

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**Date:** November 14, 2023

**To:** Kelly Keel, Interim Executive Director

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

**From:** Andy Gardner, Deputy Director  
Program Support and Environmental Assistance Division  
Office of Compliance and Enforcement

**Subject:** Rulemaking Draft Concept and Initiation Memo  
Title 30 Texas Administrative Code (TAC) Chapter 285, On-Site Sewage Facilities (OSSFs)

**Suggested short title:** Proposed changes to 30 TAC Chapter 285, OSSFs

### **Introduction and reason(s) for the rulemaking:**

The proposed revisions to 30 TAC Chapter 285 are necessary to implement the amendments to Texas Health and Safety Code (THSC), Chapter 366 made during the 88th Texas Legislature, Regular Session, 2023, by House Bill (HB) 4087 (Kuempel) which was effective September 1, 2023. Specifically, the legislation amended THSC Section 366.012 to allow for the installation of OSSF aerobic drip emitter systems on subdivided or platted properties less than one-half acre in size serving single-family residences supplied by a public drinking water system if site-specific planning materials have been submitted by a licensed engineer or registered sanitarian and approved by the appropriate authorized agent for counties of specific populations and geographic locations. Currently the affected counties are Galveston County and Cooke County. HB 4087 also amended THSC Section 366.0513 to allow a Texas Commission on Environmental Quality (TCEQ) authorized agent to issue a permit to authorize the use of a temporary OSSF that operates in conjunction with the pumping and hauling of wastewater produced from the system and serves a property that has been subdivided for residential use that is of insufficient size to accommodate on-site disposal of all wastewater. A permit issued under this section may authorize the use of a system and the pumping and hauling activities for no more than six months from the date of issuance and cannot be renewed.

Staff are also recommending additional changes to the rule to improve clarity and consistency on issues that are routinely raised by the regulated community. Specific issues will be discussed with stakeholders during seven planned stakeholder meetings to be held throughout Texas. Meetings will be made available virtually when facility capabilities allow. The objective of the stakeholder meetings is to identify specific rule changes that will allow for enhanced clarity and more effective regulation of the OSSF Program throughout Texas. Ideas and considerations will also be received directly to executive director staff through an existing email listserv, email, phone, mail, and in person. The proposed rule changes are also expected to address new and more sophisticated technologies, incorporate the use of more efficient water saving devices and water reduction methods, and implement better understanding of the quantity and quality of wastewater that is routed to OSSFs for treatment and disposal.

### **Scope of the proposed rule:**

#### **A.) Scope required by federal regulations or state statutes:**

The proposed revisions to 30 TAC Chapter 285 are necessary to implement amendments to THSC, Chapter 366 (On-Site Sewage Disposal Systems) made during the 88th Texas Legislature, Regular Session, 2023, by HB 4087 (Kuempel). These changes would allow the use of certain types of OSSF

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installations on platted properties less than one-half acre in size by authorized agents in Galveston and Cooke Counties and would allow an authorized agent to issue temporary permits in conjunction with pumping and hauling of wastewater in subdivisions of insufficient size.

**B.) Additional staff recommendations:**

There have been many new approaches and advancements to OSSF design, construction, installation, and maintenance developed that have not wholly been implemented or clarified during previous rule revisions. TCEQ staff are proposing to evaluate and subsequently amend Subchapters A - I.

**Potential controversial concerns and legislative interest:**

Prior to the statutory changes required by HB 4087, a tract of land subdivided before January 1, 1988, to serve a single-family dwelling and served by a public drinking water supply was required to be at least one-half acre in size without exception. Some continued opposition to the reduced lot sizes allowed by this bill is anticipated.

Proposed changes to Chapter 285 could be controversial. Ideas and considerations from stakeholders will be received and discussed during the seven planned stakeholder meetings to be held throughout Texas. It is the intent of Executive Director staff to solicit ideas and recommendations from all involved stakeholders and to address any concerns made during the planned stakeholder meetings and rulemaking process.

**Potential alternatives:**

Without approval, Chapter 285 will be inconsistent with existing state statute regarding implementation of HB 4087 requirements for which there are no alternatives.

**Effect on the:**

**A. Regulated community:**

The regulated community would be provided clearer requirements for all aspects associated with owning, designing, installing, maintaining, and repairing OSSFs. One important effect will be that OSSF professionals will be able to understand the intent of the provisions more clearly and, therefore, apply them more consistently across Texas. With added clarity to the rule, developers will be able to better estimate costs associated with developing properties.

Owners and developers of properties that utilize OSSFs may experience some cost savings with respect to design work and fewer setbacks regarding the permitting process as the requirements for designs will be clearer and more consistent. With the updated requirements, owners should experience increased OSSF longevity and reduced system failures, resulting in potential financial savings due to more appropriately designed systems based on current and validated scientific data.

**B. Public:**

Changes are expected to provide better protection for the environment and public health. The changes are also expected to clarify regulatory requirements that affect the relationships between homeowners and OSSF professionals such as installers, maintenance providers, and designers.

**C. Agency programs:**

**HB 4087**

TCEQ is required to amend 30 TAC Chapter 285 to implement the changes made by HB 4087 to THSC, Chapter 366. No additional impacts from the implementation of HB 4087 are expected.

**Staff proposed amendments**

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Staff intend to identify specific changes that, if approved, will streamline several current processes and will modernize requirements for OSSFs to better protect the environment and public health. It is expected that the proposed changes will help minimize interpretations and explanations requested of TCEQ staff because the requirements will be made clearer.

**D. Authorized agents:**

Approximately 95% of OSSFs are in the jurisdiction of an authorized agent. Historically, the wording of 30 TAC Chapter 285 has led to inconsistent interpretation of requirements across the state by authorized agents. In some cases, TCEQ's OSSF Program must provide assistance in understanding the requirements, both for the authorized agents, as well as the regulated community under the jurisdiction of authorized agents. The proposed changes will help address these challenges.

**Proposed schedule and constraints:**

**Anticipated Proposal Date: June 26, 2024**

**Anticipated Public Comment Period: July 12, 2024 – August 12, 2024 (This may be extended upon request)**

**Anticipated Adoption Date: December 4, 2024**

**Planned Stakeholder involvement:**

TCEQ staff will solicit stakeholder input during the rulemaking process at seven meetings that will be held from December 7, 2023, until March 6, 2024, as follows:

1. December 7, 2023, in Lubbock (in person)
2. December 15, 2023, in Austin (virtual and recorded)
3. January 9, 2024, in Beaumont (in person)
4. January 17, 2024, in Corpus Christi (in person)
5. February 13, 2024, in Tyler (in person)
6. February 21, 2024, in Austin (hybrid)
7. March 6, 2024, in Waco (in person)

Staff intend to share the updated rule change concepts with stakeholders after each stakeholder meeting as the concepts are expected to evolve with each meeting. The updated concepts will be shared via the TCEQ website, through industry channels, and through contact information provided by stakeholders.

In addition, a public hearing will be held during the rule public comment period.

**Public Involvement Plan**

A public involvement plan will be required for this state-wide rulemaking project.

**Alternative Language Requirements**

Spanish language translations are required and will be provided for the public notifications for the public meetings and hearing, as well as for the executive summary. The executive summary is allowed to be translated from a plain language version. The public hearing will be translated to reach Spanish-speaking households as required.

**Statutory authority:**

THSC, Chapter 366 (On-Site Sewage Disposal Systems)

TWC, §5.102 (General Powers of the Commission)

TWC, §5.103 (Rules)

Texas Government Code, Chapter 2001, Subchapter B (Rulemaking)

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**Direction and Guidance:** [To be completed at ED briefing]

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**Rule or Non-Rule Project number:** 2024-009-285-CE

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**Attachments:**

House Bill 4087 (Kuempel)

**NOTE:** *TR will submit electronic notice to the following after ED Briefing:*  
Office of General Counsel  
Office of Public Interest Counsel