

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** June 8, 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 Proposed Rulemaking  
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 update 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 proposed changes would also offer alternative methods to comply with existing requirements that may be more cost effective.

**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 minimum acceptable criteria for pipes crossing drainage easements while reducing the risk of spills and eliminate the need for a variance.
- Requiring disinfection devices to be certified under NSF International (formerly the National Sanitation Foundation) Standard 46 and 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

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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.
- The proposed rule would add 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 large 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) will clarify to the regulated community 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 requires 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.
- Adding language to §285.33(c)(3)(E) to clarify allowable gravel content for soil beneath drip irrigation tubing.
- Adding language to §285.33(d)(1)(C)(4) to clarify allowable gravel content for soil beneath low pressure dosing excavations.

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- Adding language to §285.35(b) 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 clarifies the sizing for one to three bedroom homes.
- Making other grammatical and formatting changes to add clarity to make the chapter more accessible to the public.

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

- 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) that tanks 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:**

**A.) Regulated community:**

The proposal 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

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property owners. The certification of disinfection devices will have a cost of \$50 to \$200 upfront for each new OSSF requiring 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).

**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?**

The proposed rules will not affect any current policies or require the development of new policies.

**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:**

**Anticipated proposal date:** June 27, 2012

**Anticipated *Texas Register* publication date:** July 13, 2012

**Public hearing date (if any):** August 6, 2012

**Public comment period:** July 13 to August 13, 2012

**Anticipated adoption date:** December 6, 2012

**Agency contacts:**

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