

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

AGENDA REQUESTED: August 10, 2022

DATE OF REQUEST: July 29, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Cecilia Mena, Agenda Coordinator, (512) 239-6098

CAPTION: **Docket No. 2022-0823-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 June 20, 2022, by Brian Wakefield, President of B & J Wakefield Services, Inc. (Petitioner). The Petitioner requested that the Commission initiate rulemaking to amend rules in 30 TAC Chapter 285, On-Site Sewage Facilities (OSSFs). Specifically, the Petitioner requested an amendment to the general pipe requirements in 30 TAC § 285.33(a)(5) to allow the use of cross-linked polyethylene (PEX) pipe in accordance with the American Society of Testing and Materials (ASTM) Standard F876, ASTM Standard F877, the American National Standards Institute and American Water Works Standard C904, and/or CSA (formerly the Canadian Standards Association) Standard B137.5, when the pipe is under internal pressure within any part of the OSSF. (Donna Cospers, Kathy Humphreys; Non-Rule Project No. 2022-030-PET-NR)

Craig Pritzlaff
Director

Andy Gardner
Division Deputy Director

Cecilia Mena
Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 29, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Craig Pritzlaff, Director
Office of Compliance and Enforcement

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2022-0823-PET

Project No.: 2022-030-PET-NR

Who Submitted the Petition:

On June 20, 2022, the Texas Commission on Environmental Quality (commission) received a petition for rulemaking from Brian Wakefield, President of B & J Wakefield Services, Inc. (Petitioner).

What the Petitioner Requests:

The Petitioner requested that the commission initiate rulemaking to amend rules in 30 Texas Administrative Code (TAC) Chapter 285, On-Site Sewage Facilities (OSSFs). Specifically, the Petitioner requested an amendment to the general pipe requirements in 30 TAC §285.33(a)(5) to allow the use of: cross-linked polyethylene (PEX) pipe in accordance with the American Society of Testing and Materials (ASTM) Standard F876; ASTM Standard F877; the American National Standards Institute and American Water Works Standard C904; and/or CSA (formerly the Canadian Standards Association) Standard B137.5, when the pipe is under internal pressure within any part of the OSSF.

Recommended Action and Justification:

The executive director recommends denying the Petitioner's request because:

- PEX pipe has not been proven to be at least as equally protective of the environment and public health as ASTM Schedule 40 pipe, which is the type of pipe that is approved for use in an OSSF;
- the potential for blockages within the pipe increases due to the location of couplings within the inner wall of the pipe as well as due to the flexibility of the pipe;
- the ASTM F876 and F877 Standards were not written for components for use within an OSSF; they were written for components that are intended for use in residential and commercial, hot and cold-potable water distribution systems, reclaimed water, fire protection, municipal water service lines, radiant heating and cooling systems, hydronic distribution systems, snow and ice melting systems, geothermal ground loops, district heating, turf conditioning, compressed air distribution and building services pipe;
- the ANSI/AWWA C904 Standard was written for pressure tubing that is used for conveyance of underground potable water, reclaimed water, and wastewater service lines. While this standard was written in part for wastewater service lines, no evidence of usage or the allowance of usage of ANSI/AWWA C904 compliant

Commissioners

Page 2

July 29, 2022

Re: Docket No. 2022-0823-PET

PEX tubing for wastewater lines was found in literature research. The uses that were found to be allowed were strictly for potable water; and

- the CSA B137.5 Standard was not written for components for use within an OSSF; it was written for components that were intended for use in potable water distribution systems.

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 describes the procedures for petitions for rulemaking specific to the commission; and
- Texas Health and Safety Code, §366.012, which provides the commission the authority to adopt rules governing the installation of OSSFs.

Agency Contacts:

Donna Cospers, Project Manager, Program Support Section, (512) 239-1324

Kathy Humphreys, Staff Attorney, Environmental Law Division, (512) 239-3417

Cecilia Mena, Agenda Coordinator, (512) 239-6098

Attachment:

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Donna Cospers
Kathy Humphreys
Cecilia Mena

Brian Wakefield respectfully submits this rule petition to:

Toby Baker, Executive Director

TCEQ

P.O. Box 13087,

Austin TX 78711-3087

Explanation: Amending rules on reporting

Proposed amendment to: **§285.33. Criteria for Effluent Disposal Systems General Requirements**

§285.33. CRITERIA FOR EFFLUENT DISPOSAL SYSTEMS.

(a) General requirements.

(5) Except for drip irrigation tubing, pipe under internal pressure within any part of an on-site sewage facility system shall meet the minimum requirements of ASTM Schedule 40 or for pex pipe In accordance with ASTM F876, ASTM F877, AWWA C904 and/or CSA B137.5.

Statutory Authority

This amendment is proposed under Health and Safety Code Chapter 366, On-Site Sewage Disposal Systems §366.012. Rules Concerning On-Site Sewage Disposal Systems. (A) Encourage the use of economically feasible alternative techniques and technologies for on-site sewage disposal systems that can be used in soils not suitable for conventional on-site sewage disposal.

Allegation: The use of purple pex pipe which is available at this time to be used for surface irrigation lines in which is not allowed at this time due to current rules and regulations. To allow the use pex to be used for air line going from air compressor to ATU and the use of purple pex leaving pump tank going to distribution field. Pex pipe may be used where solid pipe is not necessary.

Pex has been used with plumbers for many years now and have saved property owners money for many years because pex is less likely to split and leak due to ground shifting and bad angles etc. Which ultimately helps protect the ground water with less spray lines from breaking as well. Installation of pex can be easier to install.

Submitted by:

Brian Wakefield, President

B & J Wakefield Services, Inc.

1234 Broadhead Rd, Waxahachie, TX 75165, 972-921-6619

Texas Commission on Environmental Quality



**DECISION OF THE COMMISSION
REGARDING THE PETITION FOR RULEMAKING
FILED BY BRIAN WAKEFIELD, PRESIDENT OF B & J WAKEFIELD SERVICES, INC.**

Docket No. 2022-0823-PET
Rule Project No. 2022-030-PET-NR

On August 10, 2022, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed on June 20, 2022, by Brian Wakefield, President of B & J Wakefield Services, Inc. Mr. Wakefield requested the Commission initiate rulemaking to amend 30 Texas Administrative Code 285, On-Site Sewage Facilities (OSSFs), to allow the use of cross-linked polyethylene (PEX) pipe in accordance with the American Society of Testing and Materials (ASTM) Standard F876, ASTM Standard F877, the American National Standards Institute and American Water Works Standard C904, and/or CSA (formerly the Canadian Standards Association) Standard B137.5 when the pipe is under internal pressure within any part of the 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, to deny the petition because PEX pipe has not been proven to be at least as equally protective of the environment and public health as ASTM Schedule 40 pipe, which is the type of pipe that is approved for use in an OSSF.

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

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed