

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§285.2 and 285.32 and adopts a new §285.8 concerning definitions, updating of testing criteria, and permitting and maintenance requirements for aerobic treatment systems. Section 285.32 are adopted with changes and §§285.2 and 285.8 are adopted without changes to the text as published in the September 25, 1998 issue of the *Texas Register* (23 TexReg 9701).

EXPLANATION OF ADOPTED RULE

These amendments will bring this chapter into conformity with House Bill (HB) 3059, passed by the 75th Legislature (1997), which amended Chapter 366 of the Health and Safety Code related to on-site sewage disposal systems. HB 3059 established that for single family residences in counties with a total population of less than 40,000 the regulatory authority for on-site may not condition the issuance of a permit to require the owner of an aerobic treatment system to have a maintenance contract. The amendment allows that in such situations the owner, after receiving the appropriate training, may either maintain the facility personally or enter into a maintenance contract. Also, HB 3059 modified the definition for on-site sewage disposal systems to allow the use of cluster-type systems and expanded the definition of local governmental entity to allow public health districts to become authorized agents under this program. Finally, these amendments reflect the latest version of the National Sanitation Foundation International (NSF) criteria for the testing of proprietary treatment systems.

The amendments to §285.2, relating to Definitions, are made to the definition for on-site sewage disposal system and local government entity in order to conform with the definition of HB 3059.

Adopted new section §285.8, relating to Maintenance Contracts, adds a section to the rules which addresses the limitation on when a permitting authority can require a maintenance contract for aerobic treatment systems.

Section 285.32(b)(4), related to Criteria for Sewage Treatment Systems, is amended to reflect the most current publication dates for the appropriate NSF International standards. This section contains a phrase which was repeated and it has been deleted as it is not contained in the current rule.

FINAL REGULATORY IMPACT ANALYSIS

Section 2001.0225 of the Texas Government Code requires a state agency to prepare a regulatory analysis of a major environmental rule in certain circumstances. The regulatory analysis must be prepared where the result of the adoption of the rule is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an expressed requirement of state law, unless the rule is specifically required by federal law; exceed 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; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission has determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

This rule does not meet the definition of a “major environmental rule” because the regulatory amendments proposed will bring the definition for on-site sewage disposal systems into conformance with the statutory change as well as to provide numerical numeration for all the definitions in Chapter 285 and incorporate the most recent dates for appropriate testing standards requirements. The only addition to the rules is in response to statutory directives regarding maintenance contracts in counties of less than 40,000 inhabitants. The specific intent of the changes in this rule package will not adversely affect in a material way the economy or a sector of the economy but rather will provide the regulated community greater clarity as to the requirements.

Also the rule does not adversely affect public health and safety as the changes in the rules regarding maintenance contracts provide that a homeowner must insure proper maintenance of aerobic treatment system. In addition, the rule does not meet any of the four applicability requirements listed in §2001.0225(a). There is no federal requirement or standard related to this program. These amendments are in accordance with applicable requirements of state law. There is currently no delegation agreement or contract between the state and any agency or representative of the federal government to perform these functions. State law under Chapter 366 of the Health and Safety Code specifically authorizes the commission to regulate on-site sewage facilities.

TAKINGS IMPACT ASSESSMENT

The “Texas Government Action Affecting Private Property Act” as found in Chapter 2007 of the Texas Government Code, applies to governmental actions which affect private property. This statute provides that the regulation of on-site sewage disposal systems is specifically exempted from the application of that chapter for political subdivisions. The specific exemption is found at Chapter 2007.003(b)(11)(B).

The actions are for the purpose of bringing the rules into conformity with HB 3059 of the 75th Legislative Session and, the changes would not affect private property because the rules as originally promulgated were intended to prevent the occurrence of a nuisance condition. The changes include amendments to definitions, a reduction in the permitting requirements for specific systems in certain counties and incorporating the most current NSF International standards into the rules. These actions in themselves do not constitute a taking of private property.

COASTAL MANAGEMENT PLAN

The commission has prepared a consistency determination for the amendments pursuant to 31 TAC §505.22 and has found the adopted rulemaking is consistent with the applicable Coastal Management Plan (CMP) goals and policies. The following is a summary of that determination. CMP goals applicable to the amendments include §501.12 (1)(2)(5) and (10). CMP policies applicable to the amendments include §501.14(g)(3). Promulgation and enforcement of these amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies because the amendments will maintain or enhance existing agency criteria utilized for management of on-site wastewater systems and will effectively maintain or enhance agency strategies for the protection of coastal natural resource areas.

PUBLIC HEARING AND COMMENTERS

A public hearing was held on October 22, 1998, in Austin. No one presented testimony at the public hearing. A total of two written comments to the proposed rules were submitted. Calhoun County Health Department expressed general opposition to the portion of the statute regarding maintenance of aerobic treatment units in counties less than 40,000 population that led to these proposed rules. Comments and questions about implementation were submitted by the Brazos County Health Department.

GENERAL COMMENTS

Subchapter A - General Provisions

Section 285.8. Maintenance Contract

Calhoun County Health Department stated that the portion of HB 3059 related to maintenance contracts should be rescinded. This would negate the need for these Section of the rules. The reasons given were: 1) enforcement on a homeowner will be more difficult than enforcing on an installer; 2) training of a homeowner will be difficult and there is no recourse for lack of training of the homeowner; 3) homeowner not required to receive the same level of training required for an installer; 4) homeowners will not submit the required testing paperwork and will not comply with rules; and 5) the County will be required to hire more staff to monitor homeowner compliance. Brazos County Health Department also stated that the requirement in the previous rules for a maintenance contract with a private contractor provides the best service and protection for a community than what was established by HB 3059.

Although the commission appreciates the comments and the concerns addressed in the letters, the intent of this rulemaking process is to revise the state's minimum on-site sewage facility (OSSF) standards such that they reflect past legislative changes. Any revisions to Chapter 366 of the Health and Safety Code will need to be accomplished through the legislative process.

Brazos County Health Department questioned what will occur when a county of less than 40,000 grows to a population of greater than 40,000.

The commission believes that the language used is sufficient. If a county grows to a population greater than 40,000, this section would no longer apply and maintenance contracts would be required in order to obtain and/or maintain a permit.

Brazos County Health Department questioned whether a homeowner can repair or install an aerobic treatment unit.

The commission responds that in regards to homeowner installation, the rule changes in this proposal did not address, nor change, the existing language in §285.51 of the current rule, regarding a homeowner's ability to install a system. In response to the comment regarding homeowner repair of an aerobic system, in accordance with HB 3059, the rule provides that a homeowner, in a county with a population of 40,000 or less, may elect to maintain an aerobic system directly, but must receive appropriate training in order to do so.

Brazos County Health Department questioned whether a homeowner would provide biased sampling and reporting data.

The commission believes that the language used is sufficient. A homeowner is required to test and report at the same frequency as an installer. Failure to test and report could result in enforcement action against the homeowner.

STATUTORY AUTHORITY

These amendments are adopted under the authority of Chapter 366 of the Texas Health and Safety Code relating to On-site Sewage Disposal Systems. These amendments will bring 30 TAC Chapter 285 into conformity with changes to Chapter 366 as made by the 75th Legislature through HB 3059.

SUBCHAPTER A : GENERAL PROVISIONS

§285.2, §285.8

§285.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Abandoned tank** - A tank that is not to be used or is not allowed to be used by a permitting authority.

(2) **Aerobic digestion** - The bacterial decomposition and stabilization of sewage in the presence of free oxygen.

(3) **Anaerobic digestion** - The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

(4) **Apprentice** - An individual who has been properly registered with the agency, and is undertaking a training program under the supervision of an installer (holding a valid certificate under this chapter) who has agreed to accept responsibility for the individual.

(5) **Authorized agent** - A local governmental entity authorized by the commission, executive director or Chapter 284 of this title (relating to Private Sewage Facilities) to implement and enforce Chapter 366, Texas Health and Safety Code.

(6) **Bedrock** - A continuous horizontal layer of hardened mineral deposits that do not support growth of common plant life.

(7) **Blackwater** - All sewage other than greywater that contains sufficient human or animal wastes to require the water to be treated prior to disposal to the earth's surface or subsurface.

(8) **Borehole** - A drilled hole four feet or greater in depth and one to three feet in diameter.

(9) **Certificate or certification** - The actual certificate of registration held by an individual required to obtain such under this chapter or the process of obtaining a certificate of registration from the agency.

(10) **Cesspool** - A non-watertight, covered receptacle intended for the receipt and partial treatment of domestic 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.

(11) **Chemical** - A substance that in sufficient quantity could have a biotoxic effect on OSSFs.

(12) **Cluster system** - An on-site 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.

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

(14) **Condensate drain** - Collection and disposal of water generated by air conditioners, refrigeration equipment, and other equipment.

(15) **Delegation** - To delegate or designate.

(16) **Designated representative** - An individual who holds a valid certificate with the agency and is designated by the authorized agent to make site evaluations, percolation tests, system evaluations, and inspections subject to the authorized agent's approval.

(17) **Direct supervision** - The responsibility of an installer to perform the oversight, direction and approval of all actions of an apprentice related to the installation of an OSSF.

(18) **Edwards Aquifer** - That portion of an arcuate belt of porous, water bearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties or as amended under Chapter 213 of this title (relating to Edwards Aquifer).

(19) **Edwards Aquifer Recharge zone** - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and 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 specifically that geological area delineated on official maps located in the Austin and San Antonio Regional Offices of the agency, or as amended by Chapter 213 of this title (relating to Edwards Aquifer).

(20) **Emergency repair** - A repair made to an OSSF to abate a serious and dangerous nuisance condition without altering the OSSF's planned function and notification is given to the permitting authority within 72 hours of when the repairs begin.

(21) **Evapotranspiration (ET) system** - A subsurface sewage disposal facility which relies on soil capillarity and plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

(22) **Floodplain (100-year)** - That area along a watercourse during the time the watercourse is subject to the statistical 100-year flood.

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

(24) **Geotextile filter fabric** - A non-woven fabric suitable for wastewater applications.

(25) **Gravel-less drainfield pipe** - A generically labeled large diameter (usually eight or ten inches) geotextile fabric-wrapped piping product which is intended for use without gravel in a subsurface disposal facility.

(26) **Grease interceptor** - Flootation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged. There are no moving mechanical parts and its operational characteristics are similar to a septic tank.

(27) **Greywater** - Wastewater from clothes washing machines, showers, bathtubs, handwashing lavatories, and sinks not used for the disposal of hazardous or toxic ingredients or waste from food preparations.

(28) **Groundwater** - Subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(29) **Hardness (water)** - Primarily the presence in water of calcium bicarbonate, magnesium bicarbonate, calcium sulfate (gypsum), magnesium sulfate (epsom salts), calcium chloride, and magnesium chloride in solution.

(30) **Holding tank** - A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to, and treatment at, an approved treatment facility. This type of facility is generally intended for interim use, if and when approved by the permitting authority.

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

(32) **Installer** - An individual who holds a valid certificate with the agency and is compensated by another to perform services, construct, install, alter, or repair an OSSF.

(33) **Local governmental entity** - A municipality, county, river authority, or special district including an underground water district, soil and water conservation district, or public health district.

(34) **Maintenance** - The normal or routine upkeep, cleaning, or mechanical adjustments to an OSSF.

(35) **Maintenance company** - A person in the business of maintaining OSSFs. At least one individual in the company must hold an Installer II certificate or a Class D or higher wastewater operator certificate and be certified by the appropriate manufacturer's maintenance program for the proprietary unit being maintained.

(36) **Maintenance findings** - The results of a required performance check or component inspection on a specific OSSF by a valid maintenance company as outlined in the maintenance contract.

(37) **Manufactured housing community** - Any facility or area developed for lease or rental of space for the placement of two or more mobile homes.

(38) **Mound system** - A soil absorption disposal system which is installed above the natural grade and in or below an artificially created mound of earth.

(39) **Multi-unit residential development**- a building, structure or combination of structures which have been designed to contain units in which more than two families may reside.

(40) **NSF International** - National Sanitation Foundation International testing laboratories located in Ann Arbor, Michigan.

(41) **Natural soil** - Earthen materials deposited into place by natural processes and not disturbed by artificial processes.

(42) **Non-standard disposal** - All on-site disposal systems, components and materials not described in this chapter as standard and not marketed for sale in the state as a proprietary item.

(43) **Non-standard treatment** - All on-site sewage treatment processes not described in this chapter as "standard" or "proprietary" treatment processes.

(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; or

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

(45) **On-site sewage disposal system** - One or more systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

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

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

(47) **On-site waste disposal order** - An order adopted by local governmental entity and approved by the executive director. Approval of this order by the executive director grants authorized agent status to the local governmental entity.

(48) **Owner** - A person who owns an OSSF.

(49) **Permit** - An authorization, issued by the permitting authority, to install, construct, alter, extend, repair, or operate an OSSF. The permit consists of the authorization to construct (including the approved planning materials) and the license to operate.

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

(51) **Planning material** - Plans and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit to construct and operate an OSSF.

(52) **Platted** - Subdivided property recorded with the county/city in an official plat record.

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

(54) **Probation** - A formal procedure in which an individual or authorized agent is subject to an evaluation for a trial period to ascertain whether an individual should retain possession of a registration or certification as issued by the executive director or an authorized agent should retain delegation as an authorized agent.

(55) **Proprietary system** - An OSSF in which all or part of the treatment or disposal process is owned by a person and has a registered trademark or patent or utilizes a tradename or trademark.

(56) **Regional office** - A regional office of the Texas Natural Resource Conservation Commission.

(57) **Restrictive horizon** - A layer of the soil profile with a significant observable change in density, clay content, or particle size which restricts the vertical movement of water.

(58) **Revocation** - A formal procedure initiated by the executive director in which an authorized agent's delegation or an installer's, site evaluator's, or designated representative's registration or certification is rescinded by the commission.

(59) **Scum** - A mass of organic and/or inorganic matter which floats on the surface of sewage.

(60) **Secondary Treatment** - The reduction of pollutants to the levels specified in §309.1 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

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

(62) **Septic tank** - A watertight covered receptacle constructed to receive, store, and provide treatment to domestic sewage. Its function is to separate solids from the liquid, digest organic matter under anaerobic conditions, store the digested solids through a period of detention, and allow the clarified liquid to be disposed of by an approved method in accordance with this chapter.

(63) **Sewage** - Waste that:

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

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

(64) **Sewage disposal plan** - A technical report prepared by either a registered professional engineer or a registered sanitarian having demonstrated expertise in on-site sewage disposal planning. The plan must include, but is not limited to, the location of structures, easements, wells, treatment units and disposal areas.

(65) **Single family dwelling** - A habitable structure constructed on, or brought to, its site and occupied by members of one family.

(66) **Site evaluator** - An individual who holds a valid certificate with the agency and visits a site and conducts a pre-construction site evaluation which includes performing soil analysis, a site survey, and other criteria necessary to determine the suitability of a site for a specific OSSF.

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

(68) **Soil** - The unconsolidated mineral material on the surface of the earth that serves as a natural medium for the growth of plants.

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

(70) **Subsurface sewage facility** - A system which treats sewage and distributes the pretreated sewage effluent into a below ground level disposal area.

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

(72) **Uniform gravel size** - Gravel to be used in standard absorption drainfields that has been processed through shaker screens to produce a size passing one size screen and retained on another. The smaller screen shall be at least 50% of the size of the larger screen.

(73) **Water softening** - the removal of minerals causing hardness from water.

§285.8. Maintenance Contract.

(a) The installer of an on-site sewage disposal system shall provide the owner of the system with information regarding maintenance of the system at the time the system is installed.

(b) A permitting authority may not condition an on-site permit or the approval of an on-site permit for aerobic treatment systems serving single family residences located in a county with a population of less than 40, 000.

(c) The owner of an aerobic treatment system for single-family residence located in a county with a population of less than 40,000 shall either maintain the system directly or through a maintenance contract upon conclusion of any such maintenance provided under a warranty. If the owner elects to maintain the system directly, the owner must, prior to performing any maintenance, obtain training for the system from an installer who has been certified by the manufacturer.

(d) This section does not affect any testing and reporting requirement or schedule as provided by this chapter.

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

§285.32

STATUTORY AUTHORITY

These amendments are adopted under the authority of Chapter 366 of the Texas Health and Safety Code, relating to On-Site Sewage Disposal Systems. These amendments will bring 30 TAC Chapter 285 into conformity with changes to Chapter 366 as made by the 75th Legislature through HB 3059.

§285.32. Criteria for Sewage Treatment Systems.

(a) (No change.)

(b) Treatment processes - proprietary.

(1)-(3) (No change.)

(4) Approval of proprietary aerobic treatment systems. All agency approved proprietary aerobic treatment systems will be identified and published in a list of approved systems which may be obtained from the executive director. Only treatment systems which have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 (1996) or have been tested and certified as a Class I system in accordance with NSF Standard 40 (1996) by an American

National Standard Institute (ANSI) or NSF International accredited testing institution shall be considered for approval by the executive director. All agency approved systems at the time of the effective date of this rule shall continue to be listed on the list of approved systems subject to retesting under the requirements of NSF Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997). The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997).

(5) (No change.)

(c) (No change.)