

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 22, 2016

**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.:** 2016-1896-PET

**Project No.:** 2017-006-PET-NR

### **Who Submitted the Petition:**

On November 3, 2016, the Texas Commission on Environmental Quality (commission) received a petition from the Texas Septic Systems Council (petitioner).

### **What the Petitioner Requests:**

The petitioner requests that the commission create a new occupational certification, called Certified Designer, for individuals that design certain on-site sewage facilities (OSSFs). The petitioner outlines a framework where the commission would review and approve a third party to train and conduct exams necessary to obtain certification as a Certified Designer.

The regulations related to OSSFs are found in 30 Texas Administrative Code (TAC) Chapter 285. In accordance with §285.5, the planning and design materials for certain OSSFs must be developed and submitted by a Registered Professional Engineer (P.E.) or a Registered Professional Sanitarian (R.S.). The petitioner proposes to add additional training and certification requirements that are beyond the existing P.E. and R.S. licensing requirements. The proposed certification would be required before a P.E. or R.S. could design an OSSF. According to the petitioner, the proposed certification is necessary because not all P.E.s or R.S.s receive training specifically on the design of OSSFs, and the lack of training results in inconsistent designs across the 343 local governments in Texas that permit OSSFs. The petitioner also claims that there are currently no design standards or formats other than the rules themselves for the design of certain OSSFs.

### **Recommended Action and Justification:**

The executive director recommends that the commission deny the petition for rulemaking.

While the commission rules do not require training specific to OSSF design for either Professional Engineers or Professional Sanitarians, their professional licenses require sufficient educational and experience requisites to equip them to interpret and comply with the OSSF rules and to properly design these systems. In addition, the current rules include specific design criteria that serve as the basis for the design of these systems.

The consistency of OSSF designs across Texas is addressed through the current licensing and training requirements for individuals who install OSSFs, who evaluate the soils and environmental features on a property, and who maintain OSSFs. Also, the commission

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has licensing requirements for individuals who review permit applications, site evaluations, and planning materials and conduct inspections on OSSFs. The commission requires continuing education for licensees in their licensing programs, conducts outreach, and periodically reviews local OSSF programs for compliance.

The executive director believes that an additional certification is not necessary to improve the quality of the design of OSSFs. While an additional certification may provide another tool to aid in consistency, any marginal improvements in consistency must be balanced against the burden an additional certification places on professionals already required to meet significant educational and experience requisites to obtain and retain their professional license. In addition, the commission would have no control of the training and content of the examinations provided by a third party.

**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

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**Attachment:**

Petition

cc: Chief Clerk, 2 copies  
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