

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: November 16, 2012

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

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

Docket No.: 2012-0816-RUL

Subject: Commission Approval for Rulemaking Adoption
30 Texas Administrative Code (TAC) Chapter 285, On-Site Sewage Facilities
OSSF Rules Update
Rule Project No. 2012-023-285-CE

Background and reason(s) for the rulemaking:

Changes in the On-Site Sewage Facilities (OSSF) rules are needed to reflect changes in technology, provide additional options for compliance, and to clarify existing language.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would update and clarify the rules. The adopted changes would also offer alternative, potentially more cost effective methods to comply with existing requirements.

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

None.

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

The staff recommended changes are:

- Removing the drainage easement setbacks from §285.91(10). Removing the setback requirement would provide additional room for OSSF installation when drainage easements do not convey storm water. When drainage easements do convey storm water, public health protection would be provided by the existing language.
- Providing technical requirements that would allow OSSF pipes to cross drainage easements. These requirements would provide the minimum acceptable criteria for pipes that cross drainage easements while reducing the risk of spills and eliminating the need for a variance.
- Requiring disinfection equipment to initially be certified and listed as either a chlorine dispenser or a disinfection device under NSF International (formerly the National Sanitation Foundation) Standard 46 by an American National Standard Institute (ANSI) accredited testing institution. The rule will also require all disinfection equipment to subsequently be certified as a disinfection device within three years. The three-year period will provide sufficient time for manufacturers to engineer product modifications, complete the test, and obtain certification. The rule

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will allow disinfection devices to be upgraded on existing systems under the emergency repair provision. There are four certified manufacturers, two of which are from Texas. Third party certification would improve reliability of chlorinators used in OSSFs and decrease potential disease transmission through OSSFs. Adding disinfection devices to the list of emergency repairs will allow a disinfection device upgrade without upgrading the entire OSSF.

- Providing an option to reduce aerobic treatment unit sizing if an equalization tank is installed. When designing for multiple homes, or large homes, this option would provide OSSF designers a potentially lower cost option.
- Allowing existing cluster systems to be repaired. Cluster systems are wastewater systems that serve more than one legal tract (usually multiple tracts with multiple owners). Previously in Chapter 285, cluster systems were allowed. However, identifying a responsible party when a cluster system failed made achieving system compliance difficult. To address this issue the rules were amended to prohibit new cluster systems from being installed and to prohibit existing systems from being altered, extended or repaired. As a result, the owners of failing cluster systems were required to obtain a municipal wastewater permit in order to achieve compliance with Chapter 285. However, a municipal wastewater permit is not a technically feasible or practical solution for all failing cluster systems. Allowing repairs to existing systems would provide a legitimate, less costly avenue to achieve compliance.
- Adding exemptions from the subdivision review and approval process when subdividing a large tract into smaller tracts for family transfers and each tract is five acres or larger. The purpose of the subdivision review is to prevent the creation of lots which cannot be served by an OSSF. Lots that are five acres or larger will almost invariably support an OSSF.

Staff also recommends several changes that will add clarity and consistency:

- Changing "public water supply" to "public water system" in §285.4(a)(1) to provide consistency with the Public Water Supply Rules (30 TAC Chapter 290).
- Revising §285.3(a) to incorporate statutory language contained in Texas Health and Safety Code (THSC), §366.051(a) to clarify that "A person must hold a permit and an approved plan to construct, alter, repair, extend or operate an OSSF unless the OSSF meets one of the exceptions in subsection (f) of this section."
- Revising §285.5(a)(2) to indicate that all applications for new OSSF construction within the Edwards Aquifer Recharge Zone require a professional design.
- Revising §285.32(b)(1)(C)(ii) to match the figure contained in §285.90(7).
- Modifying §285.32(d) to add "in accordance with §285.91(9) of this title." After "These systems shall be designed by a professional engineer (P.E.) or a professional sanitarian." The change provides clarity as to when a P.E. must design the system.
- Adding a formula in §285.33(c)(2)(A) to calculate length when trenches are wider than the panel.

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- Adding language to §285.33(c)(3)(E) to clarify the allowable gravel content for soil beneath drip irrigation tubing.
- Adding language to §285.33(d)(1)(C)(iv) to clarify the allowable gravel content for soil beneath low pressure dosing excavations.
- Adding language to §285.9(2) to address the reporting of the security of riser caps at the end of a maintenance visit.
- Clarifying that §285.91(2) (aerobic treatment unit sizing table) also applies to apartments and townhomes and clarifying the sizing for one to three bedroom homes.
- Making other grammatical and formatting changes to clarify and make the chapter more accessible to the public.

Staff also recommended several changes based on comments received from the stakeholder group. Those recommendations were:

- Modifying §285.32(a) to increase the cleanout spacing to 100 feet. This will provide consistency with the Plumbing Code.
- Modifying §285.32(a)(8) and §285.33(a)(6) to add language for pipes that cross drainage easements.
- Clarifying §285.36(a) to indicate that tanks that are no longer used to hold sewage must be abandoned.
- Adding an option to §285.91(10) for pipe that is installed under a driveway or sidewalk.

Statutory authority:

- Texas Water Code (TWC), §5.012, Declaration of Policy;
- TWC, §5.013, General Jurisdiction of Commission;
- TWC, §5.102, General Powers;
- TWC, §5.103, Rules;
- THSC, §366.001, Policy and Purpose;
- THSC, §366.011, General Supervision and Authority;
- THSC, §366.012 Rules Concerning On-Site Sewage Disposal Systems;
- THSC, §366.051, Permits;
- THSC, §366.052, Permit Not Required for On-Site Sewage Disposal on Certain Single Residences;
- THSC, §366.053, Permit Application;
- THSC, §366.054, Notice From Installer;
- THSC, §366.055, Inspections;
- THSC, §366.056, Approval of On-Site- Sewage Disposal System;
- THSC, §366.057, Permit Issuance

Effect on the:

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A.) Regulated community:

The adopted rules could affect licensed OSSF professionals, OSSF designers, OSSF designated representatives, and property owners utilizing OSSFs. The removal of drainage easement setbacks, the option of equalization tanks, the repair of existing cluster systems, and the targeted exemptions from subdivision approval will all reduce fiscal costs to affected property owners. The certification of disinfection devices will have a cost of \$50 to \$200 upfront for each new OSSF that requires a disinfection device. However, this cost will be offset by lower operating costs for the certified devices.

B.) Public:

This rule is expected to affect only individual OSSF owners.

C.) Agency programs:

Office of Water/Water Quality Division/Wastewater Permitting Section/Municipal Permits will be relieved of the task of trying to accommodate existing cluster systems which cannot realistically comply with the Municipal Permitting rules.

Stakeholder meetings:

A stakeholders meeting was held on April 19, 2012. A total of 27 people attended the meeting. OSSF owners, installers, manufacturers and designated representatives attended the meeting. There was general agreement that the staff recommendations were necessary. Several additional recommendations were made (noted previously).

Public comment:

Comments were received from seven companies or governmental entities and one individual. Generally, the comments were supportive. Most of the comments suggest clarification of the proposed language.

Significant changes from proposal:

A requirement was added that by January 1, 2016, disinfection equipment shall be certified as disinfection devices under AMSI/NSF Standard 46 in order to be installed as part of an OSSF.

Potential controversial concerns and legislative interest:

State Representative Paul Workman has expressed interest in the drainage easement issues. We do not anticipate any controversial concerns.

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

Based on comments received, staff is proposing that the requirement for all disinfection equipment be listed as approved disinfection devices under ANSI/NSF Standard 46, starting on January 1, 2016. It was noted during the comment period that there may be a need to adjust chlorine levels in chlorine dispensers certified under ANSI/NSF Standard

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46 to prevent premature equipment breakdown. Staff concurs with the concern. Staff has contacted NSF to determine if adjusting the chlorine level in the field will affect product certification.

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

The agency could choose to not update the rules and current rules will continue to be enforced; however, there will continue to be compliance concerns with existing cluster systems as they age or begin to fail.

Key points in the proposal rulemaking schedule:

Texas Register publication date: July 13, 2012

Anticipated Texas Register publication date: December 21, 2012

Anticipated effective date: December 27, 2012

Six-month Texas Register filing deadline: January 13, 2013

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