


# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 22, 2022

**Thru:** Laurie Gharis, Chief Clerk  
Toby Baker, Executive Director

**From:**  Craig Pritzlaff, Director  
Office of Compliance and Enforcement

**Docket No.:** 2022-0913-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
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 petition. The petitions requested amendments to several sections and the executive director considered the changes recommended by TOWA and Wakefield.

Additionally, House Bill 1680, 87th Texas Legislature (2021), amended the Texas Health and Safety Code, Section 1, Subchapter A, Chapter 366 to add Section 366.06 to establish that separately leased parts of certain tracts of land that are owned by the federal government are considered 366.06.

This rulemaking would amend 30 Texas Administrative Code (TAC) Chapter 285 to address some of the requests in the petitions and adds §285.3(f)(4) to address House Bill 1680.

**Scope of the rulemaking:**

This rulemaking would 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 proposed rules would 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 proposed rules would 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 would be effective with permits issued on September 1, 2023, and later.

The proposed rules would update the language for timers used in dosing systems and the requirement for purple fittings for reclaimed water systems.

The proposed rules would 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 would amend 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 would do:**

The proposed rules would amend Chapter 285 to better protect public health and the environment by revising the existing rules for consistency with industry terminology and standards. The proposed rules would 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 would implement HB 1680 87th Leg., R.S. Legislative Session (2021).

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

The rulemaking would 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, 5.105.

**Effect on the:**

**A.) Regulated community:**

Permitting authorities that regulate OSSFs, as well as owners, installers, and designers of OSSFs would 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 would result from the decreased potential for rainwater infiltration into an OSSF that could result from inspection and cleanout port risers that are below ground level.

Maintenance providers and anyone who needs access would have easier access to the systems to ensure that they are operating properly, resulting in better protection of the public health and the environment. Given the easier access for maintenance providers, the maintenance costs to owners would decrease as fewer labor hours would be required for maintenance and repairs.

**C.) Agency programs:**

Agency programs would experience no significant effect as a result of this rulemaking.

**Stakeholder meetings:**

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

**Potential controversial concerns and legislative interest:**

This rulemaking would implement HB 1680 87th Leg., R.S. Legislative Session, and incorporate some rule changes that were proposed in two petitions. There are no controversial concerns associated with this proposed rulemaking.

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

This rulemaking would not affect any current policies or require development of new policies. There would be no consequences

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

If this rulemaking does not go forward, there may be rainwater infiltration into some OSSF systems resulting in an increased wastewater inflow that exceeds that capacity of the treatment system and drainage field, and inspection or cleanout access to OSSF systems may be impeded in some circumstances. If the rulemaking did not implement HB 1680 87th Leg., R.S. Legislative Session (2021), the amended provisions in Section 366.06 would still be in effect. This rulemaking would result in better protection of human health and the environment.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** December 14, 2022

**Anticipated *Texas Register* publication date:** December 30, 2022

**Anticipated public hearing date:** January 30, 2023

**Anticipated public comment period:** December 30, 2022 - January 31, 2023

**Anticipated adoption date:** May 10, 2023

**Agency contacts:**

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**Attachments:**

HB 1680

cc: Chief Clerk, 2 copies  
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