

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 17, 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.: 2017-0054-PET

Project No.: 2017-011-PET-NR

Who Submitted the Petition:

On January 12, 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 that the commission create a new occupational certification called Certified Reuse Technician for individuals who design, construct, and maintain water/wastewater reuse facilities and appurtenances. The petitioner requests changes to 30 Texas Administrative Code (TAC) Chapter 285, On-Site Sewage Facilities, and 30 TAC Chapter 30, Occupational Licenses and Registrations.

The requested changes to Chapter 285 include a definition for "Certified Reuse Technician," a list of the duties and responsibilities of a Reuse Technician, and a description of the violations which could result in a revocation or suspension of the certification of a Reuse Technician. The requested changes to Chapter 30 include a definition of "Certification" which equates a certification to a license, a requirement that an applicant for Reuse Technician certification take a reuse technician course, a requirement for the commission to review and approve the content of examinations necessary to obtain the certification, and requirements needed to renew the certification.

Recommended Action and Justification:

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

The petitioner indicates that the proposed rulemaking would address "the overall water reuse issue." House Bill (HB) 1902 (84th Texas Legislature, 2015) expanded the allowable uses of graywater and other recycled water to help reduce the demand for fresh water by amending Texas Health and Safety Code (THSC), §341.039 and §366.012 and Texas Water Code, §26.0311. HB 1902 did not include any requirements specifically for individuals who install, operate, or maintain authorized graywater or recycled water systems. The executive director has determined that if the Legislature intended the commission to add an additional occupational license for Reuse Technicians, it would have expressly provided for the additional occupational license. Moreover, in a 1999 Opinion regarding a requirement that site evaluators obtain a license from the Texas Natural Resource Conservation Commission, the Texas Attorney General stated that "a state agency may

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not establish and regulate occupational or professional categories in absence of express legislative authority to do so." (See Tex. Att'y Gen. Op. No. JC-0020 (1999).)

The executive director has also determined that, if adopted, this new occupational license could have unintended negative impacts on other graywater and alternative on-site water reuse systems (collectively "reuse systems"). For example, the petitioner limits the scope of the Certified Reuse Technician to individuals that design, construct, and maintain reuse facilities that are associated with on-site sewage facilities (OSSFs); however, the graywater and alternative water systems authorized by HB 1902 are not limited to reuse systems associated with OSSFs. This limitation could result in a significant difference between how reuse systems associated with an OSSF and those associated with a sewage collection system are regulated.

Additionally, the Reuse Technician Certification could conflict with other commission's licenses as well as conflict and even exclude licenses issued by the Texas State Board of Plumbing Examiners and the Texas Board of Professional Engineers among others.

Finally, the executive director has determined that the Reuse Technician Certification would likely add to the costs associated with reuse systems, and as a result, it could result in fewer reuse systems being installed.

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
- THSC, §366.011 and §366.012, which provides general authority for the commission to adopt rules concerning OSSFs

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Attachment:

Petition

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