

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 6, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2011-1064-RUL

Subject: Commission Approval for Rulemaking Adoption
30 Texas Administrative Code Chapter 285, On-Site Sewage Facilities
HB 2694 (8.01 – 8.06) Texas On-Site Wastewater Treatment Research
Council/Repeal, Funding and Fee
HB 240: Unintentional Access to On-Site Waste Water Facilities
Rule Project No. 2011-040-285-CE

Background and reason(s) for the rulemaking:

The Texas Commission on Environmental Quality (TCEQ) Sunset legislation, House Bill (HB) 2694, 82nd Legislature, 2011, was authored by Representative Wayne Smith and sponsored by Senator Joan Huffman.

HB 2694 abolished the Texas On-Site Wastewater Treatment Research Council (Council), transferring its duties and responsibilities to the TCEQ. The Council is referred to in 30 Texas Administrative Code (TAC) §§285.11(b) and 285.21(b). Replacing the references to Council with "commission" will clarify the responsibility for the collection of fees for the research program.

HB 240, 82nd Legislature, 2011 was authored by Representative Tan Parker and sponsored by Senator Jane Nelson.

HB 240 requires that new On-Site Sewage Facilities (OSSF) installed after September 1, 2012, be designed to prevent accidental or unintentional access to the OSSF. This change addresses a concern that the accidental or unintentional removal of a septic tank lid might contribute to harmful or fatal accidents involving individuals accessing and then falling into septic tanks.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking replaces two references to "the Council" with "the commission."

The rulemaking requires new OSSFs installed after September 1, 2012, to include a mechanism to prevent accidental or unintentional access to the system, including risers, and covers. The proposed standards are consistent with the NSF International (formerly

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known as the National Sanitation Foundation) standards for access ports for OSSFs. The adopted rules include the authority for the executive director to approve new technology. The rulemaking includes requirements that are needed to address Texas specific concerns, such as parts that are resistant to ultraviolet (UV) damage.

B.) Scope required by federal regulations or state statutes:

There are no federal regulations related to the adopted rules.

Texas Health and Safety Code (THSC), Chapter 367 authorized the Council; HB 2694 abolished the Council. The adopted 30 TAC §§285.11(b) and §285.21(b) replace "the Council" with "the commission."

THSC, Chapter 366 contains the requirements for OSSFs. HB 240 requires that new OSSFs designed or installed after September 1, 2012, be designed to prevent accidental or unintentional access to the OSSF.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff recommends adopting the NSF International standards with some modifications that were made during the stakeholder meeting and public comment period. The recommendations are:

- require that certain components have UV protection;
- require that inspection reports include documentation (such as a statement) that the OSSF owner refused to replace a riser to make it secure;
- clarify that risers and riser caps for septic tanks must also meet the rule requirements;
- remove the requirement to have specialized tools to open risers and covers to reduce damage to risers and covers;
- clarify that a sludge transporter can access OSSFs to perform maintenance
- clarify that a licensed maintenance technician can replace a riser or cover;
- require that covers be recessed to prevent accidental access to the OSSF; and
- clarify that new installation of a riser is considered construction and must be performed by a licensed installer.

Statutory authority:

- THSC, §366.001, §366.011, §366.012, §367.001, §367.007, §367.008, §367.009, and §367.010
- Texas Water Code (TWC), §5.013, §5.103, and §5.105

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Effect on the:

A.) Regulated community:

OSSF Installers and Maintenance Providers will be impacted. Installers will be required to provide approved devices on newly installed OSSFs after September 1, 2012. The regulated community will pay for the devices and ultimately pass those costs on to the OSSF purchaser.

B.) Public:

OSSF owners will benefit from additional safeguards to prevent unintentional access to the septic tank. The financial impact to the OSSF cost is expected to be an additional \$25.00 to \$100.00 at the time of the initial installation. The cost of maintenance in future years may be impacted if a riser or cover needs to be replaced.

C.) Agency programs:

The OSSF Program will update the agency's website to include the new requirements. The Program will provide information on the listserv and at training events. The program has working with trade associations to include information on the requirements in upcoming newsletters.

Revenues from the OSSF Permit Fee, formerly for the Council, will now be available to the commission, as appropriated. TCEQ staff will now deposit these revenues in the Water Resources Management Account 153, rather than General Revenue.

Stakeholder meetings:

A stakeholders' meeting was held on September 27, 2011. A notice was posted on the agency's website. Eight people attended the stakeholders' meeting representing OSSF manufacturers, installers, county agents responsible for implementing the requirements, and a trade association.

The stakeholders expressed concern that the proposed rulemaking addressed only new installations and did not include existing OSSFs. Stakeholders expressed concern that sludge transporters could fail to properly secure the system after pumping activities. Stakeholders also expressed concern that homeowners could use unacceptable mechanisms to make maintenance easier or fail to properly secure the system after performing maintenance. Stakeholders also expressed concern that there should be increased enforcement against unlicensed individuals performing OSSF activities.

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Public comment:

A public hearing was held in Austin on March 21, 2012. The comment period opened on February 24, 2012 and closed on March 26, 2012. Comments were received from the Kerr County Environmental Health Department, B&J Wakefield Services, Inc., Aerobic System Inspection & Maintenance, and one individual.

Generally, the commenters asked for clarification of various requirements.

Significant changes from proposal:

In response to comments, several changes to the proposed rule are recommended:

- Language in 30 TAC §285.38(c) was changed to clarify that the rule requirements did not apply to septic tanks and 30 TAC §285.38(d) was changed to include the requirements for septic tanks buried more than 12 inches below the ground.
- The requirement to have a specialized tool to open OSSF risers and covers was removed to reduce the potential for components being broken when OSSF owners or pumpers attempt routine maintenance.
- Language was added to limit the use of a 65 pound cover to a recessed area. This will prevent the cover from being accidentally slid open.
- Language was added that requires maintenance providers to document that the OSSF is not secure if the OSSF owner refuses to pay for repairs that are needed to secure the OSSF.

Potential controversial concerns and legislative interest:

Collection of the OSSF Permit Fee continues, even though the legislature did not appropriate funding to the TCEQ for the grant program for the 2012-2013 biennium.

Does this rulemaking affect any current policies or require development of new policies?

The rulemaking will not affect any current policies and will not require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rulemaking does not go forward, the agency will not be in compliance with the Sunset legislation relating to the Council and will not have rules requiring OSSFs to be designed to prevent accidental or unintentional access to the system.

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There are no alternatives to rulemaking.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: February 24, 2012

Anticipated *Texas Register* publication date: August 10, 2012

Anticipated effective date: August 16, 2012

Six-month Texas Register filing deadline: August 24, 2012

Agency contacts:

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Attachments

HB 2694, Article 8

HB 240

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