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TEXAS SEPTIC SYSTEMS COUNCIL

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Date of submittal: 31 October 2016

Executive Director
Texas Commission on environmental Quality
POB 13087
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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

There is no experience or specific training qualification required to design a septic system in Texas other than if the person happens to hold a Professional Engineering or Professional Sanitarian license. Neither of these fields teaches how to design a septic system nor are there any DESIGN STANDARDS OR FORMATS other than the rules themselves. In fact NO ONE TEACHES SEPTIC SYSTEM DESIGNING.

Thus, every designer fabricates a format of his own making and every DR accepts it so long as he feels it meets what he considers a minimum submittal.

MOST OTHER PROFESSIONS REQUIRE TRAINING TOWARD THE ATTAINMENT OF HIGH STANDARDS AND SOME FORM OF CERTIFICATION OF COMPETENCY SO AS TO ENSURE CONSISTENCY OF FIELD APPLICATION.

The Texas Septic Systems Council, as an organization of industry design experts, is being formed in order to assist TCEQ in achieving these goals. The review process

that is envisioned is to and modeled after the NSF CERTIFICATION PROGRAM that is currently used by TCEQ for product review.

- (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]
- (C) The concept herein proposed has been deemed, by Kathy Humphreys, TCEQ staff attorney, as within their ruling authority.
- (D) Allegation: the current regulatory arrangement would continue in a lack of consistency of enforcement of the current rules over the 343 separate jurisdictions because designers are required no formal training or certification specific to OSSF regulations.

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.

Texas Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART 1	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 285	ON-SITE SEWAGE FACILITIES
SUBCHAPTER A	GENERAL PROVISIONS
RULE §285.1	Purpose and Applicability

(a) Purpose.....The licensing of installers, designated representatives, site evaluators, **and designers** and the registration of apprentices is included in Chapter 30 of this title (relating to Occupational Licenses and Registrations). Unauthorized discharge of effluent into or adjacent to the waters in the state is prohibited.

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SUBCHAPTER A	GENERAL PROVISIONS
RULE §285.2	Definitions

The following words and terms in this section are in addition to the definitions in Chapter 3 and Chapter 30 of this title (relating to Definitions and Occupational Licenses and Registrations). The words and terms in this section, when used in this chapter, have the following meanings.

.....(8) Certified professional soil scientist--An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science.

(9) Certified designer - A licensed Professional Engineer or Professional Sanitarian who has met the certification requirements of the executive director for the purpose of preparing planning materials.

[SUBSEQUENT NUMBERS REVISED ACCORDINGLY]

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SUBCHAPTER A	GENERAL PROVISIONS
RULE §285.3	General Requirements

(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~~ **certified designer** 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.

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RULE §285.4	Facility Planning

(a) (2) Manufactured housing communities or multi-unit residential developments. The owners of manufactured housing communities or multi-unit residential developments that are served by an OSSF and rent or lease space shall submit a sewage disposal plan to the permitting authority for approval. The total anticipated sewage flow for the individual tract of land shall not exceed 5,000 gallons per day. The plan shall be prepared by a ~~professional engineer or professional sanitarian~~ **certified designer**.

(c) Review of subdivision or development plans. Persons proposing residential subdivisions, manufactured housing communities, multi-unit residential developments, business parks, or other similar structures that use OSSFs for sewage disposal shall submit planning materials for these developments to the permitting authority and receive approval prior to submitting an OSSF application.

(1) The planning materials must be prepared by a ~~professional engineer or professional sanitarian~~ **certified designer** and must include...

(2) If the proposed development includes restaurants or buildings with food service establishments, the planning materials must show adequate land area for doubling the land needed for the treatment units. The **certified designer** may consider increasing the amount of land area for the treatment units beyond doubling the minimum required area.

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RULE §285.5	Submittal Requirements for Planning Materials

(a)(2) Planning materials prepared by a ~~professional engineer or professional sanitarian~~ **certified designer**. OSSF planning materials shall be prepared by a ~~professional engineer or professional sanitarian~~ **certified designer** (with appropriate seal, date, and signature) as follows, unless otherwise specified in this chapter:

(a)(3) Planning materials prepared by a ~~professional engineer~~ **certified designer**. OSSF planning materials shall be prepared by a ~~professional engineer~~ **certified designer** (with appropriate seal, date and signature as follows, unless otherwise specified in this chapter:

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SUBCHAPTER D	PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS
RULE §285.32	Criteria for Sewage Treatment Systems

(d)...These systems shall be designed by a ~~professional engineer or a professional sanitarian~~ **certified designer** in accordance with...

(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. It is the responsibility of the **certified** designer to properly design a system which reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required.

(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~~ **certified** 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 unless secondary treatment levels are required. Residential sewage is sewage that has a strength of less than 300 mg/l BOD.

(3) Flow equalization. The **certified** designer should consider whether flow-equalization will be needed for the treatment system to function properly.

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RULE §285.33 Criteria for Effluent Disposal Systems

(d) Nonstandard disposal systems. All disposal systems not described or defined in subsections (b) and (c) of this section are nonstandard disposal systems. Planning materials for nonstandard disposal systems must be developed by a ~~professional engineer or professional sanitarian~~ **certified designer** using basic engineering and scientific principles. The planning materials for paragraphs (1) - (5) of this subsection shall be submitted to the permitting authority and the permitting authority shall review and either approve or disapprove them on a case-by-case basis according to §285.5 of this title (relating to Submittal Requirements for Planning Materials). Electrical wiring for nonstandard disposal systems shall be installed according to §285.34(c) of this title (relating to Other Requirements). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority. Approval for a nonstandard disposal system is limited to the specific system described in the planning materials for the specific location. The systems identified in paragraphs (1) - (5) of this subsection must meet these requirements, in addition to the requirements identified for each specific system in this section.

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SUBCHAPTER E	SPECIAL REQUIREMENTS FOR OSSFS LOCATED IN THE EDWARDS AQUIFER RECHARGE ZONE
RULE §285.40	OSSFs on the Recharge Zone of the Edwards Aquifer

(b) Additional application requirements for new OSSFs. All planning materials shall be submitted to the permitting authority by a ~~professional engineer or professional sanitarian~~ **certified designer**.

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RULE §285.50	General Requirements

(a) The procedures for issuing licenses and registrations for on-site sewage facilities (OSSF) installers, designated representatives, apprentices, site evaluators, maintenance providers, ~~and~~ maintenance technicians, **and certified designers** are in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(g) Any individual who acts in any capacity for a permitting authority shall not, within that permitting authority's area of jurisdiction:

- (1) work as an apprentice to an OSSF installer;
- (2) work as an OSSF installer;
- (3) work for an OSSF maintenance provider or maintenance technician;
- (4) work as a site evaluator; ~~or~~
- (5) **work as a certified designer; or**

(6) perform any other OSSF-related activities which fall under the permitting authority's regulatory jurisdiction, except those activities directly related to the individual's duties as an employee of, appointee to, or contractor for the permitting authority.

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RULE §285.62	Duties and Responsibilities of Designated Representatives

A designated representative shall:

(19) while employed by, appointed to, or contracted by the authorized agent, refrain from performing any of the following activities within the authorized agent's area of jurisdiction:

- (A) working as an apprentice to an OSSF installer;
- (B) working as an OSSF installer;
- (C) working for an OSSF maintenance provider;
- (D) working as a site evaluator; ~~or~~

(E) working as a certified designer; or

(F) performing any other OSSF-related activities which fall under the authorized agent's regulatory jurisdiction, except those activities directly related to the individual's duties as a designated representative for the authorized agent;

(20) verify the existence of a maintenance contract between an owner and the maintenance provider according to §285.7(d) of this title (relating to Maintenance Requirements);

(21) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change; and

(22) receive written permission from the designated representative's employer if the designated representative desires to perform any OSSF-related activities for compensation outside of the authorized agent's regulatory jurisdiction, to be kept on file in the designated representative's office.

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ENVIRONMENTAL QUALITY

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CHAPTER 285

ON-SITE SEWAGE FACILITIES

SUBCHAPTER F

LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, SITE EVALUATORS, MAINTENANCE PROVIDERS, AND MAINTENANCE TECHNICIANS

RULE §285.65 Duties and Responsibilities of Certified Designers.

(a) A certified designer shall:

- (1) Possess a current certification from the executive director;**
- (2) Meet all of the requirements, including passing a standards exam written by an independent 3rd party industry group;**
- (3) Record their license number and certification number on all designs and on all other correspondence prepared as a designer under this chapter;**
- (4) Provide true and accurate information on the design required by §285.5 [relating to planning materials requirements] and in any other documentation;**
- (5) Maintain a current professional engineer license or professional sanitarian licenses if the designer certification was granted at least partially on the basis of holding either a PE or an PS license;**
- (6) Conduct predesign/preconstruction site visits to determine all the existing and proposed elements required for a design meeting these rules;**
- (7) Draw up a complete set of planning materials as required by these rules;**
- (8) Complete all required application forms and permit fee payments so as to submit the complete package of planning materials for review and approval by the Designated Representative.**

- (9) Maintain a current mailing address, phone number and email address with the executive director and submit any changes in writing within 30 days after the date of a change.

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RULE §285.66	Suspension or Revocation of License or Registration

(a) Suspension. In addition to the grounds listed in Texas Water Code, §7.303, the commission may suspend an OSSF installer's license, a designated representative's license, a site evaluator's license, an apprentice's registration, a maintenance provider's license, ~~or~~ a maintenance technician's registration **or a certified designer** for violation of duties and responsibilities listed in this subchapter, as recommended by the executive director. Additional grounds for suspension of these licenses and registrations include (and are not limited to) the following reasons.

(b) Revocation. In addition to the grounds listed in Texas Water Code, §7.303 the commission may revoke an OSSF installer's license, a designated representative's license, a site evaluator's license, an apprentice's registration, a maintenance provider's license, ~~or~~ a maintenance technician's registration, **or a certification of a designer** for violation of duties and responsibilities listed in this subchapter, as recommended by the executive director. Additional grounds for revocation of these licenses and registrations include (and are not limited to) the following reasons.

(b)(7) A designer's certification can be revoked for:

- (A) Falsifying information within a design or planning materials;**
- (B) Failure to note their license and certification numbers on the design or planning materials;**
- (C) Failing to maintain their Professional Engineer or Professional Sanitarian license.**

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SUBCHAPTER I	APPENDICES
RULE §285.91	Tables

(3) Table III. Wastewater Usage Rate

Table III. Wastewater Usage Rate.

This table shall be used for estimating the hydraulic loading rates only. Sizing formulas are based on residential strength BOD₅. Commercial/institutional facilities must pretreat their wastewater to 140 BOD₅ prior to disposal unless secondary treatment quality is required. For design purposes, restaurant wastewater will be assumed to have a BOD₅ of at least 1,200 mg/l after exiting the grease trap or grease interceptor.

Actual water usage data or other methods of calculating wastewater usage rates may be used by the ~~system~~ **certified** designer if it is accurate and acceptable to the Texas Commission on Environmental Quality or its authorized agents. If actual water use records are greater than the usage rates in this table, the system shall be designed for the higher flow.

(9) Table IX. OSSF System Designation.

Table IX. OSSF System Designation.

SYSTEM DESCRIPTION	SYSTEM TYPE	PLANNING MATERIAL TO BE PREPARED BY RO or PE? CERTIFIED DESIGNER	INSTALLER REQUIREMENTS
Septic Tank & Absorptive Drainfield	Standard	No	Class I or II
Septic Tank & ET Drainfield (Unlined)	Standard	No	Class I or II
Septic Tank & ET Drainfield (Lined)	Standard	No	Class II

(table continues... and ends as follows:)

Any Other Treatment System	---	Yes	Class II
Any Other Subsurface Disposal System	---	(1)	(1)
Any Other Surface Disposal System	---	Yes	Class II
Non-Standard Treatment when Secondary Treatment Required	Non-Standard	Engineer Only Yes	Class II
Holding Tank	---	No	Class I or II

(Note: the phrase **CERTIFIED DESIGNER** heads the third column on both pages of the table.)

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[SUBCHAPTER](#) ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS
[A](#)

RULE §30.3

Purpose and
Applicability

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, Irrigation Technicians, and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated

Representatives, Maintenance Providers, Maintenance Technicians, **Certified Designers**, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; and Visible Emissions Evaluator Training and Certification) contain the program-specific requirements related to each program.

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RULE §30.7	Definitions

(3) Certification - A license, granted by the executive director, that affirms that an individual has met the requirements of a designer

[SUBSEQUENT NUMBERS REVISED ACCORDINGLY]

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SUBCHAPTER A	ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS
RULE §30.10	Administration

The executive director is responsible for:

- (10) reviewing and approving the qualification examination, prepared and administered by an independent, 3rd party industry group, for the certification of designers.

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CHAPTER 30	OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER A ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS
 RULE §30.20 Examinations

(a) The executive director shall prescribe **or review and approve** the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license. The contents of any examination required for licensure under this chapter are confidential and examinees may not share them with anyone.

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 RULE §30.231 Purpose and Applicability

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that:

- (1) constructs any part of an on-site sewage facility;
- (2) performs the duties of a designated representative;
- (3) performs the duties of a site evaluator;
- (4) performs the duties of an apprentice;
- (5) performs the duties of a licensed maintenance provider; ~~or~~
- (6) performs the duties of a maintenance technician; **or**
- (7) performs the duties of a certified designer.**

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 RULE §30.240 Qualifications for Initial License

(f) Effective September 1, 2017, to obtain a Certified Designer’s license, in individual must have:

- (1) met the requirements of Subchapter A of this chapter,
- (2) met the following requirements:
 - (A) complete the designer training course by a service provider,
 - (B) pass the Certified Designer examination developed by an independent, 3rd party industry group; and
 - (C) possess a current Professional Engineer or Professional Sanitarian license.

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RULE §30.242	Qualifications for License Renewal

(a) To renew an Installer I, Installer II, designated representative, maintenance provider, or-site evaluator **or certified designer license** , an individual must have:

[The End]