

## Member Organizations

Alamo, Austin, and Lone Star chapters of  
the Sierra Club  
Bexar Audubon Society  
Austin, Bexar and Travis Green Parties  
Bexar Grotto  
Boerne Together  
Bulverde Neighborhood Alliance  
Bulverde Neighbors for Clean Water  
Cibolo Center for Conservation  
Citizens for the Protection of Cibolo Creek  
Comal County Conservation Alliance  
Environment Texas  
First Universalist Unitarian Church of SA  
Friends of Canyon Lake  
Friends of Dry Comal Creek  
Friends of Government Canyon  
Fuerza Unida  
Green Society of UTSA  
Guadalupe River Road Alliance  
Guardians of Lick Creek  
Headwaters at Incarnate Word  
Helotes Heritage Association  
Hill Country Alliance  
Kendall County Well Owners Association  
Kinney County Ground Zero  
Leon Springs Business Association  
Native Plant Society of Texas – SA  
Northwest Interstate Coalition of  
Neighborhoods  
Pedernales River Alliance – Gillespie Co.  
Preserve Castroville  
Preserve Lake Dunlop Association  
Preserve Our Hill Country Environment  
RiverAid San Antonio  
San Antonio Audubon Society  
San Antonio Conservation Society  
San Geronimo Valley Alliance  
San Marcos Greenbelt Alliance  
San Marcos River Foundation  
Save Barton Creek Association  
Save Our Springs Alliance  
Scenic Loop/Boerne Stage Alliance  
Securing a Future Environment  
SEED Coalition  
Signal Hill Area Alliance  
Sisters of the Divine Providence  
Solar San Antonio  
Texas Cave Management Association  
Trinity Edwards Spring Protection Assoc.  
Water Aid – Texas State University  
Wildlife Rescue & Rehabilitation  
Wimberley Valley Watershed Association

PO Box 15618  
San Antonio, Texas 78212  
(210) 320-6294

October 27, 2022

Laurie Gharis, Chief Clerk  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX 78711-3087

*Submitted electronically at <https://www14.tceq.texas.gov/epic/eComment/>*

Re: Comments Regarding the Consideration of a Petition for Rulemaking under  
Section 20.15 of 30 TAC Chapter 20, Rulemaking. Docket No. 2022-1154-PET.

**Greater Edwards Aquifer Alliance (GEAA).** GEAA submits the following comments on behalf of our fifty-four member organizations and the undersigned supporting organizations and requests that the petition for rulemaking not be adopted. Should rulemaking be initiated, GEAA also requests that our organization is included as a stakeholder in that process. GEAA is a 501(c)(3) nonprofit organization that promotes effective broad-based advocacy for the protection and preservation of the Edwards Aquifer, its springs, watersheds, and the Texas Hill Country that sustains it. GEAA believes that the state and specifically, the Edwards Aquifer Region, including its Contributing Zone would be adversely affected by any expansion of On-Site Sewage Facilities (OSSFs).

GEAA's members have serious concerns regarding any new rulemaking for OSSFs, as the original rules were put in place to address the issues that were occurring with lot sizes that were too small. GEAA and its members' specific areas of concern are summarized in the following section of this letter.

**Comments on the petition.** There are several areas of concern with the current petition:

A. **Negative Impacts of Increased Density:** The increased density of development that would be permitted with this rule change, especially in areas like the karst regions of the Texas Hill Country, would lead to dramatic increases in impervious cover; hence, increased risks of subsequent flooding. Permitting authorities such as Bexar, Comal, Bandera, Kendall, and Hays counties have seen the increased risk of flooding associated with high density development. While some communities impacted by OSSFs have drainage systems, others do not have the capacity for such infrastructure. Further, state restrictions that prohibit counties from enforcing density restrictions strip these counties of additional tools that might be used to address drainage concerns.

B. **Water Quality and Quantity Impacts:** While the use of advanced systems such as Aerobic Treatment Units provide better treatment, periods of high rainfall could still increase the potential of oversaturation and stormwater runoff. Additionally,

these Aerobic Treatment Units do not undergo regularly scheduled inspections<sup>1</sup>. Should higher density rules be implemented in the Edwards Aquifer Contributing Zone, more contaminants could reach the drinking water for over 2.5 million people in all of Uvalde, Medina, and Bexar counties as well as parts of Atascosa, Caldwell, Guadalupe, Comal, and Hays counties. In some cases, lack of regularly scheduled monitoring may result in increased levels of pollution to groundwater supplies not being detected.

We are also concerned that county fees associated with OSSFs might not be sufficient to ensure regular and scrupulous inspection by the counties given the vast increase in these duties resulting from these new rules.

C. Soil Type and Groundwater Levels: The soils in Galveston County and other similar areas, along with presence of groundwater, make installation of ground disposal-type systems problematic. These ground treatment systems require two feet of dry soil beneath the bottom of the treatment trench. In some cases, this means a buffer of 42 inches above groundwater to safely install these systems. As water levels continue to rise in the Coastal Zone of Texas, the increased density of OSSFs will lead to increased groundwater and surface water contamination.

D. Lot Sizes Were Increased Previously: Minimum lot size requirements for OSSFs were increased in 2007 and prior to address the very same concerns raised above about density, oversaturation, and suitable land to replace failing systems. The broader concern for water quality has only strengthened since that time. We encourage TCEQ to seriously consider the short- and long-term results of this proposed rule change, fostering the protection of natural resources and public health.

Texas continues to be in desperate need for more water, including infrastructure to improve water quality and mitigate flooding. We believe that TCEQ and others have made a commitment to making those improvements. Moving forward with rule-making as proposed in this instance would only provide an opportunity to move backward in our shared mission to ensure clean and safe water for Texans.

Thank you for the opportunity to submit these comments.

Sincerely,

Annalisa Peace  
Executive Director  
Greater Edwards Aquifer Alliance

David Baker  
Executive Director  
Wimberley Valley Watershed Association

Marisa Bruno  
Water Program Manager  
Hill Country Alliance

Clark Hancock  
Board President  
Save Barton Creek Association

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<sup>1</sup> Texas Sunset Advisory Commission. Texas Sunset Advisory Commission, 2022, pp. 85, 2022 Texas Commission on Environmental Quality Sunset Staff Report.

## RESPONSE TO PETITION FOR RULE-MAKING SUBMITTED BY GALVESTON COUNTY

Galveston County has submitted to TCEQ a petition for rule-making, to modify Chapter 285.4(a)(1)(A), as follows:

( 1) Residential lot sizing.

(A) Platted or unplatted subdivisions served by a public water system. Subdivisions of single family dwellings platted or created after the effective date of this section, served by a public water supply and using individual OSSFs for sewage disposal, shall have lots of at least 1/2 acre, **or shall have site-specific sewage disposal plan submitted by a registered professional engineer or registered sanitarian and approved by the permitting authority**.

In order to make any sense of this request, it is first necessary to understand the very nature of Galveston County's request, which they have utterly failed to make clear. Is there a perceived "need" to create NEW subdivisions with lots smaller than 1/2 acre? If so, it would be incumbent upon them to explain exactly why. What is "different" about the situation upon which this petition appears to be focused, the Bolivar peninsula, that "requires" the ability to plat NEW smaller lots *statewide*? Are they simply saying, we expect that the "organized" wastewater system that "should" be serving this area is expected to eventually get its act together, and so we need a "transition" strategy, to allow now, served by OSSFs for some "interim" period, the smaller lots that the provision of "organized" sewer service would eventually allow?

OR, is Galveston County asserting it is "in limbo" regarding their ability to approve OSSFs for *pre-existing* "substandard size" lots? Note that, in part at least, this ability is already explicitly set forth in 285.4(b)(1):

(b) Approval of OSSF systems on existing small lots or tracts.

(1) Existing small lots or tracts that do not meet the minimum lot size requirements under subsection (a)(1)(A) or (B) of this section, and were either subdivided before January 1, 1988, or had a site-specific sewage disposal plan approved between January 1, 1988, and the effective date of this section, are allowed to use OSSFs, but the OSSFs must comply with the requirements set forth in this Chapter.

So perhaps the genesis of this "problem" is that Galveston County has been irresponsible, perhaps acted illegally, in creating lots smaller than 1/2 acre since January 1, 1988. We need to first understand the genesis of the problem before we should be entertaining the manner in which it may be attended to. It would seem from what Galveston County has set forth on this matter that this is a rather unique, local situation. So it may be very reasonably asked, how is it that Galveston County and TCEQ cannot resolve this matter between them, why the rest of the state has to be dragged into this matter?

If TCEQ does somehow judge that the requested rule-making is "needed" – it has been asserted that Executive Director Baker has recommended approving the petition – then the charge must be defined as being MUCH broader than the "simple" language Galveston County has requested, in regard to the following:

- First, it appears to be suggested that there be NO minimum lot size that must be attained. Rather, a lot of ANY size upon which some sort of "engineered" or "improved" OSSF could be sited would seem to be allowed. I once got approved an OSSF on a 0.13-acre lot, featuring a recirculating packed-bed filter treatment unit (recirculating "sand" filter) and a subsurface drip irrigation field, so it is indeed possible to "fit" a system onto a lot much smaller than 1/2 acre. But lacking any meaningful "control" of the types of systems that might be entertained, this would seem to set up an "engineering free for all", that anything some engineer might where his/her seal to set forth could be entertained.
- Second, in regard to that, we have already seen that many supposedly professional engineers will put their seal on an OSSF that would use a home-sized activated sludge plant that may be cheek to jowl

with lots on which these devices would be employed. The degree to which these plants, going under the moniker “aerobic treatment units”, fail to perform consistently and reliably are legend, as is the very insufficient level of oversight that is required to be accorded to them. In particular never, ever requiring any monitoring of effluent quality. It should go without saying that spray dispersal should be absolutely banned in “tight quarters”, which can be readily imparted by putting a meaningful property line setback into the rules, which is currently absent. This level of “performance” by both the designer community and the regulatory system must be critically examined, especially if it is proposed to allow these devices to be installed at even greater density than is typically happening now.

- But wait! The petition would allow the “site-specific sewage disposal plan” to be done by a registered sanitarian. Any sort of “engineered” OSSF by its very definition entails the practice of engineering. A sanitarian should NEVER be allowed to “design” any OSSF more complex than a conventional septic tank-gravity drain system. Anything else would violate the engineering practices act. It is a sad fact that our governments at all levels have conspired to sweep this matter under the rug. So if it is going to be considered that by the application of engineering works OSSFs would be allowed to serve smaller lots, it would be incumbent on the regulatory system to assure that appropriate expertise is brought to bear, that indeed the engineering practices act would be enforced in these circumstances.
- It has been pointed out in other comments that allowing an increase in lot density would very likely entail impact of drainage, and the shedding on non-point source pollution due to higher impervious cover levels. An issue in this regard is that local jurisdictions may not have the regulatory tools to assure that “adequate” storm water management, including pollution control, is implemented in the process of creating new subdivisions. And of course, if we are dealing with “small” pre-existing lots, there would be NO control over the “adequacy” of storm water management extant in those neighborhoods. So if this petition is to be granted and rule-making started, it would be incumbent upon all concerned to consider the “adequacy” of the storm water management facilities, and how that could be part and parcel of whatever rules come out of this process.
- It must be investigated why Galveston County “thinks” it has “little to no influence ... on the timeliness and scale of the needed capital improvement projects” that would allow the “organized” wastewater service provider on the Bolivar peninsula to provide timely service, and so “believes” it “has” to allow the use of OSSFs on “substandard size” lots. It must be explored what efforts Galveston County has made to provide funding or other assistance to that provider. The implication of Galveston County’s description of the situation is that it indeed “believes” that the “solution” to the matter is to allow OSSFs to serve lots smaller than ½ acre in NEW subdivisions – “there have been concerns about their ability to keep up with the fast growth and development of Bolivar Peninsula” – implying that it is the creation of NEW development that is driving the asserted “need” to allow OSSFs to serve all this development. Besides considering whether this local, parochial issue demands changing the lot sizing rules *statewide*, it must be investigated what options have been considered – e.g., a decentralized concept strategy providing wastewater service within each new development, with service provided on a “just in time” basis as each NEW subdivision is built. This would place the responsibility for funding on the developer, so relieving the existing wastewater service provider from having to finance facilities up front of being able to serve the first house in the development. It would also almost no doubt provide “waste” water service more affordably than would be afforded by extending and perpetuating the prevailing conventional centralized scheme. It is understood that TCEQ very much does not want to ever delve into such a concept – they perceive it flies in the face of their “regionalization” policy – but it is suggested that these sort of ideas, ideals, concepts and principles could provide a much more workable and sound – fiscally, societally and environmentally – solution to the matter presented by Galveston County than would be allowing – *statewide!!* – the creation of smaller lots that would be served by OSSFs, especially under the prevailing, rather deficient, rules system.

- Along the way, it is to be hoped that the whole idea that what we are about is “disposal” of a perceived nuisance would be critically examined. What we “should” be about is how to “best”/most effectively and efficiently husband this water **RESOURCE**. This matter is considered in “Averting a Crisis” (<http://www.venhuizen-ww.com/docs/Averting%20a%20crisis.pdf>) and “Slashing pollution, saving water – the classic win-win (but ignored by society)” (<https://waterblogue.com/2013/03/24/29/>), both of which are considered to be part and parcel of this comment. If “engineered” OSSFs are to be universally allowed on “small” lots, the husbanding rather than “disposal” of this water RESOURCE must be carefully considered, indeed must become the aim of the OSSF design. This can be readily attained by the methods reviewed in those two works.
- And then there is the matter that society might consider the wisdom of allowing more development on the Bolivar peninsula, given the realities of climate change, in particular the likely impact on shoreline development. Of course this runs afoul of the prevailing state government’s “don’t say climate change” policy, but it’s a reality that should be dealt with. Understanding that we have to deal with this society’s take on property rights. So perhaps the ownership profile of the properties that Galveston County deems it “necessary” to be provided “waste” water service should be reviewed as part and parcel of any rule-making that ensues, and it should be considered whether some sort of buy-out program would be a “better” way to “manage” these properties. Expertise on the likely “lifetime” of the shoreline development on that spit of land should be brought to bear to inform any such deliberations.

Respectfully submitted,



David Venhuizen, P.E.

**From:** [Mary Smith](#)  
**To:** [Mehgan Taack](#)  
**Cc:** [Colleen Ford](#)  
**Subject:** FW: NDS: Important TCEQ news update 10.28.22  
**Date:** Monday, October 31, 2022 2:16:07 PM

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Forwarding for filing – rule petition

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**From:** Farrah Court <[farrah.court@tceq.texas.gov](mailto:farrah.court@tceq.texas.gov)>  
**Sent:** Monday, October 31, 2022 2:02 PM  
**To:** Laurie Gharis <[Laurie.Gharis@tceq.texas.gov](mailto:Laurie.Gharis@tceq.texas.gov)>  
**Cc:** Krista Kyle <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>; Mary Smith <[Mary.Smith@Tceq.Texas.Gov](mailto:Mary.Smith@Tceq.Texas.Gov)>; Deornette Monteleone <[Deornette.Monteleone@tceq.texas.gov](mailto:Deornette.Monteleone@tceq.texas.gov)>  
**Subject:** FW: NDS: Important TCEQ news update 10.28.22

Laurie,

Email for records (3 of 3.)

Thanks,  
Farrah

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**From:** DavidVenhuizen <[waterguy@ix.netcom.com](mailto:waterguy@ix.netcom.com)>  
**Sent:** Monday, October 31, 2022 1:46 PM  
**To:** Jon Niermann <[Jon.Niermann@Tceq.Texas.Gov](mailto:Jon.Niermann@Tceq.Texas.Gov)>; Emily Lindley <[Emily.Lindley@tceq.texas.gov](mailto:Emily.Lindley@tceq.texas.gov)>; Bobby Janecka <[Bobby.Janecka@tceq.texas.gov](mailto:Bobby.Janecka@tceq.texas.gov)>  
**Cc:** Krista Kyle <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>  
**Subject:** FW: NDS: Important TCEQ news update 10.28.22

Thoughts about the “regionalization” policy, currently “understood” very wrong-headedly, are offered below, for whatever they are deemed worth.

David Venhuizen, P.E.  
Planning & Engineering as if Water and Environmental Values Matter  
website - [www.venhuizen-ww.com](http://www.venhuizen-ww.com)  
blog - [www.waterblogue.com](http://www.waterblogue.com)

Your old road is rapidly aging  
Please get out of the new one  
If you can't lend your hand  
For the times, they are a-changin'  
- Bob Dylan

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**From:** DavidVenhuizen [<mailto:waterguy@ix.netcom.com>]  
**Sent:** Saturday, October 29, 2022 2:47 PM  
**To:** 'Brian Zabcik'; 'ccraigsmith@icloud.com'; 'matt.hollon@austintexas.gov'; 'mike.kelly@austintexas.gov'; 'Ron Fiesler'; 'rogers4water@gmail.com'; 'GM@haysgroundwater.com'; 'Raymond Slade'; 'Terry Tull'; 'Susan Meckel'; 'sleurig@gmail.com'; 'jon.white@traviscountytx.gov';

'sarah.b.faust@gmail.com'; 'john.dupnik@twdb.texas.gov'; 'Tim Loftus'; 'sueparten@aol.com';  
'maravuacres@gmail.com'; 'Christy Williams'; 'vpuigwilliams@edf.org'; 'Robert Mace'; 'Kincaid, Nick';  
'Marisa Bruno'; 'Victoria Rose'; 'David Marino'

**Subject:** RE: NDS: Important TCEQ news update 10.28.22

The first thing that needs to be understood about the “regionalization” thing is that it seems to be all about “regionalizing” hardware, with the presumption that by doing so, you would “regionalize” management. And a corollary seems to be, this is the “only” way to “regionalize”. Not a word about the actual aim, to regionalize MANAGEMENT, to attain the aims asserted. Then too it’s all posed in the idea that the whole aim of the system is to “dispose of” a perceived nuisance. Not a hint that what we are really about here, or at least NEED to be about, is how to best husband this water RESOURCE.

Stupidly, the regionalization document asserts “Typically, existing systems with sufficient treatment capacity can provide wastewater treatment and disposal at a lower cost than a new, stand-alone system.” Uh, maybe the operation of the treatment plant might be more cost efficient than it would take to operate multiple “satellite” plants, but when you add the cost of the pipes and pumps to “regionalize” the hardware system in the manner envisioned here, no way that’s the general case, far more likely the opposite. Then when you add on the cost of redistribution hardware if a reuse value of this RESOURCE is to be realized, that just nails that coffin shut.

This of course all runs in exactly the *opposite* direction we need to be going over most of the Hill Country, as the example of Dripping Springs and their clown-car “management” of “waste” water in their ETJ shows. So maybe the best “use” of this whole process is to line up folks to go up there and one after another tell TCEQ that if they want to attain “smart regionalization” they will expand this whole idea to be about regionalizing management, and looking at each local situation for the best form and deployment of technologies, rather than presuming “regionalization” is all about creating larger point sources gathering the stuff from further and further away. As has been noted, that is pretty much the whole predicate for even considering stream discharge as the fate of this water RESOURCE. Anywhere!

But this is TCEQ, so unlikely any of that will find a receptive audience. And of course, this group has so far seemed uninterested in exploring the decentralized concept as the manner in which future discharges would be avoided. So ???

David Venhuizen, P.E.  
Planning & Engineering as if Water and Environmental Values Matter  
website - [www.venhuizen-ww.com](http://www.venhuizen-ww.com)  
blog - [www.waterblogue.com](http://www.waterblogue.com)

Your old road is rapidly aging  
Please get out of the new one  
If you can't lend your hand  
For the times, they are a-changin'  
- Bob Dylan

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**From:** Brian Zabcik [<mailto:brian@savebartoncreek.org>]

**Sent:** Friday, October 28, 2022 3:52 PM

**To:** [ccraigsmith@icloud.com](mailto:ccraigsmith@icloud.com); [matt.hollon@austintexas.gov](mailto:matt.hollon@austintexas.gov); [mike.kelly@austintexas.gov](mailto:mike.kelly@austintexas.gov); Ron Fiesler; [rogers4water@gmail.com](mailto:rogers4water@gmail.com); [GM@haysgroundwater.com](mailto:GM@haysgroundwater.com); Raymond Slade; Terry Tull; Susan Meckel; [waterguy@ix.netcom.com](mailto:waterguy@ix.netcom.com); [sleurig@gmail.com](mailto:sleurig@gmail.com); [jon.white@traviscountytx.gov](mailto:jon.white@traviscountytx.gov); [sarah.b.faust@gmail.com](mailto:sarah.b.faust@gmail.com); [john.dupnik@twdb.texas.gov](mailto:john.dupnik@twdb.texas.gov); Tim Loftus; [sueparten@aol.com](mailto:sueparten@aol.com); [maravuacres@gmail.com](mailto:maravuacres@gmail.com); Christy Williams; [vpuigwilliams@edf.org](mailto:vpuigwilliams@edf.org); Robert Mace; Kincaid, Nick; Marisa Bruno; Victoria Rose; David Marino

**Subject:** Fwd: NDS: Important TCEQ news update 10.28.22

Hi everyone —

This is Brian Zabcik at Save Barton Creek Association & the No Dumping Sewage coalition. I'm forwarding this email update that I just sent to NDS members. TCEQ has been unusually busy with rule petitions and proposals. The agency is currently accepting comments on two of them and will hopefully be accepting comments on the rest later. At a minimum, I would suggest submitting comments against Galveston County's petition to eliminate the minimum lot size requirement for OSSFs (item #2 below).

I'm forwarding this to an abbreviated list of people on the email list for the Regional Water Quality Plan Working Group. I've included only folks I've seen at meetings, and I've deleted anyone who's already on the NDS list. Feel free to forward this yourself!

— Brian

----- Forwarded message -----

From: **Brian Zabcik** <[brian@savebartoncreek.org](mailto:brian@savebartoncreek.org)>

Date: Fri, Oct 28, 2022 at 3:35 PM

Subject: NDS: Important TCEQ news update 10.28.22

Hi everyone — here's an update for the No Dumping Sewage coalition on a lot of important wastewater news:

**CONTENTS:**

- 1) NDS meeting: <https://us06web.zoom.us/j/3707576248>, 10am, Wed, 11/9
- 2) TCEQ petition on OSSF lot sizes (OPPOSE): comment deadline 11/1, commissioners meeting 11/2
- 3) TCEQ rulemaking on Chapter 210 reclaimed water applications (SUPPORT): comment deadline & public meeting 11/8
- 4) TCEQ rulemaking on wastewater regionalization guidelines
- 5) TCEQ stakeholder process on pristine streams

**1) NDS meeting: 10am, Wed, 11/9, <https://us06web.zoom.us/j/3707576248>**  
Monthly meeting of the No Dumping Sewage coalition & Wastewater Subcommittee of the Texas Hill Country Conservation Network.

**2) TCEQ petition on OSSF lot sizes (OPPOSE): comment deadline 11/1, commissioners meeting 11/2**  
**TCEQ ID#: 2022-1154-PET**

Galveston County has filed a petition (attached) asking TCEQ to create a rule eliminating the half-acre lot size requirement for OSSFs. This would be a statewide rule since the only geographic exception in the petition is for the Edwards Recharge Zone. While OSSF regulations are set by counties, this proposal would allow any Hill Country county to eliminate their OSSF minimum lot size regulation if they wanted.

TCEQ commissioners will discuss and vote on this petition at their meeting next Wednesday, 11/2. Executive Director Toby Baker has recommended that they should approve the petition. Public comments can be submitted through the 11/2 meeting, but practically speaking, they should be submitted asap in order to actually be considered.

This is a very bad proposal and NDS is strongly recommending that everyone submit comments asking TCEQ commissioners to vote against it. GEAA is also accepting sign-ons for the letter that it's submitting (attached). If you want to add your entity's signature to GEAA's letter, email [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org).

The commissioners' meeting starts at 9:30am, Wed, 11/2 (see attached agenda).

- If you want to attend or comment during the meeting, you must register in advance: <https://forms.office.com/r/jEKC0yB6W9>. (Agenda item 27)
- If you want to attend in person: 12100 Park 35 Circle, Austin; Building E, Room 201S
- If you want to watch online: <https://www.gotomeeting.com/webinar/join-webinar> (enter webinar ID 948-634-323)

If you want to submit comments before the meeting:

- Go to: <https://www14.tceq.texas.gov/epic/eComment/>
- Enter 2023-003-PET-NR in the Permit Number field
- You can type a comment in the Comments field, submit an attachment, or both.
- You should receive a confirmation within the hour, but you can also check that your comment is viewable on the Commissioners' Integrated Database after it's submitted at: <https://www14.tceq.texas.gov/epic/eCID/>. Be sure to check the box labeled "Include all correspondence from the public on this Item." Please note that if you submit an attachment, the document will not be viewable until it's processed by TCEQ.

Email attachments on this petition:

- Galveston County petition to eliminate OSSF minimum lot size (2022-1154-PET)
- GEAA sign-on letter opposing OSSF petition (to add your signature, email [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org))
- TCEQ Commissioners meeting agenda 11.02.22
- OSSF regulation in the Barton Springs Zone – excerpt from 2019 Austin Watershed Protection report (included as a refresher on local OSSF rules)

**3) TCEQ rulemaking on Chapter 210 reclaimed water applications (SUPPORT):  
comment deadline & public meeting 11/8  
Rule Project # 2022-018-210-OW**

TCEQ has proposed an internal rule change to clarify that an application to receive authorization under Chapter 210 to reuse treated wastewater can be submitted at the same time, or any time after, as an application for a discharge or TLAP permit. According to TCEQ, this has always been the case, but there's been confusion among applicants who think that they have to receive their discharge or TLAP permit first, before they can apply for Chapter 210 authorization. NDS strongly recommends supporting this change.

How to comment:

- Comments must be submitted by 11/8
- Comments must reference Rule Project Number 2022-018-210-OW
- Electronic comments may be submitted at:  
<https://www6.tceq.texas.gov/rules/ecomments/>
- Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

TCEQ staff is holding a public hearing on this proposal at 10am, Monday, 11/7.

- Open discussion will not be permitted during the hearing; however, staff members will be available to discuss the proposal 30 minutes prior to the hearing.
- Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by Thursday, 11/3.
- To register, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, 11/4.

#### **4) TCEQ rulemaking on wastewater regionalization guidelines (NEUTRAL); comments not accepted at this time**

TCEQ staff has drafted new guidance for wastewater system regionalization (attached). The public comment period ended on 10/23. The next step is for the staff to put the proposal onto the agenda for an upcoming commissioners meeting, date TBD. TCEQ will accept comments on the proposal at that time.

My very imperfect understanding of this issue is that TCEQ isn't supposed to grant a new wastewater permit if there's an acceptable regional system already in operation. The new regionalization guidance spells out what can be considered an acceptable alternative.

An article in the National Law Journal (attached) has more info: "TCEQ requires that applicants for domestic wastewater discharge permits include justification of need and availability of regionalization. ... The new draft guidance provides that regionalization is feasible unless one of the following circumstances applies: (1) no other wastewater systems are within 3 miles of the proposed system; (2) requests for service from neighboring systems have been made but denied; or (3) the applicant can demonstrate that there is a valid basis for an exception from the regionalization policy based on the cost analysis included in the application. For now, the draft guidance does not specifically elaborate on an issue that has been of recent controversy – the

nature and type of service conditions imposed by neighboring service providers that might in effect be considered a denial of service."

TCEQ staff drafted the new guidance in response to a petition filed this spring by the cities of San Marcos, McAllen, and Jarrell (attached). The commissioners voted 3-0 at their 5/18 meeting to deny the petition, but they directed staff to set up a stakeholder process to develop a regionalization rule guidance.

#### **5) TCEQ stakeholder process on pristine streams**

There's been no official communication from the agency since the public meeting it held on 8/31. However, Robin Gary at the Watershed Association was able to get the staff to provide its presentations from the meeting, which she's posted on this page:

<https://wimberleywatershed.org/current-issues/pristine-streams-protections/>

This page will be a fantastic resource for all of us going forward. Many thanks to Robin for putting it together!

— Brian

---

#### **BRIAN ZABCIK**

Advocacy Director

718-288-0341

Follow SBCA on social media:

@savebartoncreek

[www.savebartoncreek.org](http://www.savebartoncreek.org)

**From:** [Mary Smith](#)  
**To:** [Mehgan Taack](#)  
**Cc:** [Colleen Ford](#)  
**Subject:** FW: NDS: Important TCEQ news update 10.28.22  
**Date:** Monday, October 31, 2022 2:15:45 PM

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Forwarding for filing – rule petition

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**From:** Farrah Court <[farrah.court@tceq.texas.gov](mailto:farrah.court@tceq.texas.gov)>  
**Sent:** Monday, October 31, 2022 2:02 PM  
**To:** Laurie Gharis <[Laurie.Gharis@tceq.texas.gov](mailto:Laurie.Gharis@tceq.texas.gov)>  
**Cc:** Krista Kyle <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>; Mary Smith <[Mary.Smith@Tceq.Texas.Gov](mailto:Mary.Smith@Tceq.Texas.Gov)>; Deornette Monteleone <[Deornette.Monteleone@tceq.texas.gov](mailto:Deornette.Monteleone@tceq.texas.gov)>  
**Subject:** FW: NDS: Important TCEQ news update 10.28.22

Laurie,

Email for records (2 of 3.)

Thanks,  
Farrah

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**From:** DavidVenhuizen <[waterguy@ix.netcom.com](mailto:waterguy@ix.netcom.com)>  
**Sent:** Monday, October 31, 2022 1:33 PM  
**To:** 'Brian Zabcik' <[brian@savebartoncreek.org](mailto:brian@savebartoncreek.org)>; [ccraigsmith@icloud.com](mailto:ccraigsmith@icloud.com); [matt.hollon@austintexas.gov](mailto:matt.hollon@austintexas.gov); [mike.kelly@austintexas.gov](mailto:mike.kelly@austintexas.gov); 'Ron Fiesler' <[manager@blancocountygroundwater.org](mailto:manager@blancocountygroundwater.org)>; [rogers4water@gmail.com](mailto:rogers4water@gmail.com); [GM@haysgroundwater.com](mailto:GM@haysgroundwater.com); 'Raymond Slade' <[RAYMOND643@aol.com](mailto:RAYMOND643@aol.com)>; 'Terry Tull' <[totalltull@aol.com](mailto:totalltull@aol.com)>; 'Susan Meckel' <[Susan.Meckel@lcra.org](mailto:Susan.Meckel@lcra.org)>; [sleurig@gmail.com](mailto:sleurig@gmail.com); [jon.white@traviscountytexas.gov](mailto:jon.white@traviscountytexas.gov); [sarah.b.faust@gmail.com](mailto:sarah.b.faust@gmail.com); [john.dupnik@twdb.texas.gov](mailto:john.dupnik@twdb.texas.gov); 'Tim Loftus' <[TLoftus@bseacd.org](mailto:TLoftus@bseacd.org)>; [sueparten@aol.com](mailto:sueparten@aol.com); [maravuacres@gmail.com](mailto:maravuacres@gmail.com); 'Christy Williams' <[cwilliams@bseacd.org](mailto:cwilliams@bseacd.org)>; [vpuigwilliams@edf.org](mailto:vpuigwilliams@edf.org); 'Robert Mace' <[robertmace@txstate.edu](mailto:robertmace@txstate.edu)>; 'Kincaid, Nick' <[nick.kincaid@austintexas.gov](mailto:nick.kincaid@austintexas.gov)>; 'Marisa Bruno' <[Marisa@hillcountryalliance.org](mailto:Marisa@hillcountryalliance.org)>; 'Victoria Rose' <[victoria@sosalliance.org](mailto:victoria@sosalliance.org)>; 'David Marino' <[dmarino@bseacd.org](mailto:dmarino@bseacd.org)>; [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org)  
**Cc:** Jon Niermann <[Jon.Niermann@Tceq.Texas.Gov](mailto:Jon.Niermann@Tceq.Texas.Gov)>; Emily Lindley <[Emily.Lindley@tceq.texas.gov](mailto:Emily.Lindley@tceq.texas.gov)>; Bobby Janecka <[Bobby.Janecka@tceq.texas.gov](mailto:Bobby.Janecka@tceq.texas.gov)>; Krista Kyle <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>  
**Subject:** RE: NDS: Important TCEQ news update 10.28.22

Here, for whatever you deem it worth, is the comment I submitted on the 210 rule consideration:

The most basic issue with the manner in which the concept of "disposal" relates to the concept of "reuse" is that TCEQ has demanded that a full-blown "disposal" system be in place, and only then might it be considered how some of that water headed for "disposal" could be diverted to "reuse". It appears that this rule change might "streamline" the paper processing of all this, but it is not at all apparent that this whole "disposal" focus that TCEQ has about "waste" water management would be

blunted at all by what is proposed. A more "optimal" scheme for practically maximizing "reuse" could be integrating the entire system within a reuse-focused plan, with the dispersal fields being formally TLAP fields but arrayed over areas it is desired to irrigate. Most optimally over areas that would be irrigated in any case, whether the reclaimed water resource were available or not, so defraying pretty much gallon for gallon demands on the "original" water system. This may be "best" attained by reorganizing the overall system, distributing it so that the "waste" water would be treated and reused as close to where it is generated as practical. That sort of scheme is illustrated in "This is how we do it" (<https://waterblogue.com/2014/09/24/this-is-how-we-do-it/>) -- considered to be part and parcel of this comment -- in the context of a rather typical Hill Country development. This sort of scheme could be repeated all throughout the hinterlands, so obviating the installation (and paying for) of an extensive set of pipes and pumps that do nothing but move the stuff around, contributing nothing to actually "managing" these flows. Actually, two sets of pipes and pumps, if it is indeed proposed to beneficially reuse this water RESOURCE, as a reclaimed water redistribution system would have to also be installed. All these capital investments, and the "clumsiness" of the two-part TCEQ permitting process, to first put in place provision to "dispose of" this water RESOURCE, and then to overlay on that facilities to reuse this water instead, could be obviated. You need look no further than the clown-car situation in/around Dripping Springs to see how the insistence on centralizing flows from miles around to one point source -- so driving a desire to just discharge to a stream to (supposedly) make the "management" less costly -- where they seem unable to plan to route much of that flow to beneficial reuse, in particular in projects that are "remote" from the existing centralized treatment plant. While TCEQ likely considers this whole idea to be outside what they want their rules to be focused upon -- in particular TCEQ appears to see the decentralized concept as running afoul of its "regionalization" policy, which they badly misunderstand -- the manner in which this all is to be done is in DIRE need of re-examination. Starting with jettisoning the whole notion that this process is at all about "disposal" of a perceived nuisance, and start focusing on how we "best"/most effectively and efficiently husband this water RESOURCE. Starting with understanding that there is no such thing as "disposal" in this context, and so organizing the system to practically maximize the reuse value of this water RESOURCE. Thank you.

David Venhuizen, P.E.

Planning & Engineering as if Water and Environmental Values Matter

website - [www.venhuizen-ww.com](http://www.venhuizen-ww.com)

blog - [www.waterblogue.com](http://www.waterblogue.com)

Your old road is rapidly aging

Please get out of the new one

If you can't lend your hand

For the times, they are a-changin'

- Bob Dylan

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**From:** Brian Zabcik [<mailto:brian@savebartoncreek.org>]

**Sent:** Friday, October 28, 2022 3:52 PM

**To:** [ccraigsmith@icloud.com](mailto:ccraigsmith@icloud.com); [matt.hollon@austintexas.gov](mailto:matt.hollon@austintexas.gov); [mike.kelly@austintexas.gov](mailto:mike.kelly@austintexas.gov); Ron Fiesler; [rogers4water@gmail.com](mailto:rogers4water@gmail.com); [GM@haysgroundwater.com](mailto:GM@haysgroundwater.com); Raymond Slade; Terry Tull; Susan Meckel; [waterguy@ix.netcom.com](mailto:waterguy@ix.netcom.com); [sleurig@gmail.com](mailto:sleurig@gmail.com); [jon.white@traviscountytx.gov](mailto:jon.white@traviscountytx.gov); [sarah.b.faust@gmail.com](mailto:sarah.b.faust@gmail.com); [john.dupnik@twdb.texas.gov](mailto:john.dupnik@twdb.texas.gov); Tim Loftus; [sueparten@aol.com](mailto:sueparten@aol.com); [maravuacres@gmail.com](mailto:maravuacres@gmail.com); Christy Williams; [vpuiqwilliams@edf.org](mailto:vpuiqwilliams@edf.org); Robert Mace; Kincaid, Nick; Marisa Bruno; Victoria Rose; David Marino

**Subject:** Fwd: NDS: Important TCEQ news update 10.28.22

Hi everyone —

This is Brian Zabcik at Save Barton Creek Association & the No Dumping Sewage coalition. I'm forwarding this email update that I just sent to NDS members. TCEQ has

been unusually busy with rule petitions and proposals. The agency is currently accepting comments on two of them and will hopefully be accepting comments on the rest later. At a minimum, I would suggest submitting comments against Galveston County's petition to eliminate the minimum lot size requirement for OSSFs (item #2 below).

I'm forwarding this to an abbreviated list of people on the email list for the Regional Water Quality Plan Working Group. I've included only folks I've seen at meetings, and I've deleted anyone who's already on the NDS list. Feel free to forward this yourself!

— Brian

----- Forwarded message -----

From: **Brian Zabcik** <[brian@savebartoncreek.org](mailto:brian@savebartoncreek.org)>

Date: Fri, Oct 28, 2022 at 3:35 PM

Subject: NDS: Important TCEQ news update 10.28.22

Hi everyone — here's an update for the No Dumping Sewage coalition on a lot of important wastewater news:

**CONTENTS:**

- 1) NDS meeting: <https://us06web.zoom.us/j/3707576248>, 10am, Wed, 11/9
- 2) TCEQ petition on OSSF lot sizes (OPPOSE): comment deadline 11/1, commissioners meeting 11/2
- 3) TCEQ rulemaking on Chapter 210 reclaimed water applications (SUPPORT): comment deadline & public meeting 11/8
- 4) TCEQ rulemaking on wastewater regionalization guidelines
- 5) TCEQ stakeholder process on pristine streams

**1) NDS meeting: 10am, Wed, 11/9, <https://us06web.zoom.us/j/3707576248>**

Monthly meeting of the No Dumping Sewage coalition & Wastewater Subcommittee of the Texas Hill Country Conservation Network.

**2) TCEQ petition on OSSF lot sizes (OPPOSE): comment deadline 11/1, commissioners meeting 11/2**

**TCEQ ID#: 2022-1154-PET**

Galveston County has filed a petition (attached) asking TCEQ to create a rule eliminating the half-acre lot size requirement for OSSFs. This would be a statewide rule since the only geographic exception in the petition is for the Edwards Recharge Zone. While OSSF regulations are set by counties, this proposal would allow any Hill Country county to eliminate their OSSF minimum lot size regulation if they wanted.

TCEQ commissioners will discuss and vote on this petition at their meeting next Wednesday, 11/2. Executive Director Toby Baker has recommended that they should approve the petition. Public comments can be submitted through the 11/2 meeting, but practically speaking, they should be submitted asap in order to actually be

considered.

This is a very bad proposal and NDS is strongly recommending that everyone submit comments asking TCEQ commissioners to vote against it. GEAA is also accepting sign-ons for the letter that it's submitting (attached). If you want to add your entity's signature to GEAA's letter, email [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org).

The commissioners' meeting starts at 9:30am, Wed, 11/2 (see attached agenda).

- If you want to attend or comment during the meeting, you must register in advance: <https://forms.office.com/r/ljEKC0yB6W9>. (Agenda item 27)
- If you want to attend in person: 12100 Park 35 Circle, Austin; Building E, Room 201S
- If you want to watch online: <https://www.gotomeeting.com/webinar/join-webinar> (enter webinar ID 948-634-323)

If you want to submit comments before the meeting:

- Go to: <https://www14.tceq.texas.gov/epic/eComment/>
- Enter 2023-003-PET-NR in the Permit Number field
- You can type a comment in the Comments field, submit an attachment, or both.
- You should receive a confirmation within the hour, but you can also check that your comment is viewable on the Commissioners' Integrated Database after it's submitted at: <https://www14.tceq.texas.gov/epic/eCID/>. Be sure to check the box labeled "Include all correspondence from the public on this Item." Please note that if you submit an attachment, the document will not be viewable until it's processed by TCEQ.

Email attachments on this petition:

- Galveston County petition to eliminate OSSF minimum lot size (2022-1154-PET)
- GEAA sign-on letter opposing OSSF petition (to add your signature, email [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org))
- TCEQ Commissioners meeting agenda 11.02.22
- OSSF regulation in the Barton Springs Zone – excerpt from 2019 Austin Watershed Protection report (included as a refresher on local OSSF rules)

### **3) TCEQ rulemaking on Chapter 210 reclaimed water applications (SUPPORT): comment deadline & public meeting 11/8**

#### **Rule Project # 2022-018-210-OW**

TCEQ has proposed an internal rule change to clarify that an application to receive authorization under Chapter 210 to reuse treated wastewater can be submitted at the same time, or any time after, as an application for a discharge or TLAP permit. According to TCEQ, this has always been the case, but there's been confusion among applicants who think that they have to receive their discharge or TLAP permit first, before they can apply for Chapter 210 authorization. NDS strongly recommends supporting this change.

How to comment:

- Comments must be submitted by 11/8
- Comments must reference Rule Project Number 2022-018-210-OW

- Electronic comments may be submitted at:  
<https://www6.tceq.texas.gov/rules/ecomments/>
- Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

TCEQ staff is holding a public hearing on this proposal at 10am, Monday, 11/7.

- Open discussion will not be permitted during the hearing; however, staff members will be available to discuss the proposal 30 minutes prior to the hearing.
  - Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by Thursday, 11/3.
  - To register, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing.
- Instructions for participating in the hearing will be sent on Friday, 11/4.

#### **4) TCEQ rulemaking on wastewater regionalization guidelines (NEUTRAL); comments not accepted at this time**

TCEQ staff has drafted new guidance for wastewater system regionalization (attached). The public comment period ended on 10/23. The next step is for the staff to put the proposal onto the agenda for an upcoming commissioners meeting, date TBD. TCEQ will accept comments on the proposal at that time.

My very imperfect understanding of this issue is that TCEQ isn't supposed to grant a new wastewater permit if there's an acceptable regional system already in operation. The new regionalization guidance spells out what can be considered an acceptable alternative.

An article in the National Law Journal (attached) has more info: "TCEQ requires that applicants for domestic wastewater discharge permits include justification of need and availability of regionalization. ... The new draft guidance provides that regionalization is feasible unless one of the following circumstances applies: (1) no other wastewater systems are within 3 miles of the proposed system; (2) requests for service from neighboring systems have been made but denied; or (3) the applicant can demonstrate that there is a valid basis for an exception from the regionalization policy based on the cost analysis included in the application. For now, the draft guidance does not specifically elaborate on an issue that has been of recent controversy – the nature and type of service conditions imposed by neighboring service providers that might in effect be considered a denial of service."

TCEQ staff drafted the new guidance in response to a petition filed this spring by the cities of San Marcos, McAllen, and Jarrell (attached). The commissioners voted 3-0 at their 5/18 meeting to deny the petition, but they directed staff to set up a stakeholder process to develop a regionalization rule guidance.

#### **5) TCEQ stakeholder process on pristine streams**

There's been no official communication from the agency since the public meeting it held on 8/31. However, Robin Gary at the Watershed Association was able to get the

staff to provide its presentations from the meeting, which she's posted on this page:  
<https://wimberleywatershed.org/current-issues/pristine-streams-protections/>  
This page will be a fantastic resource for all of us going forward. Many thanks to Robin for putting it together!

— Brian

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**BRIAN ZABCIK**

Advocacy Director

718-288-0341

Follow SBCA on social media:

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[www.savebartoncreek.org](http://www.savebartoncreek.org)

**From:** [Mary Smith](#)  
**To:** [Mehgan Taack](#)  
**Cc:** [Colleen Ford](#)  
**Subject:** FW: NDS: Important TCEQ news update 10.28.22  
**Date:** Monday, October 31, 2022 2:15:33 PM  
**Attachments:** [RESPONSE TO PETITION FOR RULE PETITION BY GALVESTON COUNTY.pdf](#)

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Forwarding for filing – rule petition

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**From:** Farrah Court <[farrah.court@tceq.texas.gov](mailto:farrah.court@tceq.texas.gov)>  
**Sent:** Monday, October 31, 2022 2:01 PM  
**To:** Laurie Gharis <[Laurie.Gharis@tceq.texas.gov](mailto:Laurie.Gharis@tceq.texas.gov)>  
**Cc:** Krista Kyle <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>; Mary Smith <[Mary.Smith@Tceq.Texas.Gov](mailto:Mary.Smith@Tceq.Texas.Gov)>; Deornette Monteleone <[Deornette.Monteleone@tceq.texas.gov](mailto:Deornette.Monteleone@tceq.texas.gov)>  
**Subject:** FW: NDS: Important TCEQ news update 10.28.22

Laurie,

Email for records (1 of 3.)

Thanks,  
Farrah

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**From:** DavidVenhuizen <[waterguy@ix.netcom.com](mailto:waterguy@ix.netcom.com)>  
**Sent:** Monday, October 31, 2022 12:50 PM  
**To:** 'Brian Zabcik' <[brian@savebartoncreek.org](mailto:brian@savebartoncreek.org)>; [ccraigsmith@icloud.com](mailto:ccraigsmith@icloud.com); [matt.hollon@austintexas.gov](mailto:matt.hollon@austintexas.gov); [mike.kelly@austintexas.gov](mailto:mike.kelly@austintexas.gov); 'Ron Fiesler' <[manager@blancocountygroundwater.org](mailto:manager@blancocountygroundwater.org)>; [rogers4water@gmail.com](mailto:rogers4water@gmail.com); [GM@haysgroundwater.com](mailto:GM@haysgroundwater.com); 'Raymond Slade' <[RAYMOND643@aol.com](mailto:RAYMOND643@aol.com)>; 'Terry Tull' <[totalltull@aol.com](mailto:totalltull@aol.com)>; 'Susan Meckel' <[Susan.Meckel@lcra.org](mailto:Susan.Meckel@lcra.org)>; [sleurig@gmail.com](mailto:sleurig@gmail.com); [jon.white@traviscountytexas.gov](mailto:jon.white@traviscountytexas.gov); [sarah.b.faust@gmail.com](mailto:sarah.b.faust@gmail.com); [john.dupnik@twdb.texas.gov](mailto:john.dupnik@twdb.texas.gov); 'Tim Loftus' <[TLoftus@bseacd.org](mailto:TLoftus@bseacd.org)>; [sueparten@aol.com](mailto:sueparten@aol.com); [maravuacres@gmail.com](mailto:maravuacres@gmail.com); 'Christy Williams' <[cwilliams@bseacd.org](mailto:cwilliams@bseacd.org)>; [vpuigwilliams@edf.org](mailto:vpuigwilliams@edf.org); 'Robert Mace' <[robertmace@txstate.edu](mailto:robertmace@txstate.edu)>; 'Kincaid, Nick' <[nick.kincaid@austintexas.gov](mailto:nick.kincaid@austintexas.gov)>; 'Marisa Bruno' <[Marisa@hillcountryalliance.org](mailto:Marisa@hillcountryalliance.org)>; 'Victoria Rose' <[victoria@sosalliance.org](mailto:victoria@sosalliance.org)>; 'David Marino' <[dmarino@bseacd.org](mailto:dmarino@bseacd.org)>; [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org)  
**Cc:** Jon Niermann <[Jon.Niermann@Tceq.Texas.Gov](mailto:Jon.Niermann@Tceq.Texas.Gov)>; Emily Lindley <[Emily.Lindley@tceq.texas.gov](mailto:Emily.Lindley@tceq.texas.gov)>; Bobby Janecka <[Bobby.Janecka@tceq.texas.gov](mailto:Bobby.Janecka@tceq.texas.gov)>; Krista Kyle <[Krista.Kyle@tceq.texas.gov](mailto:Krista.Kyle@tceq.texas.gov)>  
**Subject:** RE: NDS: Important TCEQ news update 10.28.22

For whatever it's worth, my comments on the Galveston County lot size petition are attached. Please consider if you can get behind them.

Thank you.

David Venhuizen, P.E.  
Planning & Engineering as if Water and Environmental Values Matter

website - [www.venhuizen-ww.com](http://www.venhuizen-ww.com)

blog - [www.waterblogue.com](http://www.waterblogue.com)

Your old road is rapidly aging  
Please get out of the new one  
If you can't lend your hand  
For the times, they are a-changin'  
- Bob Dylan

---

**From:** DavidVenhuizen [<mailto:waterguy@ix.netcom.com>]

**Sent:** Monday, October 31, 2022 10:36 AM

**To:** 'Brian Zabcik'; 'ccraigsmith@icloud.com'; 'matt.hollon@austintexas.gov'; 'mike.kelly@austintexas.gov'; 'Ron Fiesler'; 'rogers4water@gmail.com'; 'GM@haysgroundwater.com'; 'Raymond Slade'; 'Terry Tull'; 'Susan Meckel'; 'sleurig@gmail.com'; 'jon.white@traviscountytx.gov'; 'sarah.b.faust@gmail.com'; 'john.dupnik@twdb.texas.gov'; 'Tim Loftus'; 'sueparten@aol.com'; 'maravuacres@gmail.com'; 'Christy Williams'; 'vpugwilliams@edf.org'; 'Robert Mace'; 'Kincaid, Nick'; 'Marisa Bruno'; 'Victoria Rose'; 'David Marino'; 'annalisa@aquiferalliance.org'

**Subject:** RE: NDS: Important TCEQ news update 10.28.22

This to note the problematic nature of the GEAA comments on the proposal for rule-making submitted by Galveston County, and to point out how it could have been used as a vehicle to promote “fixing” the very things it points to as a “reason” for NOT rule-making, and so addressing all that.

GEAA asserts, “GEAA believes that the state and specifically, the Edwards Aquifer Region, including its Contributing Zone would be adversely affected by any expansion of On-Site Sewage Facilities (OSSFs).” The bad punctuation aside, raising the question, of course, “adversely affected” how? In relation to what? The implication appears to be that GEAA believes that “septics are bad”, by their very nature, and so all “waste” water service “should” be provided by “sewer systems”. As we have seen in the situation around Dripping Springs, it is the very nature of “sewer systems”, pursued under the prevailing paradigm, that is the whole predicate for even considering stream discharge as the fate of this water RESOURCE, and is plagued by a number of other fiscal, societal and environmental issues. As has been discussed, OSSFs could be an integral part of an area-wide, or “regional” strategy to put ALL “waste” water systems under professional management. It is irresponsible to throw out such a blanket assertion, absent any actual analysis of the situation and the reasoning for the position. As noted, this was a missed opportunity for opening up rule-making to address the various concerns that are likely behind that blanket assertion.

GEAA also decries the lack of proper storm water infrastructure in developments served by OSSFs. This brings up that we need to understand the actual breadth of the Galveston County request. Do they want to allow NEW subdivisions to be created with smaller minimum lot sizes, or do they want to simply clarify their “permission” to allow pre-existing “sub-standard” lot sizes to be served by OSSFs? If the former, yeah, everyone should have some heartburn about that, and we would hope that if rule-making were approved, everyone would weigh in on taking a long, hard look at all the issues that would be entailed, including the sufficiency of each local jurisdiction’s ability and willingness to require “adequate” storm water infrastructure. And if the latter, since the ability to do what Galveston County appears to be concerned about is already provided for in the existing rules, just maybe this request is stooopid. Seems that parochial issue could be resolved directly between Galveston County and TCEQ, no? Why drag the rest of the state into that? Rather than demonstrate its understanding of all this, GEAA seems to want to just say no, and so avoid any consideration of all the stuff they assert they are concerned about.

Of course I have a real problem with GEAA touting “Aerobic Treatment Units”, as these are exactly the sort of approach to be avoided, as was set explicitly before SBCA when I wrote “Averting a

Crisis” (<http://www.venhuizen-ww.com/docs/Averting%20a%20crisis.pdf>) in 2008, and went into again in “Slashing pollution, saving water – the classic win-win (but ignored by society)” (<https://waterblogue.com/2013/03/24/29/>), which GEAA and the whole environmental community has studiously avoided dealing with. Noting explicitly the low level of on-going oversight of OSSFs, again this should be an opportunity to open all that up, to perhaps get in place “tougher” rules for on-going oversight. It would seem this would be part and parcel of the rule-making effort, since it should be clear to all that if the density of OSSFs is to be increased, on-going oversight will be that much more critical.

Under the item about “Soil Type and Groundwater Levels”, it is asserted that soils may be broadly “insufficient” based solely on the soil depth requirements for “conventional” septic tank-gravity trench OSSFs. Which, I’ll take a guess, would not be an option in the circumstances on which the Galveston County petition focuses. It is advised that folks learn a bit about this field of endeavor before asserting such non-sequiturs.

GEAA concludes its letter with “Texas continues to be in desperate need for more water ....” Well yeah! And that has been a continuing theme of information that has been offered to GEAA and the rest of the environmental community, that we need to fundamentally alter the focus of “waste” water management from being all about “disposal” of a perceived nuisance to being all about how we “best”/most efficiently husband this water RESOURCE. That was a major theme in “Averting a Crisis” and “Slashing pollution ...”. So when will GEAA and the rest get behind that fundamental transformation? Instead, GEAA seems to explicitly state it is determined to AVOID dealing with all that, asserting that engaging in rule-making would automatically “move backwards”, rather than offering an opportunity to move forward. We read between the lines that GEAA does not trust TCEQ to do rule-making in a rational manner, that they would be inclined to just grease the squeaky wheel and let the devil take the hindmost. Given TCEQ’s track record, that is understandable, but perhaps their past performance is due in part to folks like GEAA and friends having failed to participate intelligently in those rule-making processes, just saying no rather than setting forth the sorts of changes we need to indeed move forward.

Now this could be just one more “very long e-mail” that no one reads, or this could be a spur to GEAA and friends to up their game. You cannot afford any longer to “just say no”, rather you need to get into the weeds and help to spur the societal activities that will shift the paradigm. I hope that you will all take this to heart.

Thank you.

David Venhuizen, P.E.  
Planning & Engineering as if Water and Environmental Values Matter  
website - [www.venhuizen-ww.com](http://www.venhuizen-ww.com)  
blog - [www.waterblogue.com](http://www.waterblogue.com)

Your old road is rapidly aging  
Please get out of the new one  
If you can't lend your hand  
For the times, they are a-changin'  
- Bob Dylan

---

**From:** Brian Zabcik [<mailto:brian@savebartoncreek.org>]  
**Sent:** Friday, October 28, 2022 3:52 PM  
**To:** [ccraigsmith@icloud.com](mailto:ccraigsmith@icloud.com); [matt.hollon@austintexas.gov](mailto:matt.hollon@austintexas.gov); [mike.kelly@austintexas.gov](mailto:mike.kelly@austintexas.gov); Ron Fiesler; [rogers4water@gmail.com](mailto:rogers4water@gmail.com); [GM@haysgroundwater.com](mailto:GM@haysgroundwater.com); Raymond Slade; Terry Tull; Susan Meckel; [waterguy@ix.netcom.com](mailto:waterguy@ix.netcom.com); [sleurig@gmail.com](mailto:sleurig@gmail.com); [jon.white@traviscountytexas.gov](mailto:jon.white@traviscountytexas.gov); [sarah.b.faust@gmail.com](mailto:sarah.b.faust@gmail.com); [john.dupnik@twdb.texas.gov](mailto:john.dupnik@twdb.texas.gov); Tim Loftus; [sueparten@aol.com](mailto:sueparten@aol.com); [maravuacres@gmail.com](mailto:maravuacres@gmail.com); Christy

Williams; [vpuigwilliams@edf.org](mailto:vpuigwilliams@edf.org); Robert Mace; Kincaid, Nick; Marisa Bruno; Victoria Rose; David Marino  
**Subject:** Fwd: NDS: Important TCEQ news update 10.28.22

Hi everyone —

This is Brian Zabcik at Save Barton Creek Association & the No Dumping Sewage coalition. I'm forwarding this email update that I just sent to NDS members. TCEQ has been unusually busy with rule petitions and proposals. The agency is currently accepting comments on two of them and will hopefully be accepting comments on the rest later. At a minimum, I would suggest submitting comments against Galveston County's petition to eliminate the minimum lot size requirement for OSSFs (item #2 below).

I'm forwarding this to an abbreviated list of people on the email list for the Regional Water Quality Plan Working Group. I've included only folks I've seen at meetings, and I've deleted anyone who's already on the NDS list. Feel free to forward this yourself!

— Brian

----- Forwarded message -----

From: **Brian Zabcik** <[brian@savebartoncreek.org](mailto:brian@savebartoncreek.org)>

Date: Fri, Oct 28, 2022 at 3:35 PM

Subject: NDS: Important TCEQ news update 10.28.22

Hi everyone — here's an update for the No Dumping Sewage coalition on a lot of important wastewater news:

**CONTENTS:**

- 1) NDS meeting: <https://us06web.zoom.us/j/3707576248>, 10am, Wed, 11/9
- 2) TCEQ petition on OSSF lot sizes (OPPOSE): comment deadline 11/1, commissioners meeting 11/2
- 3) TCEQ rulemaking on Chapter 210 reclaimed water applications (SUPPORT): comment deadline & public meeting 11/8
- 4) TCEQ rulemaking on wastewater regionalization guidelines
- 5) TCEQ stakeholder process on pristine streams

**1) NDS meeting: 10am, Wed, 11/9, <https://us06web.zoom.us/j/3707576248>**  
Monthly meeting of the No Dumping Sewage coalition & Wastewater Subcommittee of the Texas Hill Country Conservation Network.

**2) TCEQ petition on OSSF lot sizes (OPPOSE): comment deadline 11/1, commissioners meeting 11/2**  
**TCEQ ID#: 2022-1154-PET**

Galveston County has filed a petition (attached) asking TCEQ to create a rule eliminating the half-acre lot size requirement for OSSFs. This would be a statewide rule since the only geographic exception in the petition is for the Edwards Recharge Zone. While OSSF regulations are set by counties, this proposal would

allow any Hill Country county to eliminate their OSSF minimum lot size regulation if they wanted.

TCEQ commissioners will discuss and vote on this petition at their meeting next Wednesday, 11/2. Executive Director Toby Baker has recommended that they should approve the petition. Public comments can be submitted through the 11/2 meeting, but practically speaking, they should be submitted asap in order to actually be considered.

This is a very bad proposal and NDS is strongly recommending that everyone submit comments asking TCEQ commissioners to vote against it. GEAA is also accepting sign-ons for the letter that it's submitting (attached). If you want to add your entity's signature to GEAA's letter, email [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org).

The commissioners' meeting starts at 9:30am, Wed, 11/2 (see attached agenda).

- If you want to attend or comment during the meeting, you must register in advance: <https://forms.office.com/r/jEKC0yB6W9>. (Agenda item 27)
- If you want to attend in person: 12100 Park 35 Circle, Austin; Building E, Room 201S
- If you want to watch online: <https://www.gotomeeting.com/webinar/join-webinar> (enter webinar ID 948-634-323)

If you want to submit comments before the meeting:

- Go to: <https://www14.tceq.texas.gov/epic/eComment/>
- Enter 2023-003-PET-NR in the Permit Number field
- You can type a comment in the Comments field, submit an attachment, or both.
- You should receive a confirmation within the hour, but you can also check that your comment is viewable on the Commissioners' Integrated Database after it's submitted at: <https://www14.tceq.texas.gov/epic/eCID/>. Be sure to check the box labeled "Include all correspondence from the public on this Item." Please note that if you submit an attachment, the document will not be viewable until it's processed by TCEQ.

Email attachments on this petition:

- Galveston County petition to eliminate OSSF minimum lot size (2022-1154-PET)
- GEAA sign-on letter opposing OSSF petition (to add your signature, email [annalisa@aquiferalliance.org](mailto:annalisa@aquiferalliance.org))
- TCEQ Commissioners meeting agenda 11.02.22
- OSSF regulation in the Barton Springs Zone – excerpt from 2019 Austin Watershed Protection report (included as a refresher on local OSSF rules)

### **3) TCEQ rulemaking on Chapter 210 reclaimed water applications (SUPPORT): comment deadline & public meeting 11/8**

#### **Rule Project # 2022-018-210-OW**

TCEQ has proposed an internal rule change to clarify that an application to receive authorization under Chapter 210 to reuse treated wastewater can be submitted at the same time, or any time after, as an application for a discharge or TLAP permit. According to TCEQ, this has always been the case, but there's been confusion

among applicants who think that they have to receive their discharge or TLAP permit first, before they can apply for Chapter 210 authorization. NDS strongly recommends supporting this change.

How to comment:

- Comments must be submitted by 11/8
- Comments must reference Rule Project Number 2022-018-210-OW
- Electronic comments may be submitted at:

<https://www6.tceq.texas.gov/rules/ecomments/>

- Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

TCEQ staff is holding a public hearing on this proposal at 10am, Monday, 11/7.

- Open discussion will not be permitted during the hearing; however, staff members will be available to discuss the proposal 30 minutes prior to the hearing.
  - Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by Thursday, 11/3.
  - To register, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing.
- Instructions for participating in the hearing will be sent on Friday, 11/4.

#### **4) TCEQ rulemaking on wastewater regionalization guidelines (NEUTRAL); comments not accepted at this time**

TCEQ staff has drafted new guidance for wastewater system regionalization (attached). The public comment period ended on 10/23. The next step is for the staff to put the proposal onto the agenda for an upcoming commissioners meeting, date TBD. TCEQ will accept comments on the proposal at that time.

My very imperfect understanding of this issue is that TCEQ isn't supposed to grant a new wastewater permit if there's an acceptable regional system already in operation. The new regionalization guidance spells out what can be considered an acceptable alternative.

An article in the National Law Journal (attached) has more info: "TCEQ requires that applicants for domestic wastewater discharge permits include justification of need and availability of regionalization. ... The new draft guidance provides that regionalization is feasible unless one of the following circumstances applies: (1) no other wastewater systems are within 3 miles of the proposed system; (2) requests for service from neighboring systems have been made but denied; or (3) the applicant can demonstrate that there is a valid basis for an exception from the regionalization policy based on the cost analysis included in the application. For now, the draft guidance does not specifically elaborate on an issue that has been of recent controversy – the nature and type of service conditions imposed by neighboring service providers that might in effect be considered a denial of service."

TCEQ staff drafted the new guidance in response to a petition filed this spring by the

cities of San Marcos, McAllen, and Jarrell (attached). The commissioners voted 3-0 at their 5/18 meeting to deny the petition, but they directed staff to set up a stakeholder process to develop a regionalization rule guidance.

#### **5) TCEQ stakeholder process on pristine streams**

There's been no official communication from the agency since the public meeting it held on 8/31. However, Robin Gary at the Watershed Association was able to get the staff to provide its presentations from the meeting, which she's posted on this page: <https://wimberleywatershed.org/current-issues/pristine-streams-protections/>

This page will be a fantastic resource for all of us going forward. Many thanks to Robin for putting it together!

— Brian

---

#### **BRIAN ZABCIK**

Advocacy Director

718-288-0341

Follow SBCA on social media:

@savebartoncreek

[www.savebartoncreek.org](http://www.savebartoncreek.org)

## RESPONSE TO PETITION FOR RULE-MAKING SUBMITTED BY GALVESTON COUNTY

Galveston County has submitted to TCEQ a petition for rule-making, to modify Chapter 285.4(a)(1)(A), as follows:

( 1) Residential lot sizing.

(A) Platted or unplatted subdivisions served by a public water system. Subdivisions of single family dwellings platted or created after the effective date of this section, served by a public water supply and using individual OSSFs for sewage disposal, shall have lots of at least 1/2 acre, ***or shall have site-specific sewage disposal plan submitted by a registered professional engineer or registered sanitarian and approved by the permitting authority***.

In order to make any sense of this request, it is first necessary to understand the very nature of Galveston County's request, which they have utterly failed to make clear. Is there a perceived "need" to create NEW subdivisions with lots smaller than 1/2 acre? If so, it would be incumbent upon them to explain exactly why. What is "different" about the situation upon which this petition appears to be focused, the Bolivar peninsula, that "requires" the ability to plat NEW smaller lots *statewide*? Are they simply saying, we expect that the "organized" wastewater system that "should" be serving this area is expected to eventually get its act together, and so we need a "transition" strategy, to allow now, served by OSSFs for some "interim" period, the smaller lots that the provision of "organized" sewer service would eventually allow?

OR, is Galveston County asserting it is "in limbo" regarding their ability to approve OSSFs for *pre-existing* "substandard size" lots? Note that, in part at least, this ability is already explicitly set forth in 285.4(b)(1):

(b) Approval of OSSF systems on existing small lots or tracts.

(1) Existing small lots or tracts that do not meet the minimum lot size requirements under subsection (a)(1)(A) or (B) of this section, and were either subdivided before January 1, 1988, or had a site-specific sewage disposal plan approved between January 1, 1988, and the effective date of this section, are allowed to use OSSFs, but the OSSFs must comply with the requirements set forth in this Chapter.

So perhaps the genesis of this "problem" is that Galveston County has been irresponsible, perhaps acted illegally, in creating lots smaller than 1/2 acre since January 1, 1988. We need to first understand the genesis of the problem before we should be entertaining the manner in which it may be attended to. It would seem from what Galveston County has set forth on this matter that this is a rather unique, local situation. So it may be very reasonably asked, how is it that Galveston County and TCEQ cannot resolve this matter between them, why the rest of the state has to be dragged into this matter?

If TCEQ does somehow judge that the requested rule-making is "needed" – it has been asserted that Executive Director Baker has recommended approving the petition – then the charge must be defined as being MUCH broader than the "simple" language Galveston County has requested, in regard to the following:

- First, it appears to be suggested that there be NO minimum lot size that must be attained. Rather, a lot of ANY size upon which some sort of "engineered" or "improved" OSSF could be sited would seem to be allowed. I once got approved an OSSF on a 0.13-acre lot, featuring a recirculating packed-bed filter treatment unit (recirculating "sand" filter) and a subsurface drip irrigation field, so it is indeed possible to "fit" a system onto a lot much smaller than 1/2 acre. But lacking any meaningful "control" of the types of systems that might be entertained, this would seem to set up an "engineering free for all", that anything some engineer might whore his/her seal to set forth could be entertained.
- Second, in regard to that, we have already seen that many supposedly professional engineers will put their seal on an OSSF that would use a home-sized activated sludge plant that may be cheek to jowl

with lots on which these devices would be employed. The degree to which these plants, going under the moniker “aerobic treatment units”, fail to perform consistently and reliably are legend, as is the very insufficient level of oversight that is required to be accorded to them. In particular never, ever requiring any monitoring of effluent quality. It should go without saying that spray dispersal should be absolutely banned in “tight quarters”, which can be readily imparted by putting a meaningful property line setback into the rules, which is currently absent. This level of “performance” by both the designer community and the regulatory system must be critically examined, especially if it is proposed to allow these devices to be installed at even greater density than is typically happening now.

- But wait! The petition would allow the “site-specific sewage disposal plan” to be done by a registered sanitarian. Any sort of “engineered” OSSF by its very definition entails the practice of engineering. A sanitarian should NEVER be allowed to “design” any OSSF more complex than a conventional septic tank-gravity drain system. Anything else would violate the engineering practices act. It is a sad fact that our governments at all levels have conspired to sweep this matter under the rug. So if it is going to be considered that by the application of engineering works OSSFs would be allowed to serve smaller lots, it would be incumbent on the regulatory system to assure that appropriate expertise is brought to bear, that indeed the engineering practices act would be enforced in these circumstances.
- It has been pointed out in other comments that allowing an increase in lot density would very likely entail impact of drainage, and the shedding on non-point source pollution due to higher impervious cover levels. An issue in this regard is that local jurisdictions may not have the regulatory tools to assure that “adequate” storm water management, including pollution control, is implemented in the process of creating new subdivisions. And of course, if we are dealing with “small” pre-existing lots, there would be NO control over the “adequacy” of storm water management extant in those neighborhoods. So if this petition is to be granted and rule-making started, it would be incumbent upon all concerned to consider the “adequacy” of the storm water management facilities, and how that could be part and parcel of whatever rules come out of this process.
- It must be investigated why Galveston County “thinks” it has “little to no influence ... on the timeliness and scale of the needed capital improvement projects” that would allow the “organized” wastewater service provider on the Bolivar peninsula to provide timely service, and so “believes” it “has” to allow the use of OSSFs on “substandard size” lots. It must be explored what efforts Galveston County has made to provide funding or other assistance to that provider. The implication of Galveston County’s description of the situation is that it indeed “believes” that the “solution” to the matter is to allow OSSFs to serve lots smaller than ½ acre in NEW subdivisions – “there have been concerns about their ability to keep up with the fast growth and development of Bolivar Peninsula” – implying that it is the creation of NEW development that is driving the asserted “need” to allow OSSFs to serve all this development. Besides considering whether this local, parochial issue demands changing the lot sizing rules *statewide*, it must be investigated what options have been considered – e.g., a decentralized concept strategy providing wastewater service within each new development, with service provided on a “just in time” basis as each NEW subdivision is built. This would place the responsibility for funding on the developer, so relieving the existing wastewater service provider from having to finance facilities up front of being able to serve the first house in the development. It would also almost no doubt provide “waste” water service more affordably than would be afforded by extending and perpetuating the prevailing conventional centralized scheme. It is understood that TCEQ very much does not want to ever delve into such a concept – they perceive it flies in the face of their “regionalization” policy – but it is suggested that these sort of ideas, ideals, concepts and principles could provide a much more workable and sound – fiscally, societally and environmentally – solution to the matter presented by Galveston County than would be allowing – *statewide!!* – the creation of smaller lots that would be served by OSSFs, especially under the prevailing, rather deficient, rules system.

- Along the way, it is to be hoped that the whole idea that what we are about is “disposal” of a perceived nuisance would be critically examined. What we “should” be about is how to “best”/most effectively and efficiently husband this water **RESOURCE**. This matter is considered in “Averting a Crisis” (<http://www.venhuizen-ww.com/docs/Averting%20a%20crisis.pdf>) and “Slashing pollution, saving water – the classic win-win (but ignored by society)” (<https://waterblogue.com/2013/03/24/29/>), both of which are considered to be part and parcel of this comment. If “engineered” OSSFs are to be universally allowed on “small” lots, the husbanding rather than “disposal” of this water RESOURCE must be carefully considered, indeed must become the aim of the OSSF design. This can be readily attained by the methods reviewed in those two works.
- And then there is the matter that society might consider the wisdom of allowing more development on the Bolivar peninsula, given the realities of climate change, in particular the likely impact on shoreline development. Of course this runs afoul of the prevailing state government’s “don’t say climate change” policy, but it’s a reality that should be dealt with. Understanding that we have to deal with this society’s take on property rights. So perhaps the ownership profile of the properties that Galveston County deems it “necessary” to be provided “waste” water service should be reviewed as part and parcel of any rule-making that ensues, and it should be considered whether some sort of buy-out program would be a “better” way to “manage” these properties. Expertise on the likely “lifetime” of the shoreline development on that spit of land should be brought to bear to inform any such deliberations.

Respectfully submitted,



David Venhuizen, P.E.

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

**AGENDA REQUESTED:** November 2, 2022

**DATE OF REQUEST:** October 14, 2022

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2022-1154-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 September 16, 2022, by Galveston County (Petitioner). 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 lot size requirements in 30 TAC Section 285.4(a)(1)(A) to allow the use of an OSSF system on a lot size smaller than 1/2 acre, if the system has been designed by a registered sanitarian or registered professional engineer and approved by the permitting authority. (Donna Cosper, Kathy Humphreys; Non-Rule Project No. 2023-003-PET-NR)

  
\_\_\_\_\_  
**Director**

*Andy Gardner*  
\_\_\_\_\_  
**Division Deputy Director**

**Gwen Ricco**  
\_\_\_\_\_  
**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** October 14, 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.:** 2022-1154-PET

**Project No.:** 2023-003-PET-NR

**Who Submitted the Petition:**

On September 16, 2022, the Texas Commission on Environmental Quality (Commission) received a petition for rulemaking from Galveston County (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 lot size requirements in 30 TAC § 285.4(a)(1)(A) to allow the use of an OSSF system on a lot size smaller than 1/2 acre, if the system has been designed by a registered sanitarian or registered professional engineer and approved by the permitting authority.

**Recommended Action and Justification:**

The Executive Director recommends approval of the petition to initiate rulemaking with stakeholder involvement. Through the stakeholder process, the executive director will further evaluate the technical merits of the proposal to ensure adequate protection of the environment and public is achieved.

**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 Cosper, Project Manager, Program Support Section, (512) 239-1324  
Kathy Humphreys, Staff Attorney, (512) 239-3417  
Gwen Ricco, Agenda Coordinator, (512) 239-2678

**Attachment:**

Petition

cc: Chief Clerk, 2 copies

Commissioners  
Page 2  
October 14, 2022

Re: Docket No. 2022-1154-PET

Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Krista Kyle  
Office of General Counsel  
Donna Cospers  
Kathy Humphreys  
Gwen Ricco



#48407

# County of Galveston

Galveston County Courthouse  
722 Moody Avenue, Galveston, Texas 77550

Toby Baker  
Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

RE: Petition to request the adoption of a rule affecting 30 Texas Administrative Code 285.4.

Mr. Baker:

Attached is a petition to request the adoption of a rule affecting 30 TAC 285.4, regarding the use of an OSSF system.

The submission of this petition was approved by the Galveston County Commissioners Court in a meeting on 09/06/2022.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Giusti".

Joe Giusti  
Galveston County Commissioner, Pct. 2

RECEIVED

SEP 16 2022

EXECUTIVE OFFICE

RECEIVED  
SEP 1 1963  
EXECUTIVE OFFICE



# County of Galveston

Galveston County Courthouse  
722 Moody Avenue, Galveston, Texas 77550

## Petition for the Adoption of a rule affecting 30 TAC 285.4

### Petitioner:

County of Galveston  
722 Moody Avenue  
Galveston, Texas 77550

### Explanation of Proposed Rule:

Currently 30 Texas Administrative Code, Rule §285.4 establishes a minimum lot size of 1/2 acre for the use of an on-site sewage facility (OSSF) for sewage disposal. The proposed rule amends 30 Texas Administrative Code, Rule §285.4(a)(1)(A) to allow for the use of an OSSF system on a lot size smaller than 1/2 acre, if the system has been designed by a registered sanitarian or registered professional engineer and approved by the permitting authority. Previously, 30 TAC 285.4 contained such provision and allowed for an OSSF system to be used on a lot size smaller than 1/2 acre. The proposed rule seeks to return 30 TAC 285.4 to that form of the rule.

### Text of the Proposed Rule:

#### **30 Texas Administrative Code, Chapter 285, Subchapter A, Rule §285.4**

(a) Land planning and site evaluation. Property that will use an on-site sewage facility (OSSF) for sewage disposal shall be evaluated for overall site suitability. For property located on the Edwards Aquifer recharge zone, see §285.40 of this title (relating to OSSFs on the Recharge Zone of the Edwards Aquifer) for additional requirements. The following requirements apply to all sites where an OSSF may be located.

(1) Residential lot sizing.

(A) Platted or unplatted subdivisions served by a public water system. Subdivisions of single family dwellings platted or created after the effective date of this section, served by a public water supply and using individual OSSFs for sewage disposal, shall have lots of at least 1/2 acre, or shall have site-specific sewage disposal plan submitted by a registered professional engineer or registered sanitarian and approved by the permitting authority.

(B) Platted or unplatted subdivisions not served by a public water system. Subdivisions of single family dwellings platted or created after the effective date of this section, not served by a public water supply and using individual OSSFs, shall have lots of at least one acre.

(C) A platted or unplatted subdivision where one tract is divided into four or fewer parts; where each tract is five acres or larger; and each tract is to be sold, given, or otherwise transferred to an

individual who is related to the owner within the third degree by consanguinity or affinity, as determined under Texas Government Code, Chapter 573 is exempt from submitting planning materials required in this section.

**Statutory Authority:**

Section 336.012, Texas Health & Safety Code provides the authority for the Texas Commission on Environmental Quality (TCEQ) to adopt rules concerning on-site sewage disposal systems. Specifically, Section 336.012(a)(1)(A) requires TCEQ to adopt rules governing the installation of on-site sewage disposal systems, including rules concerning the review and approval of on-site sewage disposal systems. Section 5.102, Texas Water Code, provides general authority necessary for TCEQ to exercise its jurisdiction and discharge its duties. Section 5.105, Texas Water Code, provides TCEQ with the authority for the adoption of rules.

**Allegation of Injury or Inequity:**

On the Bolivar Peninsula in Galveston County, there is currently only one privately-owned sewer service provider. As of the drafting of this petition, the service provider's capacity is not enough to address current demands on the system. While the service provider has plans to increase capacity, there have been concerns about their ability to keep up with the fast growth and development of Bolivar Peninsula. Failure to adopt the proposed rule will leave the Bolivar Peninsula with limited alternative options for their wastewater disposal needs. Development on the Peninsula will continue to be stalled, awaiting significant improvement and expansion of a privately owned-sewage system. Due to the privately-owned nature of the sewage service provider, there is little to no influence the County can have on the timeliness and scale of the needed capital improvement projects.

While the Galveston County Health District is authorized to grant variances for lot size requirements, Galveston County has identified the proposed language as a means to clarify the role that the Health District has in approving variances for OSSF systems on lot sizes smaller than 1/2 acre. The proposed rule seeks to clarify the authority and process by which the Health District may grant a variance. Failure to adopt the proposed rule would leave a layer of uncertainty for the Health District as they seek to mitigate the impacts of the lack of safe and accessible wastewater disposal options for the Bolivar Peninsula. The systems that would be authorized and approved by the local permitting authority, the Health District, under the proposed rule would, without putting the health and safety of the residents and environment, allow development to continue and for the wastewater of the Bolivar Peninsula to be safely disposed of.

# Texas Commission on Environmental Quality



## DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY GALVESTON COUNTY

Docket No. 2022-1154-PET  
Rule Project No. 2023-003-PET-NR

On November 2, 2022, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed on September 16, 2022, by Galveston County. 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 lot size requirements in 30 TAC § 285.4(a)(1)(A) to allow the use of an OSSF system on a lot size smaller than 1/2 acre, if the system has been designed by a registered sanitarian or registered professional engineer and approved by the permitting authority.

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 approve the petition and initiate rulemaking.

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

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed