

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the amendment to §285.5, Submittal Requirements for Planning Materials; and new §285.8, Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land. Section 285.8 is adopted *with change* to the proposed text as published in the March 1, 2001 issue of the *Texas Register* (27 TexReg 1456). Section 285.5 is adopted *without change* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Texas Health and Safety Code (THSC), §366.0512, was added by House Bill (HB) 2912, §20.03, 77th Legislature, 2001, to provide the commission the authority to permit multiple treatment and disposal systems located on one tract of land as an on-site sewage facility (OSSF), provided that: the tract of land is at least 100 acres in size; all the systems on the tract of land produce no more than a combined total of 5,000 gallons per day (gpd) on an annual average basis; the systems are only used on a seasonal or intermittent basis; and the systems are used only for disposal of sewage produced on the tract of land.

Owners of large tracts of land with multiple treatment and disposal systems, such as camps and parks, have highlighted concerns about being required to obtain a municipal wastewater treatment permit for the systems, because of the cost and time involved. HB 2912, §20.03, provides both environmental protection and a commonsense remedy for owners of large tracts of land with multiple OSSF systems.

To avoid conflicts with 30 TAC Chapter 331 (relating to Underground Injection Control), language has also been included to indicate that the calculated peak flow for each individual system shall be less than 5,000 gpd. Additionally, language has been included that requires the owner to monitor the flow from the systems and report the flow data to the permitting authority and the executive director (ED). The ED and the permitting authority must review the flow data. If the system produces more than 5,000 gpd, the owner must either bring the system into compliance or obtain a municipal wastewater discharge permit.

SECTION BY SECTION DISCUSSION

Adopted §285.5(a) is amended to add §285.5(a)(2)(D). New subparagraph (D) states that the planning materials for multiple treatment and disposal systems on large tracts of land must be prepared by either a professional engineer or professional sanitarian.

Adopted new §285.8 provides the requirements that must be met before multiple treatment and disposal systems on a single tract can be permitted as an OSSF. Additionally, this section includes the procedures for preparing the planning materials, reviewing the planning materials, permitting the systems, and monitoring the systems. Language is also provided to address systems that do not meet the requirements of this section.

Adopted §285.8(a) adds the requirements that the owner of a single tract of land must meet to be able to obtain an OSSF permit for construction of multiple treatment and disposal systems. Paragraph (1)

provides that the size of the tract of land must be at least 100 acres as specified in HB 2912, §20.03. Paragraph (2) includes the language specified in HB 2912, §20.03, that the systems be used only on a seasonal or intermittent basis. Since the intent of the legislation is to address the needs of camps and parks, “seasonal or intermittent” are defined as the time used by camp and park programs. The commission determined that the language concerning the definition of “seasonal and intermittent” needed to be clarified since it appeared to be contradictory. Therefore, the language has been changed to: “the systems are used: (A) on a seasonal or intermittent basis, which means any combination of weekends (Friday through Sunday) plus 60 weekdays (Monday through Thursday) or less during a calendar year;....” Most of these facilities operate during the summer months, then only on weekends with some limited weekday use the remainder of the year. The 60-weekday requirement would allow use of the camp or park 15 weeks per year. Language has also been included to address the use of the facility the remainder of the year by employees, voluntary staff, or contractors performing work-related duties on the tract of land. Language was added to paragraph (3) to clarify that the anticipated total of all the systems on the tract of land produce no more than 5,000 gpd on an annual average basis as specified in HB 2912, §20.03. “Annual average basis” is defined as the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. This definition is consistent with other rules of the commission. The flow must be calculated using either actual water use data or data from §285.91(3), concerning Tables. Paragraph (4) requires that the peak flow for each individual OSSF system be less than 5,000 gpd. If the individual OSSF system has a peak flow over 5,000 gpd, the system is not considered an OSSF and may not be permitted under Chapter 285 or THSC, Chapter 366. This is consistent with 30 TAC §331.7(c), concerning Permit Required.

Paragraph (5) provides the language from HB 2912, §20.03, indicating that the systems may only be used for disposal of sewage produced on the single tract of land.

Adopted §285.8(b) specifies who can prepare and submit the planning materials to the permitting authority and the information that must be included in the planning materials for all existing systems.

Paragraph (1) provides that the application must be submitted on the form provided by the permitting authority. Paragraph (2) provides that all planning materials required by §285.5(a)(2) must be submitted. Paragraph (3) provides that the results of a site evaluation must be provided. Paragraph (4) provides that the location, type of systems, size of systems, and if permitted, information from the permit must be provided for all existing systems. Paragraph (5) provides that the appropriate fee must be submitted.

Adopted §285.8(c) provides that the permitting authority must submit the application package to the ED within five working days after receipt. The ED shall review the application package and shall determine if the systems may be permitted as an OSSF, the systems do not meet the requirements of this section, or the application is incomplete. The ED shall provide the determination in writing to the owner or the owner's agent, and to the permitting authority within 30 days after receipt of the application package from the permitting authority.

Adopted §285.8(d) provides the procedures to follow as a result of the ED review. Paragraph (1) provides that if the ED determines that the systems may be permitted as an OSSF, the permitting authority shall issue either an authorization to construct, or a notice of approval. Paragraph (2) requires

that all multiple systems that do not meet the requirements in subsection (a) may be required to submit an application for either a permit under 30 TAC Chapter 205 or Chapter 305 (General Permits for Waste Discharges or Consolidated Permits, respectively) and an authorization under Chapter 331, concerning Underground Injection Control.

Adopted §285.8(e) indicates that all systems on the property, including existing systems, must meet the requirements of Chapter 285. This may require the owners of some existing systems to bring the systems into compliance with Chapter 285.

Adopted §285.8(f) specifies the monitoring and reporting requirements for all of the systems on the single tract of land. These provisions are necessary to ensure that all of the systems on the tract of land will comply with the requirement for a total combined annual average flow of no more than 5,000 gpd. Language has been added to clarify that this section only applies to the actual flow from the systems.

Adopted §285.8(g) provides that if, as a result of the submittal of the reports required in subsection (f), the ED or the authorized agent determines that the systems no longer meet the requirement of this section, the owner shall either bring the systems into compliance with the section or submit an application for a permit under Chapter 205 or Chapter 305 and an authorization under Chapter 331.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These rules are adopted to protect the environment, but are not expected to adversely affect the economy of the state in a material way.

These adopted rules are anticipated to have a minimal effect on the economy, competition, and jobs, although they enhance the protection of the environment and the public health and safety of citizens of the state. The adopted rules incorporate multiple systems provisions from HB 2912, §20.03, into new §285.8.

This rulemaking is not a major rule and does not meet any of the four requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, this rulemaking does not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The EPA does not have a federal program for OSSFs and does not establish requirements for states that implement their own OSSF programs. Thus, the adopted rules do not exceed a standard set

by federal law nor exceed the requirement of a delegation agreement because there is no federal authorization for on-site sewage disposal systems.

This rulemaking does not adopt a rule solely under the general powers of the commission and does not exceed an express requirement of state law. The requirements implemented through these adopted rules are expressly defined under THSC, Chapter 366, which requires the commission to enact rules governing the installation of OSSFs.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.43. The purpose of this rulemaking is to clarify and define minimum standards to ensure that OSSFs meet the requirements of the law and adequately protect the consumer and the environment from potential exposure to raw sewage resulting from improper installation, operation, and maintenance of sewage facilities, which could result in the discharge of sewage into the environment. This rulemaking does not provide the commission with any additional authority or jurisdictional responsibility related to OSSFs.

The specific purpose of the adopted rules is to incorporate multiple systems provisions from HB 2912, §20.03 into new §285.8.

These rules are adopted in an effort to reasonably fulfill an obligation mandated by state law to implement the OSSF program and will substantially advance the implementation of the requirements

under THSC, Chapter 366. Promulgation and enforcement of these adopted rules will not affect private real property. Therefore, the commission determined that these adopted rules will not result in a takings.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC Chapter 505, §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program. The Coastal Coordination Act requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that the adopted rules are in accordance with 31 TAC §505.22, and that the adopted rulemaking is consistent with the applicable CMP goals and policies.

The goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP goals applicable to these adopted rules require that rules governing OSSFs shall require those systems to be located, designed, operated, inspected, and maintained so as to prevent

release of pollutants that may adversely affect coastal waters. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP goals because the standards specified in the rules are intended to reduce discharge of pollutants regardless of location.

PUBLIC COMMENT

The commission held a public hearing in Austin on March 26, 2002. The public comment period closed on April 1, 2002. No commenters provided oral comments at the public hearing on Chapter 285. The following commenters provided written comments: Community Environmental Services, Inc. (CES); Guadalupe Survey Company/Guadalupe Wastewater Company (GSCGWC); and Thompson & Knight (T&K), representing the Capitol Area Council of the Boy Scouts of America.

CES generally supported, in part, certain provisions of the proposed rulemaking. GSCGWC and T&K supported the proposed rulemaking. CES expressed opposition to the costs provided in the fiscal analysis. CES, GSCGWC, and T&K suggested changes to the proposal as stated in the RESPONSE TO COMMENTS section of the preamble.

RESPONSE TO COMMENTS

General

CES indicated that the costs given in the fiscal analysis for OSSF systems are incorrect. According to CES, the cost of a typical system is \$66,750, without considering the cost of the sewer line or manifold piping cost.

Response

The commission acknowledges that the cost of systems vary across the state and that the CES cost estimate may more accurately represent the cost in its area of the state. The costs provided in the fiscal analysis, however, are average costs for the entire state. Therefore, no change has been made in response to this comment.

CES expressed concern that the costs given appear to be promoting certain types of systems like aerobic treatment systems and that other systems provide more consistent and better effluent quality than aerobic treatment systems.

Response

The commission disagrees with CES's comment that the commission is promoting certain types of OSSF systems. The costs were not based on a specific system since the commission does not promote any system over another. All systems included in Chapter 285 will provide proper treatment and disposal of wastewater if properly designed, installed, operated, and maintained. This issue is beyond the scope of this rulemaking. Therefore, no change has been made in response to this comment.

CES suggested that the agency perform long-term (25 to 30 years) cost analyses on systems to provide the regulated community a better picture of systems instead of promoting certain types of systems.

Response

The commission acknowledges CES' comment regarding long-term analysis. Such an analysis is beyond the scope of this rulemaking. Therefore, no change has been made in response to this comment.

GSCGWC indicated that they were “glad to see special considerations being extended to camps as they certainly operate under special conditions” and that they appreciated the opportunity to interact “as TNRCC works to create rules for the implementation of the Bill (House Bill 2912).”

Response

The commission appreciates the comment.

T&K stated that they “support and complement the agency’s efforts in developing the proposed rules.”

Response

The commission appreciates the comment.

Comments on §285.8

T&K requested that the language in §285.8(a)(2) be changed from “the systems are used on a seasonal or intermittent basis, which means” to “the systems are used by persons, other than employees, voluntary staff, or contractors performing work-related duties on the tract of land, on a seasonal or intermittent basis, which means.” T&K indicated that the language as written would exclude the use of

the facilities by camp staff or contract workers except on the times specified in the rules. T&K further indicated that the requested change creates an exception that is consistent with the legislative concept of “seasonal or intermittent” use.

Response

The commission agrees with the comment. The proposed rule did not address staff or contractors who may work at the facilities other times during the year. Therefore, language has been added to §285.8(a)(2)(B), which states that the systems are used “the remainder of the year by employees, voluntary staff, or contractors performing work-related duties on the tract of land.”

CES and GSCGWC recommended that §285.8(a)(2) be deleted. CES indicated that the rules “so narrowly define the visitation on properties that might be covered under the rules that they undercut the rule’s ability to meet the legislative intent.” CES also indicated that few, if any, parks would be able to get a permit using the proposed definition. CES further indicated that the “restrictive language in this proposed rule would disallow permitting of those parks’ systems under the OSSF rule, even though the average daily wastewater flows from those systems would fall well under the 5,000 gallons per day limit.” GSCGWC indicated that camps are typically used all year long, however, much of the time the use is on a very limited basis. Thus, according to GSCGWC, the definition of “seasonal and intermittent” should be deleted. GSCGWC suggested that the rule be modified to allow multiple OSSFs that do not exceed 5,000 gpd on an annual basis can be permitted as an OSSF, without respect to the duration of use.

Response

The commission disagrees with the comments. THSC, §366.0512 states that multiple systems can be permitted as an OSSF only if they are “used only on a seasonal and intermittent basis.” Based on the reported use of various camps, the commission determined that the proper definition of “seasonal and intermittent” is: any combination of weekends (Friday through Sunday) plus 60 weekdays (Monday through Thursday) or less during a calendar year. No change has been made in response to these comments.

T&K requested that the following language be added in §285.8(a)(3) in relation to calculation of the combined flow, “or by other means approved by the executive director or permitting authority.” T&K indicated that the added language would allow the owner the flexibility to use alternative means for measuring water use, while still retaining the agency’s approval authority.

Response

The commission disagrees with the suggested change. This section pertains to the combined flow as calculated as part of the application for permit process. There are only two ways to calculate the flow for sizing of the systems: actual water use data or data from §285.91(3). The actual water use data can be obtained through different measuring devices; therefore, the owner will have flexibility in obtaining the data. No change has been made in response to this comment.

T&K requested that the following language be added in §285.8(b)(2): “A map identifying the size and location of the property and the location of the systems are sufficient to satisfy the requirement in

§285.5(a) for a legal description of the property.” T&K expressed concern that the applicants would be required to submit legal surveys with metes and bounds for the large tract of land to meet the requirement in the rule for a legal description of the land. This could result in added costs to obtain a permit under this rule.

Response

The commission disagrees with this suggested change. A legal description of the property, as described in §285.5(a), is necessary to provide a location of the property and to ensure that the tract of land meets the size requirement. It is not required that a complete new survey be undertaken. The current deed and legal description of the property should be sufficient to meet the requirement without performing a new survey. No change has been made in response to this comment.

T&K requested that the language in the second sentence of §285.8(c) be changed from “The executive director shall review the materials submitted...” to “The executive director shall approve, deny, or deem incomplete the materials submitted....” T&K also recommended adding the following language at the end of §285.8(c): “If the executive director does not respond within 30 working days, the permitting authority shall treat the non-response as approval to permit the systems as an OSSF.” T&K expressed concern that there was not a firm deadline in the proposed rule for agency action on an application submitted by a permitting authority and that there is no express requirement that the ED take any dispositive action regarding the application. T&K further stated that it appears in the rule that the ED could satisfy the 30-day requirement by simply reviewing the application and writing a letter to the

applicant and the permitting authority stating that an administrative decision would occur at some future date. T&K indicated that the suggested language would be “within the spirit of the enabling legislation, which was intended to reduce state involvement and to expedite the permitting of this type of multiple on-site sewage facility systems.”

Response

The commission agrees that the language needs to clearly identify that the ED shall make a determination on each application submitted by a permitting authority and shall provide this determination in writing within 30 days. Therefore, the language has been revised from “... executive director shall review the materials submitted and respond in writing...” to “... executive director shall review the materials submitted and shall determine if either the systems may be permitted as an OSSF, the systems do not meet the requirements of this section, or the application is incomplete. The executive director shall provide the determination in writing....” The commission further determined that it is not appropriate for an applicant to assume that a permit will be granted if the applicant and permitting authority have not received a permit within 30 days because a variety of factors could cause a delay. Thus, the commission has clarified that the permitting authority will be notified of the commission decision in writing within 30 days.

In regard to §285.8(e), GSCGWC suggested that the language be changed. Instead of requiring all existing systems to meet the requirements of Chapter 285 before the owner would receive a notice of approval, GSCGWC suggested that the owner be required to submit a five-year plan for upgrading all existing systems to meet the rules before the notice of approval is issued. GSCGWC indicated that

requiring upgrading all existing systems to meet the rules could be expensive and could result in owners circumventing the rules by subdividing the property.

Response

The commission disagrees with the comment. Chapter 285 requires that an OSSF must have a permit, unless it meets one of the exceptions listed in §285.3(f). Chapter 285 also requires that all OSSFs meet all aspects of permitting, planning, construction, operation, and maintenance if the OSSF is authorized under the chapter. Section 285.3(f) does not provide an exception for multiple systems. Each OSSF in a multiple OSSF system must meet the requirements of Chapter 285. This requirement will not apply to all existing camps, only those where the owner submits an application for a multiple OSSF permit. No change has been made in response to this comment.

T&K requested that the following language be added in §285.8(f) in relation to reporting measured sewage flows: “Water usage for the facilities served by the individual systems, or by other means approved by the executive director or permitting authority.” T&K expressed concern for the potential high costs associated with installing totalizing meters at each individual system. T&K indicated that the added language would allow the owner the flexibility of an alternative mean for measuring sewage flow. CES recommended that the language in §285.8(f) be changed from “The reported flows shall be based on sewage flows measured by a totalizing meter installed at each individual system. The flows shall be recorded in a table by calendar month. The table shall give a continuous average of flows.” to “The reported flows shall be recorded daily for each individual system, and shall be recorded in a table by calendar month and shall give a continuous average of flows.” CES indicated that the rules seem to

limit the manner in which flows may be measured to only methods that may impose unnecessarily high costs to the system. CES indicated that the use of cycle counters or elapsed time meters on pump controls are an excellent and inexpensive means of measuring flow.

Response

The commission agrees with the comments. Therefore, the language suggested by T&K has been incorporated into the rule to provide specific options for measuring the flow. This change covers the concepts in the suggested language from CES.

SUBCHAPTER A: GENERAL PROVISIONS

§285.5, §285.8

STATUTORY AUTHORITY

The amendment and new section are adopted under HB 2912, §20.03, 77th Legislature, which provides that the commission may permit multiple OSSFs that are on large tracts of land; are used on a seasonal or intermittent basis; produce less than 5,000 gpd; and are only used to dispose of sewage produced on the tract of land where the OSSF is located.

The amendment and new section are also adopted under the general authority granted to the commission in THSC, §366.011, which provides the commission with authority over the location, design, construction, installation, and functioning of OSSFs. Additionally, §366.11 requires the commission to administer Chapter 366 and rules adopted under the chapter. The revisions will be implemented according to THSC, §366.012(a)(1), which requires the commission to adopt rules governing the installation of OSSFs; THSC, §366.053(b), which authorizes the commission to adopt rules governing the submission, review, approval, or rejection of OSSF permits; and THSC, §366.058, which requires adoption of rules addressing permit fees.

§285.5. Submittal Requirements for Planning Materials.

(a) Submittal of planning material. Planning materials required under this chapter shall be submitted by the owner, or owner's agent, to the permitting authority for review and approval

according to this section. All planning materials shall comply with this chapter and shall be submitted according to §285.91(9) of this title (relating to Tables). A legal description of the property where an on-site sewage facility (OSSF) is to be installed must be included with the permit application.

Additionally, a scale drawing of the OSSF, all structures served by the OSSF, and all items specified in §285.30(b) of this title (relating to Site Evaluation) and §285.91(10) of this title (relating to Tables) must be included with the permit application.

(1) Planning materials prepared by an owner or installer. Either the owner or installer may prepare the planning materials for any proposed OSSF not requiring the preparation of plans according to paragraphs (2) or (3) of this subsection.

(2) Planning materials prepared by a professional engineer or professional sanitarian. OSSF planning materials shall be prepared by a professional engineer or professional sanitarian (with appropriate seal, date, and signature) as follows, unless otherwise specified in this chapter:

(A) any proposals for treatment or disposal that are not standard as described in Subchapter D of this chapter (relating to Planning, Construction, and Installation Standards for OSSFs) unless otherwise specified under §285.91(9) of this title;

(B) any proposal for an OSSF to serve manufactured housing communities, recreational vehicle parks, or multi-unit residential developments where spaces are rented or leased;

(C) all subdivision and development plans as required in §285.4(c) of this title (relating to Facility Planning); or

(D) a proposal for multiple treatment and disposal systems on large tracts of land.

(3) Planning materials prepared by a professional engineer. OSSF planning materials shall be prepared by a professional engineer (with appropriate seal, date, and signature) as follows, unless otherwise specified in this chapter:

(A) any proposals for an OSSF for a structure not exempted by Texas Civil Statutes, Article 3271a, §20; or

(B) all proposals for non-standard treatment systems that require secondary treatment as detailed in Subchapter D of this chapter.

(b) Review of planning materials.

(1) Standard planning materials. All planning materials for standard treatment or disposal systems shall be reviewed by the permitting authority.

(2) Non-standard planning materials. The executive director shall review and respond to initial plans for all non-standard planning material for any system described in §285.32(d) and §285.33(d)(6) of this title (relating to Criteria for Sewage Treatment Systems and Criteria for Effluent Disposal Systems, respectively) within ten calendar days of receipt of the planning materials. After favorable review by the executive director, the same non-standard system planning materials may be reviewed and approved by the authorized agent for different locations, provided the same site conditions exist for which the planning materials were developed.

(3) Proprietary planning materials. Planning materials for proprietary treatment or disposal systems, as described in §285.32(c) or §285.33(c) of this title, shall be submitted to the executive director for review. The systems and the testing protocol shall be approved by the executive director before the systems can be installed in the state.

§285.8. Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land.

(a) The executive director may authorize the permitting authority to issue a permit for multiple treatment and disposal systems on a tract of land as an OSSF, instead of as a municipal wastewater treatment facility, if:

- (1) the systems are located on a tract of land of 100 acres or more;
- (2) the systems are used:

(A) on a seasonal or intermittent basis, which means any combination of weekends (Friday through Sunday) plus 60 weekdays (Monday through Thursday) or less during a calendar year; and

(B) the remainder of the year by employees, voluntary staff, or contractors performing work-related duties on the tract of land.

(3) the anticipated combined flow, calculated using either actual water use data or the data from §285.91(3) of this title (relating to Tables), from all systems is less than 5,000 gallons per day (gpd) on an annual average basis (the arithmetic average of all daily flows from the preceding 12 consecutive calendar months);

(4) the peak flow, calculated using either actual water use data or the data from §285.91(3) of this title, for each individual system is less than 5,000 gpd; and

(5) the systems are used only for disposal of sewage produced on the tract of land where the systems are located.

(b) To obtain an OSSF permit for multiple treatment and disposal systems, the owner or owner's agent must submit the following to the permitting authority:

(1) an application on the form provided by the permitting authority;

(2) all planning materials according to §285.5(a)(2) of this title (relating to Submittal Requirements for Planning Materials). The planning materials must include details on all existing systems, as well as any proposed new systems;

(3) the results of a site evaluation, conducted according to §285.30 of this title (relating to Site Evaluation);

(4) the location, types of systems, size of systems, and if permitted, information from the permit for all existing systems; and

(5) the appropriate fee.

(c) The permitting authority must submit the items listed in subsection (b) of this section to the executive director within five working days after receipt. The executive director shall review the materials submitted and shall determine if the systems may be permitted as an OSSF, the systems do not meet the requirements of this section, or the application is incomplete. The executive director shall provide the determination in writing to the owner or the owner's agent, and to the permitting authority, within 30 working days after receipt of the materials listed in subsection (b) of this section from the permitting authority.

(d) Executive director determination.

(1) If the executive director determines that the systems may be permitted as an OSSF, the permitting authority shall issue an authorization to construct for all new systems and a permit for existing systems. If the permitting authority issues an authorization to construct, all steps in §285.3(d) and (e) of this title (relating to General Requirements) must be followed before the system receives a notice of approval.

(2) If the executive director determines that the systems do not meet the requirements of this section, the owner may be required to submit an application for either a permit under Chapters 205 or 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively) and an authorization under Chapter 331 of this title (relating to Underground Injection Control).

(e) In order to receive a notice of approval, all systems on the property, including the existing systems, must meet the requirements of this chapter.

(f) The owner shall submit a report of the actual flow data to both the permitting authority and the executive director once a year in the month following the anniversary month of the receipt of the notice of approval. The reported flows shall be based on sewage flows measured by a totalizing meter installed at each individual system, water usage for the facilities served by the individual systems, or by other means approved by the executive director. The flows shall be recorded in a table by calendar month. The table shall give a continuous average of flows.

(g) If, as a result of the submittal of the reports required in subsection (f) of this section, the executive director and the authorized agent determine that the systems no longer meet the requirements of this section, the owner shall either bring the systems into compliance with this section or submit an application for a permit under Chapter 205 or Chapter 305 of this title and an authorization under Chapter 331 of this title.