

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 26, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2022-0913-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 285, On-Site Sewage Facilities (OSSF)
OSSF Updates
Rule Project No. 2021-030-285-CE

Background and reason(s) for the rulemaking:

On November 12, 2020, the Texas On-Site Wastewater Association (TOWA) filed a petition for rulemaking. On April 5, 2021, B&J Wakefield Services, Inc. (Wakefield) filed a petition for rulemaking. On December 16, 2020, and May 19, 2021, respectively, the Commission directed the Executive Director to initiate rulemaking after stakeholder involvement concerning the issues raised in the petitions. The petitions requested amendments to several sections of 30 Texas Administrative Code (TAC) Chapter 285; the Executive Director considered the changes recommended by TOWA and Wakefield.

Additionally, House Bill (HB) 1680, 87th Texas Legislature (2021), amended the Texas Health and Safety Code (THSC), Section 1, Subchapter A, Chapter 366 to add Section 366.006 to establish that certain tracts of land owned by the federal government that contain separately leased parts are considered as separate tracts of land for purposes of on-site sewage facilities permitting.

This rulemaking will amend 30 TAC Chapter 285 to address some of the requests in the petitions and adds §285.3(f)(4) to address HB 1680.

Scope of the rulemaking:

This rulemaking will implement HB 1680 87th Leg., R.S. Legislative Session (2021) which allows leased portions of federal properties to be considered separately for the purposes of the implementation of 30 TAC Chapter 285. HB 1680 was authored by Representative Smith and sponsored by Representative Springer.

This rulemaking is also the result of the petitions with input from stakeholders through public meetings and written comments. The adopted rules will clarify that: single family dwellings located on a tract of land ten acres or larger must adhere to all requirements of Chapter 285 that are not specifically listed in the rule as exempt; all required maintenance tags must include the maintenance dates and maintenance provider and be located outside the motor cover, control panel, or breaker box; wastewater 'flows' are in reference to 'hydraulic flows' within an OSSF system; and OSSF installers and owners can be parties in a contract with a maintenance provider.

The rulemaking adoption will require risers to be installed over all inspection and cleanout ports, and that all such risers be at least two inches above grade. This requirement will be effective with permits issued on September 1, 2023, and later.

The rulemaking adoption will update the language for timers used in dosing systems and the requirement for purple fittings for reclaimed water systems.

The rulemaking adoption will allow flexible conduit to be used in areas between the buried pipe and the control panels where rigid pipe is not feasible, with a limit of four feet of flexible conduit.

This rulemaking amends 30 TAC Chapter 285 to remove an outdated reference to 'National Sanitation Foundation,' correct typographical errors, and correct several references.

A.) Summary of what the rulemaking will do:

The rulemaking adoption will amend Chapter 285 to better protect public health and the environment by revising the existing rules for consistency with industry terminology and standards. The adopted rules will also implement HB 1680, allowing certain leased portions of tracts of land owned by the federal government to be considered as separate tracts of land for the purposes of Chapter 285.

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

The rulemaking will implement HB 1680 87th Legislative Session (2021).

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

The rulemaking will correct certain references, cross-references, and typographical errors in the current rules.

Statutory authority:

Texas Health and Safety Code, Chapter 366.
Texas Water Code, §§5.012, 5.013, 5.103, and 5.105.

Effect on the:

A.) Regulated community:

Permitting authorities that regulate OSSFs, as well as owners, installers, and designers of OSSFs will be required to comply with the amended rules. For new and altered systems, risers that extend at least two inches above ground level must be included in the design and installed. The clarification that OSSFs on large tracts of land are required to meet all of the application regulations is not a new requirement; however, because some owners, designers, installers, and regulators were incorrectly implementing the regulations, some systems might be required to be altered to comply with the regulatory requirements.

B.) Public:

Additional protection of the public health and of the environment will result from inspection and cleanout port risers being above ground because there will be decreased potential for rainwater infiltration into an OSSF. Currently, inspection and cleanout port risers terminate below ground level increasing the potential for infiltration.

Maintenance providers, and anyone else who needs access to the OSSF, will have easier access to the OSSF. The easier access will facilitate ensuring that the OSSF is operating properly, resulting in better protection of the public health and the environment. Easier access to OSSFs for maintenance providers, will decrease the cost to OSSF owners because fewer labor hours will be required for maintenance and repairs.

C.) Agency programs:

Stakeholder meetings:

Five stakeholder meetings were held virtually between September 23, 2021, and October 7, 2021.

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No.

Alternative Language Requirements

None.

Public comment:

The commission offered a public hearing on January 30, 2023. The comment period closed on January 31, 2023. One comment was received from an individual. The commenter was against including new requirements for risers in 30 TAC §285.38. The commenter also noted that the proposed reference in §285.91(10) was incorrect.

Significant changes from proposal:

Yes. The proposed language in 30 TAC §285.91(10) incorrectly referenced 16 TAC §76.100(a)(1), it should have referenced 16 TAC §§76.100(b), 76.100(e), and 76.100(f). The language in 16 TAC Chapter 76 was modified, but the language in these provisions is identical to the language in 16 TAC §76.1000(a)(1) that was replaced by the current rule. Changes to 30 TAC §285.91(10) were made in response to a stakeholder comment to update this reference.

Potential controversial concerns and legislative interest:

This rulemaking will implement HB 1680 87th Legislative Session (2021) and incorporate some rule changes that were proposed in two petitions. There are no controversial concerns associated with this adopted rulemaking.

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

This rulemaking will not affect any current policies or require development of new policies.

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

If this rulemaking does not go forward, rainwater could potentially infiltrate into some OSSF systems resulting in an increased wastewater inflow exceeding the capacity of the treatment system and drainage field. Additionally, inspection or cleanout access to OSSF systems may be impeded in some circumstances. If the rulemaking did not implement HB 1680 87th Legislative Session (2021), the amended provisions in THSC §366.006 would still be in effect. This rulemaking will result in better protection of human health and the environment.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: December 30, 2022
Anticipated Texas Register adoption publication date: June 30, 2023
Anticipated effective date: July 6, 2023
Six-month Texas Register filing deadline: June 30, 2023

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Attachments:

HB 1680 (87th)

cc: Chief Clerk, 2 copies
Executive Director's Office

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