

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

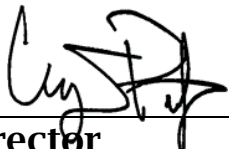
AGENDA REQUESTED: November 2, 2022

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
DELEGATIVE 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

Jon Niermann, Chairman

Date Signed