

The Texas Natural Resource Conservation Commission (commission) proposes new §285.60, Duties and Responsibilities of Site Evaluators and §285.64, Suspension or Revocation of License or Registration. The commission also proposes amendments to §285.1 Purpose and Applicability; §285.2, Definitions; §285.30, Site Evaluation; §285.50, General Requirements; §285.62, Duties and Responsibilities of Designated Representatives; §285.63, Duties and Responsibilities of Registered Apprentices; §285.71, Authorized Agent Enforcement of OSSFs; and §285.91, Tables. The commission also proposes the repeal of §285.51, Exceptions to Licensing Requirements; §285.52, Administration; §285.53, Qualifications; §285.54, Basic Training and Continuing Education; §285.55, Examinations; §285.56, Applications for License; §285.57, Registration of Apprentices; §285.58, Applications for Renewal; §285.59, Conditions for Denial of License, Registration, or Renewal; §285.60, Terms and Fees; §285.64, Denial, Reprimand, Suspension, or Revocation of License or Registration; and §285.65, Hearings.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments to Chapter 285 are to implement new requirements in Chapter 37, Texas Water Code (TWC), which was created by House Bill (HB) 3111 of the 77th Legislature, 2001. Texas Water Code, Chapter 37, requires the commission to consolidate administrative requirements and establish uniform procedures for the occupational licensing and registration programs administered by the commission, and to establish rules for the occupational licensing programs by December 1, 2001. To achieve this, the commission proposes to create new 30 TAC Chapter 30, Occupational Licenses and Registrations, to consolidate the administrative requirements for the ten licensing and registration programs administered in the Compliance Support Division (CSD).

The commission proposes these amendments to Chapter 285, because the licensing requirements for installers and designated representatives, and the registration of apprentices are being moved to the new Chapter 30. Chapter 30 will establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for all of the licensing programs managed by the CSD. The remaining sections in Chapter 285 specify the minimum standards for the planning and construction of an on-site sewage facility (OSSF), define the systems that are acceptable for use, specify requirements for the proper maintenance and operation of these systems, and specify the requirement and procedures for permitting systems. Senate Bill (SB) 405 of the 77th Legislature, 2001, also provides an exemption for licensing requirements for geoscientists, which is also proposed in these rules. Additionally, some amendments are proposed to Chapter 285 to reference the licensing requirements in Chapter 30 and to correct some minor errors in Chapter 285.

SECTION BY SECTION DISCUSSION

Subchapter A - General Provisions

Section 285.1 and §285.2 are proposed to be amended in Subchapter A to incorporate the provisions of HB 3111, and to provide a reference to licensing requirements that are proposed to be moved from Chapter 285 to Chapter 30.

Section 285.1, Purpose and Applicability, is proposed to be amended to delete the language “licensing of installers and designated representatives, registration of apprentices, and” since these procedures are no longer included in this chapter. Language is proposed to be added to indicate that the licensing of installers, designated representatives, and site evaluators and the registration of apprentices is included

in Chapter 30. The licensing procedures are proposed to be moved to Chapter 30.

Proposed amendments to §285.2, Definitions, provide a reference to licensing requirements that are proposed to be moved from Chapter 285 to Chapter 30 of this title and one new definition. Proposed amendments revise two existing definitions, and delete three definitions that are now defined in Chapter 30 of this title. A new definition is proposed for “site evaluator” to incorporate the language from TWC, Chapter 37. Amendments to the definitions for “apprentice” and “designated representative” are proposed. The commission proposes the definition for “apprentice” be amended to reference the licensing procedures in Chapter 30. The commission proposes the definition for “designated representative” be amended to reference the licensing procedures in Chapter 30 of this title and to incorporate the changes in the definition of “designated representative” that were made in TWC, Chapter 37. The definitions for “certificate of registration,” “license,” and “revocation” have been proposed for deletion since these words, terms, or phrases are now defined in Chapter 30. The definitions are proposed to be renumbered due to the addition and deletion of terms.

Subchapter D - Planning, Construction, and Installation Standards for OSSFs

Section 285.30, Site Evaluation, is proposed to be amended to add the requirement that a site evaluation must be performed by either a licensed site evaluator or an individual with a current professional engineer license as provided in amended TWC, Chapter 37. Section 285.30(a) is proposed to be amended to indicate that a site evaluation shall be performed on every tract of land where an OSSF will be installed “by either a site evaluator or a professional engineer” and that the report on the site evaluation is to be “prepared by either the site evaluator or the professional engineer.” This proposed

language is necessary to clarify who is responsible for performing each site evaluation and preparing the report and to meet the new provisions in TWC, Chapter 37. Section 285.30(b) is proposed to be amended to indicate that all aspects of a site evaluation shall be performed “by either a site evaluator or a professional engineer.” This proposed language is necessary to clarify who is responsible for performing all aspects of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(1) is proposed to be amended by adding “site evaluator or the professional engineer” and deleting “individual performing the site evaluation.” This proposed language is necessary to clarify who is responsible for taking the borings at each OSSF site for the soil analysis and to meet the provisions of TWC, Chapter 37.

Section 285.30(b)(1)(B) is proposed to be amended to indicate that the gravel analysis portion of a site evaluation shall be performed “by either a site evaluator or a professional engineer.” This proposed language is necessary to clarify who is responsible for performing the gravel analysis of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(1)(C) is proposed to be amended to indicate that either a site evaluator or a professional engineer must determine if there is the determination of a restrictive horizon. This proposed language is necessary to clarify who is responsible for performing this determination of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(2) is proposed to be amended to indicate that the groundwater evaluation portion of a site evaluation shall be performed “by either a site evaluator or a professional engineer.” This proposed language is necessary to clarify who is responsible for performing the groundwater evaluation of each site evaluation and to meet the provisions of TWC, Chapter 37.

Section 285.30(b)(2)(A) is proposed to be amended by adding “site evaluator or the professional

engineer” and deleting “individual performing the site evaluation.” This proposed language is necessary to be consistent with the other sections of the rules. Section 285.30(b)(2)(B) is proposed to be amended by adding “site evaluator or the professional engineer” and deleting “individual.” This proposed language is necessary to be consistent with the other sections of the rule.

Subchapter F - Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives

The title of Subchapter F is proposed to be amended from “Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives” to “Licensing and Registration Requirements for Installers, Apprentices, Designated Representatives, and Site Evaluators.” Section 285.50, General Requirements, is proposed to be amended to provide a reference to licensing requirements that have moved from Chapter 285 to Chapter 30 and to delete paragraphs that are proposed to be moved to Chapter 30. Section 285.50(a) is proposed to be amended to provide a reference that the procedures for issuing licenses and registrations have moved from Chapter 285 to Chapter 30. Existing §285.50(b) is proposed to be amended to change the citation from §285.51 to §30.244 since the licensing requirements have been moved to Chapter 30. Section 285.50(b)(1) and (2) is proposed to be deleted because it was moved to Chapter 30. Section 285.50(e) is proposed to be added to incorporate licensing provisions regarding site evaluator from TWC, Chapter 37. Section 285.50(e) is proposed to be moved to proposed §285.50(f) without change for better organization within the section.

Section 285.50(f) is proposed to be moved to §285.50(g) for better organization within the section. In addition to the items listed, language is proposed to be added that an individual working for a permitting authority shall not work as a site evaluator in the permitting authority's area of jurisdiction. The commission proposes to modify this subsection to remove any possible conflicts of interest for a designated representative. The language in §285.50(h) and (i) is proposed to be moved from existing §285.53(a) and (b) without change for better organization.

Sections 285.51 - 285.60 are proposed to be repealed and the existing language will be moved to the new Chapter 30.

Proposed new §285.60, Duties and Responsibilities of Site Evaluators, includes new requirements for the duties and responsibilities of site evaluators. Proposed §285.60(1) contains new language that requires a site evaluator to possess a current license or possess a current professional engineer license. This proposed paragraph states that it is the duty of a site evaluator to maintain a license and to ensure that the license is obtained or renewed, or that the professional engineer license is current, before any site evaluations are performed. Proposed §285.60(2) contains a new requirement to document the license number on work-related documentation because it is important for the owner of an OSSF to have a record of who performed the site evaluator. This information will allow the executive director to determine who is responsible for compliance with the rules and will enhance the ability of the executive director to enforce the requirements of Texas Health and Safety Code (THSC), Chapter 366 and 30 TAC Chapter 285. Proposed §285.60(3) is a new provision that requires a site evaluator to provide accurate information on any site evaluation or any other documentation submitted to the

permitting authorities because it is necessary to specify in these rules that site evaluators are expected to avoid fraudulent activities, and because the permitting authorities must be able to rely on the accuracy of the documentation of site evaluators to determine whether the appropriate OSSF is being proposed for the site. Proposed §285.60(4) is added to require that an individual with a site evaluator license maintain a current license as an Installer II, designated representative, or a professional sanitarian. This language is necessary to provide the exemption allowed in SB 405, relating to the regulation of professional geoscientists. New §285.60(5) is proposed to be added to include the duties of a site evaluator provided in TWC, Chapter 37. Proposed §285.60(6) is added to require the site evaluator to maintain a current address and phone number with the executive director and submit any change in writing within 30 days of the change. It is imperative for the executive director to have up-to-date information on site evaluators. This is necessary to ensure that the executive director is able to provide updates, track requirements, and send notices of renewal and to allow the executive director to secure compliance under these rules.

Section 285.62, Duties and Responsibilities of Designated Representatives, is proposed to be amended to include language on the prohibition of designated representatives from performing work as a site evaluator within the authorized agent's area of jurisdiction. Section 285.62(19) is proposed to be amended to expand the applicability of this paragraph to site evaluators. This is a general prohibition intended to eliminate potential conflict as a result of a designated representative working outside the position of the designated representative's responsibilities with the authorized agent.

Section 285.63, Duties and Responsibilities of Registered Apprentices, is proposed to be amended to include additional language to better define an apprentice's duties and responsibilities and to improve enforceability. Proposed new §285.63(a)(3) is added to require that an apprentice is to refrain from receiving compensation for an OSSF installation from anyone except the supervising installer. This language is necessary to improve enforceability. Section 285.63(a)(3) is proposed to be renumbered to §285.63(a)(4). Section 285.63(b) is proposed to be amended to add the word "advertise" to the list of activities an apprentice is not to perform. This language is necessary to be consistent with the requirements in Chapter 30.

Section 285.64, Denial, Reprimand, Suspension, or Revocation of License or Registration, is proposed to be repealed because the majority of the language has been moved to Chapter 30.

Proposed new §285.64, Suspension or Revocation of License or Registration, provides the violations for which the executive director may suspend or revoke a license or registration. Proposed new §285.64(a) states the actions for which a license may be suspended. New §285.64(1) identifies the actions for suspension by an installer. Proposed new §285.64(a)(1)(A) states that a license may be suspended for an installer for failing to perform required maintenance on an OSSF for at least eight consecutive months (failing to maintain records is evidence of failure to perform maintenance on the OSSF). Proposed new subparagraph (B) states that a license may be suspended for failing to properly submit three maintenance reports for an individual OSSF in a 12-month period. Proposed new subparagraph (C) states that a license may be suspended for failing to properly submit five or more required OSSF maintenance reports over any two-year period. A license may be suspended for a

designated representative for the prohibited actions listed. Proposed new subparagraph (A) states that a license may be suspended for failing to verify, before the initial inspection for a particular OSSF, that the individual is a properly licensed installer. Proposed new subparagraph (B) states that a license may be revoked for failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71. Proposed new subparagraph (C) states that a license may be revoked for failing to enforce the requirements of the order, ordinance, or resolution of an authorized agent. New §285.64(b) states that in addition to the items listed in §30.33, the executive director may revoke a license or registration for the listed reasons. Proposed new §285.64(b)(1), lists the reasons for revocation for an installer. Licenses may be revoked for constructing, or allowing the construction of, an OSSF that is not in compliance with Chapter 285; or allowing, or beginning, the construction of an OSSF without a permit when a permit is required.

Proposed new §285.64(b)(2) lists the reasons a license may be revoked for a designated representative. These include approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval; practicing as an apprentice or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or working for a maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent.

Proposed new §285.64(b)(3) provides the actions for which a license for a site evaluator may be revoked. The list of actions leading to revocation include failing to maintain a current Installer II, designated representative, or professional sanitarian license. Proposed new §285.64(b)(4) states the

actions for which a license for apprentice may be revoked. Actions leading to a revocation include acting as, advertising, or performing duties and responsibilities of, an installer without the direct supervision of, or direct communication with, the supervising installer; or receiving compensation for an OSSF installation from someone other than the supervising installer.

Section 285.65, Hearings, is proposed to be repealed because the majority of the language has been moved to Chapter 30.

Subchapter G - OSSF Enforcement

Section 285.71, Authorized Agent Enforcement of OSSFs, is proposed to be amended to incorporate language regarding site evaluators, or professional engineers performing site evaluations, from new provisions in TWC, Chapter 37.

Section 285.71(a)(1) is proposed to be amended to add “site evaluator” to the list of licensed individuals who can be investigated by the authorized agents if a complaint is received. This language is necessary to provide authorized agents the ability to take appropriate and timely action, including criminal or civil enforcement, on all OSSF-related complaints of the types listed.

Section 285.71(a)(2) is proposed to be amended to add “site evaluator, or a professional engineer who is performing site evaluations” to the list of individuals that can be investigated by the authorized agents if they do not possess a current license. This language is necessary to provide authorized agents the ability to take appropriate and timely action, including criminal or civil enforcement, on all OSSF-

related complaints of the types listed.

Subchapter I - Appendices

Two tables in §285.91 are proposed to be amended for consistency with the text of the rules and for clarification.

The table in §285.91(9) is proposed to be amended to indicate that the site evaluation is to be performed by either a site evaluator or a professional engineer to be consistent with the proposed revisions to §285.30.

The table in §285.91(10) is proposed to be amended for clarification. The language “Sewage Treatment Tanks or Holding” is proposed to be deleted from the title of a column to clarify that all tanks need to be separated from the features listed in the table. This language is necessary since there are several types of tanks identified in the rules and not all are listed in the table. References to Chapter 290 are proposed to be amended to reflect the correct chapter name.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for units of state and local government as a result of administration and enforcement of the proposed rules. The proposed repeal of licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices, could result in cost savings for units of state

and local government that pay these license fees. There will be no fiscal implications for units of state and local government that do not pay these license renewal fees.

The proposed rules are intended to implement certain provisions of HB 3111 (an act relating to occupational licenses and registrations issued by the commission), 77th Legislature, 2001.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements of several commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the Occupational Licensing Account.

The proposed rules would repeal the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices contained in this chapter. Additionally, this rulemaking will update language contained in this chapter by adding the responsibilities of a site evaluator, the requirement that all site evaluations and reports must be performed by a qualified site evaluator or professional engineer, update references, and make minor administrative corrections.

The repeal of the OSSF licensing and registration requirements would affect approximately 5,836 installers, designated representatives, site evaluators, and installer apprentices and result in the loss of fee revenue to the commission of an estimated \$300,000 in licensing and registration fees.

However, in concurrent rulemaking, the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices are established in a new Chapter 30, Occupational Licenses and Registrations. Those provisions establish new fee rates and renewal cycles for OSSF installers, designated representatives, site evaluators, and installer apprentices. The proposed new fee rate (\$70 every two years) only applies to installers, designated representatives, and site evaluators. The fee rate for apprentices will remain at \$50 every two years. The license renewal fee rate for site evaluators is a new requirement. The license renewal fee rate for installers is currently \$150 every two years, and the fee rate for designated representatives is \$100 every two years.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be the implementation of certain provisions of HB 3111, and increased compliance through the consolidation and standardization of commission occupational licensing programs.

The proposed rules implement certain provisions of HB 3111. The bill creates a new chapter of TWC, which consolidates the administrative requirements of several commission regulated licensing and registration programs into one new chapter.

The proposed rules would repeal the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices contained in this chapter.

Additionally, this rulemaking will update language contained in this chapter by adding the

responsibilities of a site evaluator, the requirement that all site evaluations and reports must be performed by a qualified site evaluator or professional engineer, update references, and make minor administrative corrections.

If amendments in concurrent rulemaking are not adopted, the adoption of these amendments would result in cost savings for the affected 5,836 OSSF installers, designated representatives, site evaluators, and installer apprentices, though these cost savings are not considered significant. There will be no fiscal implications for individuals and businesses that do not pay license renewal fees for OSSF installers, designated representatives, site evaluators, and installer apprentices.

However, in concurrent rulemaking, the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices are established in a new Chapter 30, Occupational Licenses and Registrations. Those provisions establish new fee rates and renewal cycles for OSSF installers, designated representatives, site evaluators, and installer apprentices. The proposed new fee rate (\$70 every two years) only applies to installers, designated representatives, and site evaluators. The fee rate for apprentices will remain at \$50 every two years. The license renewal fee rate for site evaluators is a new requirement. The license renewal fee rate for installers is currently \$150 every two years, and the fee rate for designated representatives is \$100 every two years.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts for small or micro-businesses as a result of the proposed rules, which is intended to implement provisions of HB 3111. Adoption of the proposed rules could result in

a cost savings, which is not anticipated to be significant, for small or micro-businesses that pay for renewal of OSSF installer, designated representative, and site evaluator licenses. If amendments in concurrent rulemaking are not adopted, the adoption of these amendments would delete the licensing and registration requirement for the affected 5,836 OSSF installers, designated representatives, site evaluators, and installer apprentices, many of which are estimated to be small or micro-businesses. There will be no fiscal implications for small or micro-businesses that do not pay renewal fees for OSSF installers, designated representatives, site evaluators, and installer apprentice licenses.

The proposed rules would also update current language by adding the responsibilities of a site evaluator, the requirement that all site evaluations and reports must be performed by a qualified site evaluator or professional engineer, update references, and make minor administrative corrections.

However, in concurrent rulemaking, the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices are established in a new Chapter 30, Occupational Licenses and Registrations. Those provisions establish new fee rates and renewal cycles for OSSF installers, designated representatives, site evaluators, and installer apprentices. The proposed new fee rate (\$70 every two years) only applies to installers, designated representatives, and site evaluators. The fee rate for apprentices will remain at \$50 every two years. The license renewal fee rate for site evaluators is a new requirement. The license renewal fee rate for installers is currently \$150 every two years, and the fee rate for designated representatives is \$100 every two years.

LOCAL EMPLOYMENT IMPACT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules.

Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply consolidate existing rule language into one chapter. Thus, the proposed rules do not meet the definition of a “major environmental rule” as defined in the Texas Government Code, §2001.0225(g)(3), and thus, does not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter. The proposed rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational licenses or registration including procedures for: the initial application; examinations; and renewal applications. The proposed rules do not constitute a takings because it would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal

30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendments are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as

assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendments implement TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

SUBCHAPTER A: GENERAL PROVISIONS

§285.1, §285.2

§285.1. Purpose and Applicability.

(a) Purpose. The purpose of this chapter is to provide a comprehensive regulatory program for the management of on-site sewage facilities (OSSFs), as prescribed by the Texas Health and Safety Code, Chapter 366. This chapter establishes minimum standards for planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, and inspection of OSSFs. This chapter also provides the procedures for [licensing of installers and designated representatives, registration of apprentices, and] the designation of local governmental entities as authorized agents. The licensing of installers, designated representatives, and site evaluators and the registration of apprentices is included in Chapter 30 of this title (relating to Occupational Licenses and Registrations). Unauthorized discharge of effluent into or adjacent to the waters in the state is prohibited.

(b) (No change.)

§285.2. Definitions.

The following words and terms in this section are in addition to the definitions in Chapter 3 and Chapter 30 of this title (relating to Definitions and Occupational Licenses and Registrations). The words and terms in this section, when used in this chapter, shall have the following meanings_ [:]

(1) (No change.)

(2) Alter - To change an on-site sewage facility (OSSF) [OSSF] resulting in:

(A) - (E) (No change.)

(3) (No change.)

(4) **Apprentice** - An individual who has been properly registered with the executive director according to Chapter 30 of this title, and is undertaking a training program under the direct supervision of a licensed installer.

(5) - (7) (No change.)

[(8) **Certificate of registration** - The license held by an individual that allows an individual to perform specific tasks under these rules, and that is issued by the executive director.]

(8) [(9)] **Certified professional soil scientist** - An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science.

(9) [(10)] **Cesspool** - A non-watertight, covered receptacle intended for the receipt and partial treatment of sewage. This device is constructed such that its sidewalls and bottom are open-jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

(10) [(11)] **Cluster system** - A sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.

(11) [(12)] **Commercial or institutional facility** - Any building that is not used as a single-family dwelling or duplex.

(12) [(13)] **Compensation** - A payment to construct, alter, repair, extend, maintain, or install an OSSF. Payment may be in the form of cash, check, charge, or other form of monetary exchange or exchange of property or services for service rendered.

(13) [(14)] **Composting toilet** - A self-contained treatment and disposal facility constructed to decompose non-waterborne human wastes through bacterial action.

(14) [(15)] **Condensate drain** - A pipe that is used for the disposal of water generated by air conditioners, refrigeration equipment, or other equipment.

(15) [(16)] **Construct** - To engage in any activity related to the installation, alteration,

extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.

(16) [(17)] **Delegate** - The executive director's act of assigning authority to implement the OSSF program under this chapter.

(17) [(18)] **Designated representative** - An individual who holds a valid license issued by the executive director according to Chapter 30 of this title, and who is designated by the authorized agent to review permit applications, [conduct] site evaluations, or planning materials, or conduct [percolation tests, system designs, and] inspections on OSSFs.

(18) [(19)] **Direct communication** - The demonstrated ability of an installer and the apprentice to communicate immediately with each other in person, by telephone, or by radio.

(19) [(20)] **Direct supervision** - The responsibility of an installer to oversee, direct, and approve all actions of an apprentice relating to the construction of an OSSF.

(20) [(21)] **Discharge** - To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) [(22)] **Edwards Aquifer** - That portion of an arcuate belt of porous, waterbearing

predominantly carbonate rocks (limestones) known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation, or as amended under Chapter 213 of this title (relating to Edwards Aquifer). The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) [(23)] **Edwards Aquifer Recharge zone** - That area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as a geographic area delineated on official maps located in the appropriate regional office and groundwater conservation district, or as amended by Chapter 213 of this title.

(23) [(24)] **Extend** - To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.

(24) [(25)] **Floodplain (100-year)** - Any area susceptible to inundation by flood waters from any source and subject to the statistical 100-year flood (has a 1% chance of flooding each year).

(25) [(26)] **Floodway** - The channel of a watercourse and the adjacent land areas (within a portion of the 100-year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation before encroachment into the 100-year floodplain.

(26) [(27)] **Geotextile filter fabric** - A non-woven fabric suitable for wastewater applications.

(27) [(28)] **Gravel-less drainfield pipe** - An eight-inch or ten-inch diameter geotextile fabric-wrapped piping product without gravel or media.

(28) [(29)] **Grease interceptor** - Flootation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged.

(29) [(30)] **Groundwater** - Subsurface water occurring in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(30) [(31)] **Holding tank** - A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to an approved treatment process.

(31) [(32)] **Individual** - A single living human being.

(32) [(33)] **Install** - To put in place or construct any portion of an OSSF.

(33) [(34)] **Installer** - An individual who is compensated by another to construct an OSSF.

(35) **License** - The document issued by the executive director approving an individual to perform duties authorized under this chapter.]

(34) [(36)] **Local governmental entity** - A municipality, county, river authority, or special district, including groundwater conservation districts, soil and water conservation districts, and public health districts.

(35) [(37)] **Maintenance** - Required or routine performance checks, examinations, upkeep, cleaning, or mechanical adjustments to an OSSF, including replacement of pumps, filters, aerator lines, valves, or electrical components. Maintenance does not include alterations.

(36) [(38)] **Maintenance company** - A person or business that maintains OSSFs.

(37) [(39)] **Maintenance findings** - The results of a required performance check or component examination on a specific OSSF.

(38) [(40)] **Malfunctioning OSSF** - An OSSF that is causing a nuisance or is not

operating in compliance with this chapter.

(39) [(41)] **Manufactured housing community** - Any area developed or used for lease or rental of space for two or more manufactured homes.

(40) [(42)] **Multi-unit residential development** - Any area developed or used for a structure or combination of structures designed to lease or rent space to house two or more families.

(41) [(43)] **Notice of approval** - Written permission from the permitting authority to operate an OSSF. The notice of approval is the final part of the permit.

(42) [(44)] **Nuisance** -

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons;

(B) an overflow from a septic tank or similar device, including surface discharge from or groundwater contamination by a component of an OSSF; or

(C) a blatant discharge from an OSSF.

(43) [(45)] **On-site sewage disposal system** - One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

(44) [(46)] **On-site sewage facility (OSSF)** - An on-site sewage disposal system.

(45) [(47)] **On-site waste disposal order** - An order, ordinance, or resolution adopted by a local governmental entity and approved by the executive director.

(46) [(48)] **Operate** - To use an OSSF.

(47) [(49)] **Owner** - A person who owns property served by an OSSF, or a person who owns an OSSF. This includes any person who holds legal possession or ownership of a total or partial interest in the structure or property served by an OSSF.

(48) [(50)] **Owner's agent** - An installer, professional sanitarian, or professional engineer who is authorized to submit the permit application and the planning materials to the permitting authority on behalf of the owner.

(49) [(51)] **Permit** - An authorization, issued by the permitting authority, to construct or operate an OSSF. The permit consists of the authorization to construct (including the approved planning materials) and the notice of approval.

(50) [(52)] **Permitting authority** - The executive director or an authorized agent.

(51) [(53)] **Planning material** - Plans, applications, site evaluations, and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit.

(52) [(54)] **Platted** - The subdivision of property which has been recorded with a county or municipality in an official plat record.

(53) [(55)] **Pretreatment tank** - A tank placed ahead of a treatment unit that functions as an interceptor for materials such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(54) [(56)] **Professional engineer** - An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(55) [(57)] **Professional sanitarian** - An individual registered by the Texas Department of Health to carry out educational and inspection duties in the field of sanitation in the State of Texas.

(56) [(58)] **Proprietary system** - An OSSF treatment or disposal system that is produced or marketed under exclusive legal right of the manufacturer or designer or for which a patent, trade name, trademark, or copyright is used by a person or company.

(57) [(59)] **Recharge feature** - Permeable geologic or manmade feature located on the Edwards Aquifer recharge zone where:

(A) a potential for hydraulic interconnectedness between the surface and the aquifer exists; and

(B) rapid infiltration from the OSSF to the subsurface may occur.

(58) [(60)] **Recreational vehicle park** - A single tract of land that has rental spaces for two or more vehicles that are intended for recreational use only and has a combined wastewater flow of less than 5,000 gallons per day.

(59) [(61)] **Regional office** - A regional office of the agency.

(60) [(62)] **Repair** - To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

[(63)] **Revocation** - A formal procedure, initiated by the executive director, in which an apprentice's, installer's, or designated representative's license or registration is rescinded by the commission.]

(61) [(64)] **Scum** - A mass of organic or inorganic matter which floats on the surface of sewage.

(62) [(65)] **Secondary treatment** - The process of reducing pollutants to the levels specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(63) [(66)] **Seepage pit** - An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(64) [(67)] **Septic tank** - A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter.

(65) [(68)] **Sewage** - Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(66) [(69)] **Single family dwelling** - A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

(67) **Site evaluator** - An individual who holds a valid license issued by the executive director according to Chapter 30 of this title, or holds a current professional engineer license, and conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an OSSF.

(68) [(70)] **Sludge** - A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(69) [(71)] **Soil** - The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(70) [(72)] **Soil absorption system** - A subsurface method for the treatment and disposal of sewage which relies on the soil's ability to treat and absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(71) [(73)] **Subdivision** - A tract of property divided into two or more parts either by platting or field notes with metes and bounds, and transferred by deed or contract for deed.

(72) [(74)] **Well** - A water well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well as defined under the Texas Water Code, Chapters 26, 32 and 33, and 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

**SUBCHAPTER D: PLANNING, CONSTRUCTION, AND
INSTALLATION STANDARDS FOR OSSFs**

§285.30

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.30. Site Evaluation.

(a) General Requirement. To document the soil and site conditions, a complete site evaluation shall be performed by either a site evaluator or a professional engineer on every tract of land where an OSSF will be installed. A report prepared by either the site evaluator or the professional engineer providing the site evaluation criteria in subsection (b) of this section shall be submitted with the planning materials.

(b) Site evaluation criteria. All aspects of the site evaluation shall be performed by either a site evaluator or a professional engineer according to this section. The information obtained during the site evaluation shall be used to determine the type and size of the OSSF.

(1) Soil analysis. The site evaluator or the professional engineer [individual performing the site evaluation] shall either drill two soil borings or excavate two backhoe pits at opposite ends of the proposed disposal area to determine the characteristics of the soil. In areas of high soil variability, the permitting authority may require additional borings or backhoe pits. The borings or backhoe pits shall either be excavated to a depth of two feet below the proposed excavation of the disposal area, or to a restrictive horizon, whichever is less.

(A) (No change.)

(B) Gravel analysis. Class II or Class III soils containing gravel shall be further evaluated by either a site evaluator or a professional engineer by using a sieve analysis to determine the percentage of gravel by volume and the size of the gravel as indicated in §285.91(5) of this title.

(C) Restrictive horizons analysis. The soils within the borings or backhoe pits shall be analyzed by either a site evaluator or a professional engineer to determine if a restrictive horizon exists. Clay subsoils, rock, and plugged laminar soils are considered restrictive horizons. Restrictive horizons are recognized by an abrupt change in texture from a sandy or loamy surface horizon to:

(i) - (ii) (No change.)

(2) Groundwater evaluation. The soil profile shall be examined by either a site evaluator or a professional engineer to determine if there are indications of groundwater within 24 inches of the bottom of the excavation.

(A) If the designated representative and the site evaluator or the professional engineer [individual performing the site evaluation] disagree on the presence of groundwater, the designated representative shall verify groundwater information using the Natural Resources Conservation Service (NRCS) soil survey for that county, if it is available.

(B) If the designated representative or the site evaluator or the professional engineer [individual] disagree with the NRCS soil survey, or if an NRCS soil survey does not exist for that county, the owner has the option to retain a certified professional soil scientist to evaluate the presence of groundwater and present that information to the designated representative for a final decision.

(3) - (4) (No change.)

**SUBCHAPTER F: LICENSING AND REGISTRATION REQUIREMENTS
FOR INSTALLERS, APPRENTICES AND DESIGNATED REPRESENTATIVES**

§§285.51 - 285.60, 285.64, 285.65

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in the TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed repeals implement TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.51. Exemptions to Licensing Requirements.

§285.52. Administration.

§285.53. Qualifications.

§285.54. Basic Training and Continuing Education.

§285.55. Examinations.

§285.56. Applications for License.

§285.57. Registration of Apprentices.

§285.58. Applications for Renewal.

§285.59. Conditions for Denial of License, Registration, or Renewal.

§285.60. Terms and Fees.

§285.64. Denial, Reprimand, Suspension, or Revocation of License or Registration.

§285.65. Hearings.

**SUBCHAPTER F: LICENSING AND REGISTRATION REQUIREMENTS
FOR INSTALLERS, APPRENTICES, [AND] DESIGNATED REPRESENTATIVES, AND
SITE EVALUATORS**

§§285.50, 285.60, 285.62 - 285.64

STATUTORY AUTHORITY

The new and amended sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed new and amended sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed new and amended sections implement TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.50. General Requirements.

(a) The procedures for issuing licenses and registrations for on-site sewage facilities (OSSF) installers, designated representatives, apprentices, and site evaluators are in Chapter 30 of this title (relating to Occupational Licenses and Registrations) [purpose of this subchapter is to provide a uniform procedure for issuing licenses to installers and designated representatives, and issuing registrations to apprentices].

(b) Any individual who constructs any part of an OSSF shall hold a current installer license appropriate for the type of system being installed, except as noted in §30.244 [§285.51] of this title (relating to Exemptions [to Licensing Requirements]). This does not include the individuals under the direct supervision of the licensed installer or registered apprentice.

[(1) Individuals may not advertise or represent themselves to the public as installers unless they possess a current installer license. Entities may not advertise or represent to the public that they can perform installer services unless they employ a currently licensed individual.]

[(2) The executive director may waive qualifications, training, or examination for an installer with a current authorization from another state if that state has requirements equivalent to those in this subchapter.]

(c) - (d) (No change.)

(e) Effective September 1, 2002, any individual, other than a professional engineer, who

performs the duties of a site evaluator under §285.60 of this title (relating to Duties and Responsibilities of Site Evaluators) shall possess a current site evaluator license. An individual possessing a current professional engineer license is not required to possess a site evaluator license.

(f) [(e)] When required by the permitting authority, the installer or the installer's apprentice must be present at the job site during the inspection or re-inspection of the OSSF.

(g) [(f)] Any individual who acts in any capacity for a permitting authority shall not, within that permitting authority's area of jurisdiction:

- (1) work as an apprentice to an OSSF installer;
- (2) work as an OSSF installer;
- (3) work for an OSSF maintenance company; [or]
- (4) work as a site evaluator; or

(5) [(4)] perform any other OSSF-related activities which fall under the permitting authority's regulatory jurisdiction, except those activities directly related to the individual's duties as an employee of, appointee to, or contractor for the permitting authority.

(h) An Installer I is authorized to construct OSSFs as described in §285.91(9) of this title (relating to Tables).

(i) An Installer II is authorized to construct all types of OSSFs as described in §285.91(9) of this title.

§285.60. Duties and Responsibilities of Site Evaluators.

A site evaluator shall:

(1) possess a current license from the executive director or possess a current professional engineer license;

(2) record their license number on all site evaluations, and all other correspondence prepared as a site evaluator under this chapter;

(3) provide true and accurate information on any site evaluation or any other documentation;

(4) maintain a current Installer II, designated representative, or professional sanitarian license, in addition to the site evaluator;

(5) conduct preconstruction site evaluations, including visiting the site and performing soil analysis, a site survey, or other activities necessary to determine if a site is suitable for an on-site sewage facility (OSSF); and

(6) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

§285.62. Duties and Responsibilities of Designated Representatives.

A designated representative shall:

(1) - (8) (No change.)

(9) verify, before the initial inspection, that the installer possesses a current license and has the correct classification for constructing the permitted or planned on-site sewage facility (OSSF) [OSSF];

(10) - (18) (No change.)

(19) while employed by, appointed to, or contracted by the authorized agent, refrain from performing any of the following activities within the authorized agent's area of jurisdiction:

(A) - (B) (No change.)

(C) working for an OSSF maintenance company; [or]

(D) working as a site evaluator; or

(E) [(D)] performing any other OSSF-related activities which fall under the authorized agent's regulatory jurisdiction, except those activities directly related to the individual's duties as a designated representative for the authorized agent;

(20) - (21) (No change.)

§285.63. Duties and Responsibilities of Registered Apprentices.

(a) An apprentice shall:

(1) (No change.)

(2) perform services associated with on-site sewage facility (OSSF) [OSSF] construction under the direct supervision and direction of the installer on-site or be in direct communication with the installer; [and]

(3) refrain from receiving compensation for an OSSF installation from anyone except the supervising installer; and

(4) [(3)] maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

(b) An apprentice shall not act as, advertise, or offer to perform services as, an installer. An apprentice may not perform any services associated with OSSF construction except under the direct supervision of an installer holding a current license or according to the supervising installer's expressed directions.

§285.64. Suspension or Revocation of License or Registration.

(a) Suspension. In addition to the items listed in §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation), the executive director may suspend a license for the following reasons:

(1) for an installer:

(A) failing to perform required maintenance on an on-site sewage facility (OSSF) for at least eight consecutive months (failing to maintain records is evidence of failure to perform maintenance on the OSSF);

(B) failing to properly submit three maintenance reports for an individual OSSF in a 12-month period; or

(C) failing to properly submit five or more required OSSF maintenance reports over any two-year period;

(2) for a designated representative:

(A) failing to verify, before the initial inspection for a particular OSSF, that the individual is a properly licensed installer;

(B) failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs); or

(C) failing to enforce the requirements of the order, ordinance, or resolution of an authorized agent;

(b) Revocation. In addition to the items listed in §30.33 of this title, the executive director may revoke a license or registration for the following reasons:

(1) for an installer:

(A) constructing, or allowing the construction of, an OSSF that is not in compliance with Chapter 285 of this title;

(B) allowing, or beginning, the construction of an OSSF without a permit when a permit is required;

(2) for a designated representative:

(A) approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval;

(B) practicing as an apprentice or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or

(C) working for a maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent;

(3) for a site evaluator: failing to maintain a current Installer II, designated representative, or professional sanitarian license; or

(4) for an apprentice:

(A) acting as, advertising, or performing duties and responsibilities of, an installer without the direct supervision of, or direct communication with, the supervising installer; or

(B) receiving compensation for an OSSF installation from someone other than the supervising installer.

SUBCHAPTER G: OSSF ENFORCEMENT

§285.71

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.71. Authorized Agent Enforcement of OSSFs.

(a) Complaints. The authorized agent shall investigate a complaint regarding an on-site sewage facility (OSSF) [OSSF] within 30 days after receipt of the complaint, notify the complainant of the findings, and take appropriate and timely action on all documented violations. Appropriate action may include criminal or civil enforcement action as necessary under the authority of their order, ordinance, or resolution, the Texas Water Code, Chapters 7 and 26, or the Texas Health and Safety Code, Chapters 341 and 366. This may include complaints against:

(1) registered apprentices and licensed installers, site evaluators, and designated representatives;

(2) individuals performing the duties as an apprentice, installer, [or] designated representative, site evaluator, or a professional engineer who is performing site evaluations without a current registration or license;

(3) - (4) (No change.)

(b) - (c) (No change.)

SUBCHAPTER I: APPENDICES

§285.91

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) - (8) (No change.)

(9) Table IX. OSSF System Designation.

Figure: 30 TAC §285.91(9)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

Figure: 30 TAC §285.91(10)

(11) - (13) (No change.)