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Texas Administrative Code

<u>TITLE 30</u>	ENVIRONMENTAL QUALITY
<u>PART 1</u>	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
<u>CHAPTER 285</u>	ON-SITE SEWAGE FACILITIES
<u>SUBCHAPTER A</u>	GENERAL PROVISIONS
<u>RULE §285.3</u>	General Requirements

(a) Permit required. A person shall hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage facility (OSSF) unless the OSSF meets one of the exceptions in subsection (f) of this section.

(1) All aspects of the permitting, planning, construction, operation, and maintenance of OSSFs shall be conducted according to this chapter, or according to an order, ordinance, or resolution of an authorized agent.

(2) The executive director is the permitting authority unless a local governmental entity has an OSSF order, ordinance, or resolution approved by the executive director. In areas where the executive director is the permitting authority, the staff from the appropriate regional office shall be responsible for the proper implementation of this chapter.

(3) Permits shall be transferred to a new owner automatically upon sale or other legal transfer of an OSSF.

(4) Conditioning of Permits. The permitting authority may require conditions to a permit in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and system approval. Failure to comply with these conditions is a violation of the permit and this chapter. Any violation of a condition of a permit that would be considered an alteration as defined in §285.2 (2) of this title (relating to Definitions) would require a new permit.

(b) General Application Requirements.

(1) The owner or owner's agent must obtain an authorization to construct from the permitting authority before construction may begin on an OSSF. Before an authorization to construct can be issued, the permitting authority shall require submittal of the following from the owner or owner's agent:

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

(B) all planning materials, according to §285.5 of this title (relating to Submittal Requirements for Planning Materials);

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

(D) the appropriate fee.

(2) Variance requests shall be submitted with the application and shall be reviewed by the permitting authority according to subsection (h) of this section.

(3) Before the permitting authority issues an authorization to construct, the owner of OSSFs identified in §285.91(12) of this title (relating to Tables) or the owner's agent, must record an affidavit in the county deed records of the county or counties where the OSSF is located. Additionally, the owner or the owner's agent must submit, to the permitting authority, an affidavit affirming the recording. An example of the affidavit is located in §285.90(2) of this title (relating to Figures). The affidavit must include:

(A) the owner's full name;

(B) the legal description of the property;

(C) that an OSSF requiring continuous maintenance is located on the property;

(D) that the permit for the OSSF is transferred to the new owner upon transfer of the property; and

(E) that at any time after the initial two-year service policy, the owner of an aerobic treatment system for a single family residence shall either obtain a maintenance contract within 30 days of the transfer or maintain the system personally.

(c) Action on Applications. The permitting authority shall either approve or deny an application within 30 days of receiving an application. If the application and planning materials are approved, the permitting authority shall issue an authorization to construct. If the application and planning materials are denied, the permitting authority shall explain the reasons for the denial in writing to the owner, and the owner's agent.

(d) Construction and Inspection.

(1) An authorization to construct is valid for one calendar year from the date of its issuance. If the installer does not request a construction inspection by the permitting authority within one year of the issuance of the authorization to construct, the authorization to construct expires, and the owner will be required to submit a new application and application fee before an OSSF can be installed. A new application and application fee are not required if the owner decides not to install an OSSF.

(2) The installer shall notify the permitting authority at least five working days (Monday through Friday, excluding holidays) before the date the OSSF will be ready for inspection.

(3) The permitting authority shall conduct a construction inspection.

(4) If the OSSF does not pass the construction inspection, the permitting authority shall:

(A) at the close of the inspection, advise the owner and the owner's agent, if present, of the deficiencies identified and that the OSSF cannot be used until it passes inspection; and

(B) within seven calendar days after the inspection, issue a letter to the owner and the owner's agent listing the deficiencies identified and stating that the OSSF cannot be used until it passes inspection.

(5) If a reinspection is necessary, a reinspection fee may be assessed by the permitting authority.

(6) The reinspection fee must be paid before the reinspection is conducted.

(e) Notice of Approval.

(1) Within seven calendar days after the OSSF has passed the construction inspection, the permitting authority shall issue, to the owner or owner's agent, a written notice of approval for the OSSF.

(2) The notice of approval shall have a unique identification number, and shall be issued in the name of the owner.

(f) Exceptions.

(1) An owner of an OSSF will not be required to comply with the permitting, operation, and installation requirements of this chapter if the OSSF is not creating a nuisance and:

(A) the OSSF was installed before September 1, 1989, provided the system has not been altered, and is not in need of repair;

(B) the OSSF was installed before the effective date of the order, ordinance, or resolution in areas where the local governmental entity had an approved order, ordinance, or resolution dated before September 1, 1989, provided the system has not been altered and is not in need of repair; or

(C) the owner received authorization to construct from a permitting authority before the effective date of this chapter.

(2) No planning materials, permit, or inspection are required for an OSSF for a single family dwelling located on a tract of land that is ten acres or larger and:

(A) the OSSF is not causing a nuisance or polluting groundwater;

(B) all parts of the OSSF are at least 100 feet from the property line;

(C) the effluent is disposed of on the property; and

(D) the single family dwelling is the only dwelling located on that tract of land.

(3) Connecting recreational vehicles or manufactured homes to rental spaces is not considered construction if the existing OSSF system is not altered.

(g) Exclusions. The following systems are not authorized by this subchapter and may require a permit under Chapter 205 or Chapter 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively):

(1) one or more systems that cumulatively treat and dispose of more than 5,000 gallons of sewage per day on one piece of property;

(2) any system that accepts waste that is either municipal, agricultural, industrial, or other waste as defined in Texas Water Code, Chapter 26;

(3) any system that will discharge into or adjacent to waters in the state; or

(4) any new cluster systems.

(h) Variances. Requests for variances from provisions of this chapter may be considered by the appropriate permitting authority on a case-by-case basis.

(1) A variance may be granted if the owner, or a professional sanitarian or professional engineer representing the owner, demonstrates to the satisfaction of the permitting authority that conditions are such that equivalent or greater protection of the public health and the environment can be provided by alternate means. Variances for separation distances shall not be granted unless the provisions of this chapter cannot be met.

(2) Any request for a variance under this subsection must contain planning materials prepared by either a professional sanitarian or a professional engineer (with appropriate seal, date, and signature).

(i) Unauthorized systems. Boreholes, cesspools, and seepage pits are prohibited for installation or use. Boreholes, cesspools, and seepage pits that treat or dispose of less than 5,000 gallons of sewage per day shall be closed according to §285.36 of this title (relating to Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits). Boreholes, cesspools, and seepage pits that exceed 5,000 gallons of sewage per day must be closed as a Class V injection well under Chapter 331 of this title (relating to Underground Injection Control).

Source Note: The provisions of this §285.3 adopted to be effective June 13, 2001, 26 TexReg 4115; amended to be effective September 11, 2008, 33 TexReg 7536; amended to be effective December 27, 2012, 37 TexReg 9947

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