

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for a Petition for Rulemaking

AGENDA REQUESTED: May 24, 2017

DATE OF REQUEST: May 5, 2017

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Sherry Davis, (512) 239-2141

CAPTION: **Docket No. 2017-0425-PET.** Consideration of a petition for rulemaking under Section 20.15 of 30 TAC Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality (commission) on March 27, 2017, by the Texas Septic Systems Council (petitioner). The petitioner requested that the commission modify 30 TAC Chapter 285, On-site Sewage Facilities, by adding or amending language related to grease interceptors, conditioning of all commercial on-site sewage facility (OSSF) permits, design requirements for restaurants, specific requirements for flow equalization, and requirements for equipment to measure wastewater flow in an OSSF. (James McCaine, Kathy Humphreys) (Project No. 2017-021-PET-NR)

Ramiro Garcia, Jr.

Deputy Director

Kelly Keel Linden

Division Director

Sherry L. Davis

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 5, 2017

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2017-0425-PET

Project No.: 2017-021-PET-NR

Who Submitted the Petition:

On March 27, 2017, the Texas Commission on Environmental Quality (commission) received a petition from the Texas Septic Systems Council (petitioner).

What the Petitioner Requests:

The petitioner requests changes to 30 Texas Administrative Code (TAC) Chapter 285, On-site Sewage Facilities (OSSF), related to grease interceptors, conditioning of all commercial OSSF permits, design requirements for restaurants, specific requirements for flow equalization, and requirements for equipment to measure wastewater flow in an OSSF.

The justification for the requested changes to Chapter 285 is the petitioner's assertion that "the failure rate of commercial septic systems in Texas, especially of restaurants, is disproportionately high." The petitioner supports his claim with an anecdote from a south Texas regulator who asserted that the failure rate of OSSFs serving restaurants in their jurisdiction is "close to 100%."

Recommended Action and Justification:

The executive director recommends denial of the petition until the petitioner provides verifiable evidence that the current Chapter 285 rules, when properly complied with, do not sufficiently protect public health and the environment when applied to restaurants.

On September 11, 2008, in response to research conducted by the Texas On-site Wastewater Treatment Research Council, the commission adopted rules in Chapter 285 specific to restaurants. The amended rules provided for significant changes to previous OSSF design. It is possible that the anecdotal evidence provided by the petitioner represents OSSFs which were designed under pre-2008 rules and, therefore, are not indicative of deficiencies in the current rules. It is also possible that the failures are limited to certain jurisdictions. If the latter is the case, then the failures might not lie with the technical requirements of the rules and might instead be better addressed through education and increased compliance efforts.

At this time, the executive director recommends the commission deny the petition. The executive director may reconsider his position if the petitioner provides verifiable evidence, in a new petition for rulemaking, that restaurants using OSSFs designed according to the current rules are not protective of public health and the environment.

Commissioners

Page 2

May 5, 2017

Re: Docket No. 2017-0425-PET

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC § 20.15, which provides such procedures specific to the commission
- Texas Health and Safety Code, §366.011 and §366.012, which provides general authority for the commission to adopt rules concerning OSSFs

Agency Contacts:

James McCaine, Rule Project Manager, Program Support Division, (512) 239-4777

Kathy Humphreys, Staff Attorney, (512) 239-3417

Sherry Davis, Agenda Coordinator, (512) 239-2141

Attachment:

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
James McCaine
Sherry Davis



TEXAS SEPTIC SYSTEMS COUNCIL

Frank Aguirre, Executive Director
Cell: 210.275.7866

www.texasepticssystemscouncil.com
franksepticcouncil@gmail.com

Date of submittal: 25 March 2017

Executive Director
Texas Commission on Environmental Quality
POB 13087
Austin, Texas 78711-3087

Sir:

In accordance with TAC Title 30, Chap. 20, Rule: 20.15, Petition for Adoption of Rules, we hereby submit a proposed rule amendment as follows:

- (a) (1): Frank Aguirre is born of and a resident of Texas
- (2): Texas Septic Systems Council, is a dba of Frank Aguirre & Associates, Inc., same address and contact information as in the letter head
- (3): It is a "c" corporation, registered in Texas.
- (4): It is a private organization and not a Texas state agency.
- (b) (1): This is a sole rule petition.
- (2): Name and address of the petitioner shown in letterhead
- (3): Includes the following:

(A) A brief explanation of the proposed rule

During a presentation that I was giving to the Texas Environmental Health Association (TEHA) on upgrading the rules on commercial systems, a DR (septic inspector) of a large south Texas jurisdiction publically admitted that the failure rate of restaurants in that area was at or close to 100%. From having worked in that area for many years, I concurred.

As a septic designer with a strong national perspective, witnessing what other states are doing in this area, known as "high strength" sewage, it is my professional opinion that Texas would do well to emulate some of those examples from around the country.

- (B) Text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule... [SEE TEXT BELOW, CHANGES IN RED]

NOTE: The goal of this proposal is to strengthen the rules and procedures on COMMERCIAL septic systems.

(C) The Statement of statutory authority under which the proposed rule will be promulgated [Required by 30 TAC §20.15(b)(3)(C)]: Texas Health & Safety Code, § 366.011. GENERAL SUPERVISION AND AUTHORITY and § 366.012. RULES CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEMS.

(D) Allegation: The failure rate of commercial septic systems in Texas, especially of restaurants, is disproportionately high. They are causing CURRENT health violations and threats to the environment.

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
RULE §285.2	DEFINITIONS

(28) Grease ~~interceptor~~ **tank** - Floatation chambers where **warm** grease floats to the water surface and is retained while the clearer, **cooler** water underneath is discharged.

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
RULE§285.3(a)(4)	GENERAL REQUIRMENTS

(4) Condition of Permits. The permitting authority ~~may~~ **shall** require **specific target hydraulic and organic parameters on all commercial permits** ~~conditions to a permit~~ in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and system approval.

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
RULE §285.32	CRITERIA FOR SEWAGE TREATMENT SYSTEMS

(f) Other design considerations.

(1) Restaurant/food establishment sewage. When designing for restaurants, food service establishments or similar activities, the minimum design strength value shall be 1,200 mg/L Biochemical Oxygen Demand (BOD) after a properly sized grease trap/interceptor tank. It is the responsibility of the designer to **assign and support both estimated hydraulic loadings, e.g., average gpd, gpw and peak flows, and estimated organic loadings, in order to** properly design a system which reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required. **The resultant systems target maximum flows through the system and organic levels of final effluent should also be noted. [Hydraulic loadings listed in Table III of these rules shall be considered only as MINIMUM levels and not necessarily indicative of actual flows.]**

(2) Other high-strength sewage. For situations where sewage as defined in this chapter is expected to be a higher strength than residential sewage, it is the responsibility of the professional designer to justify sewage design strength estimations and properly design a system that reduces the wastewater strength to 140 mg/l BOD prior to ~~disposal~~ **recycling** unless secondary treatment levels are required. Residential sewage is sewage that has a strength of less than 300 gm/l BOD.

(3) Flow equalization. The designer should consider whether flow-equalization will be needed for the treatment system to function properly. **Wherever flows to a commercial system shall vary by hour of the day or by day of the week, a flow equalization tank shall be set into place so as to ameliorate those unequal flows into small, equally-sized, equally-spaced dosages to the treatment unit, this to maximize its effectiveness and efficiency.**

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
RULE §285.34	OTHER REQUIREMENTS

(d) Grease interceptors **tanks**. Grease interceptors **tanks** shall be used on kitchen waste-lines from institutions, hotels, restaurants, schools with lunchrooms, and other buildings that may discharge large amounts of **fats, oils and greases (FOG)** and oils to the OSSF. Grease interceptors **tanks** shall be structurally equivalent to, and backfilled according to, the requirements established for septic tanks under §285.32(b)(1)(D) - (F) of this title. The **interceptor tank** shall be installed **with** piping considerations, distance from the source and tankage layouts that are conducive to achieving its primary goal -- cooling of the wastewater. ~~near the plumbing fixture that discharges greasy wastewater and shall~~ **It also must be** easily accessible for **cleaning** **wasting (pumping)**. Grease interceptors shall be **monitored closely and** cleaned out periodically **when no more than 70% full** to prevent the discharge of **grease FOG** to the disposal system. Grease interceptors **tanks** shall be properly sized and installed according to the requirements of the 2000 edition of the Uniform Plumbing Code, the 1980 EPA Design Manual: Onsite Wastewater Treatment and Disposal Systems, or **by manufacturer's recommendations** ~~other prevailing code.~~

(h) All commercial units under a performance permit shall include a water meter or pump counter at the outlet of the final effluent pump tank so that actual flows through the system can be measured and recorded, this for comparison with estimated design flows as an indication of the accuracy of the initial design, at least from a hydraulic standpoint.

[THE END]

Texas Commission on Environmental Quality



DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY TEXAS SEPTIC SYSTEMS COUNCIL

Docket No. 2017-0425-PET
Rule Project No. 2017-021-PET-NR

On May 24, 2017, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by the Texas Septic Systems Council. The petitioner filed the request on March 27, 2017, and requested changes to 30 Texas Administrative Code (TAC) Chapter 285, On-site Sewage Facilities (OSSF) related to grease interceptors, conditioning of all commercial OSSF permits, design requirements for restaurants, specific requirements for flow equalization, and requirements for equipment to measure wastewater flow in an OSSF.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102 and § 5.103 that the petition be denied. The commission will reconsider this position if the petitioner provides verifiable evidence, in a new petition for rulemaking, that restaurants using OSSFs designed according to the current rules are not protective of public health and the environment.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed