

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.

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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