

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


AGENDA REQUESTED: May 19, 2021

DATE OF REQUEST: April 30, 2021

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Lee Bellware, Agenda Coordinator, (512) 239-6095

CAPTION: Docket No. 2021-0445-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 April 5, 2021 by B & J Wakefield Services, Inc. (petitioner). The petitioner requested that the commission initiate rulemaking to amend the reporting rules in 30 TAC Chapter 285, On-Site Sewage Facilities (OSSFs), by requiring: that maintenance reports only be submitted to Authorized Agent(s) for OSSFs that are failing, or systems that are in need of repair; that the maintenance provider only provide failing maintenance reports to the permitting authority; to allow the use of approved direct bury wiring and sun resistant sheathing; and to allow electrical connections be water tight in lieu of being in a junction box. (Shannon Frazier, Kathy Humphreys) (Non-Rule Project No. 2021-015-PET-NR)



Director



Division Deputy Director

Lee Bellware

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: April 30, 2021

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.: 2021-0445-PET

Project No.: 2021-015-PET-NR

Who Submitted the Petition:

On April 5, 2021, the Texas Commission on Environmental Quality (commission) received a petition from B & J Wakefield Services, Inc. (petitioner).

What the Petitioner Requests:

The petitioner requested that the commission initiate rulemaking to amend rules in 30 Texas Administrative Code (TAC) Chapter 285, On-Site Sewage Facilities (OSSFs). Specifically, the petitioner requested to amend the reporting rules in 30 TAC §§285.7, 285.64, and 285.34 by requiring maintenance reports only be submitted to Authorized Agent(s) for OSSFs that are failing, or systems that are in need of repair; to require that the maintenance provider only provide failing maintenance reports to the permitting authority; to allow the use of approved direct bury wiring and sun resistant sheathing; and to allow electrical connections be watertight in lieu of being in a junction box.

Recommended Action and Justification:

The executive director recommends rulemaking after stakeholder meetings. The executive director has concluded that additional stakeholder input is needed to determine if rule revisions are appropriate. The executive director respectfully requests authorization to perform the review of this petition concurrently with the petition previously filed by the Texas On-Site Wastewater Association, Inc. (Docket No. 2020-1450-PET, Project No. 2021-003-PET-NR, Agenda Date: December 20, 2020), which has been approved by the commission for stakeholder engagement and rulemaking and would require revisions to Chapter 285 rules.

Applicable Law:

- Texas Government Code §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule;
- 30 TAC §20.15, which provides such procedures specific to the commission;
- Texas Health and Safety Code §366.012, which provides the commission the authority to adopt rules governing the installation of OSSFs.

Agency Contacts:

Shannon Frazier, Project Manager, Program Support Unit, (512) 239-6313
Kathy Humphreys, Staff Attorney, (512) 239-3417
Lee Bellware, Agenda Coordinator, (512) 239-6095

Commissioners

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April 30, 2021

Re: Docket No. 2021-0445-PET

Attachment:

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Brody Burks
Office of General Counsel
Shannon Frazier
Kathy Humphreys
Lee Bellware

Brian Wakefield respectfully submits this rule petition to:

Toby Baker, Executive Director

TCEQ

P.O. Box 13087,

Austin TX 78711-3087

Explanation: Amending rules on reporting

Proposed amendment to: **§285.7. MAINTENANCE REQUIREMENTS and 285.64 Duties and Responsibilities of Maintenance Providers and Maintenance Technicians**

§285.7. MAINTENANCE REQUIREMENTS

285.7.(e)(1) Effective September 1, 2009, the maintenance provider shall test and report failures for each system as required in §285.91(12) of this title. Prior to September 1, 2009, the maintenance company shall test ~~and report for each system~~ and report failing OSSF systems as required in §285.91(12) of this title. The report must:

285.7.(e)(1)(B) systems that are in need of repair are to be submitted to the permitting authority and the owner within 14 days after the date the test is performed.

§285.64. DUTIES AND RESPONSIBILITIES OF MAINTENANCE PROVIDERS AND MAINTENANCE TECHNICIANS.

285.64.(a)(5) perform maintenance on each OSSF system under executed contract, keep a maintenance record, and submit failing maintenance reports to the permitting authority and the owner of the OSSF for whom the installer has contracted to provide maintenance, according to §285.7 of this title.

Statutory Authority

This amendment is proposed under Health and Safety Code Chapter 366, On-Site Sewage Disposal Systems §366.0515. Rules Concerning Maintenance Contracts. To assure the effective and efficient administration of this chapter, the commission shall: adopt rules governing the reporting of Secondary Treatment Systems.

Allegation: The installer is required to report failing or septic system(s) in need of repair. Fully functional systems need not to be reported to regulating authority. This change will reduce the need for unnecessary record keeping by the Authorized Agent. Authorized agent **is** authorized to audit the Maintenance provider. This will allow malfunctioning system to be reviewed by Regulating Authority and reduce missing the ones that are failing.

Submitted by:

Brian Wakefield

1234 Broadhead Rd, Waxahachie, TX 75165

972-921-6619

Brian Wakefield respectfully submits this rule petition to:

Toby Baker, Executive Director

TCEQ

P.O. Box 13087,

Austin TX 78711-3087

Explanation: Amending rules on reporting

Proposed amendment to: **§285.34. OTHER REQUIREMENTS.**

(c) Electrical wiring. All electrical wiring shall conform to the requirements the National Electric Code (1999) or under any other standards approved by the executive director. Additionally, all external wiring shall be installed in approved, rigid, non-metallic gray code electrical conduit or approved direct bury and sun resistant sheathing. The conduit or direct bury wiring shall be buried according to the requirements in the National Electrical Code and terminated at a main circuit breaker panel or sub-panel. Connections shall be in approved junction boxes or water tight connections. All electrical components shall have an electrical disconnect within direct vision from the place where the electrical device is being serviced. Electrical disconnects must be weatherproof (approved for outdoor use) and have maintenance lockout provisions.

Statutory Authority

This amendment is proposed under Chapter 285, On-Site Sewage Facilities, Rules Concerning Electrical wiring. To assure the effective and efficient administration of this chapter, the commission shall: adopt rules governing Electrical Wiring of Secondary Treatment Systems and pump tanks.

Allegation: The installer is required to install all electrical wiring inside non metallic conduit at this time. National Electric Code allows for direct bury wiring to be installed in ground. This proposed amendment will allow direct bury wiring to be used. All direct bury wire and sun resistant wiring is clearly identified on its sheathing. Connections that are water tight prevent electrical shock hazards and will prevent wiring to become water logged with in junction boxes.

Submitted by:

Brian Wakefield

1234 Broadhead Rd, Waxahachie, TX 75165

972-921-6619

Comments Received on this Petition for Rulemaking

City of Austin Comments on rule [petitions from J&J Wakefield Services, Inc.](#) to amend 30 TAC 285. Petition posted on April 5th.

Proposed Changes to Maintenance Requirements

1. Amend Section 285.7(e)(1) related to maintenance reporting, to remove the requirement to report *all* testing (maintenance activities) to the authority having jurisdiction and replace it with *only reporting failing OSSF systems*.
2. Amend Section 285.7(e)(1)(B) related to maintenance reporting, to add “systems that in need of repair are to” be submitted to the permitting authority.
3. Amend Section 285.64 related to duties and responsibilities of maintenance providers and technicians, to limit the submittal of reports to the permitting authority to only submitting “failing” maintenance reports.

There are multiple issues with the proposed changes. The terms “repair” and “emergency repair” are defined in 285 (§285.2 and §285.32, respectively). The terms “failing” or “failed” are not defined in the 285. The proposed amendment uses the terms “failing” and “in need of repair” interchangeably when (as noted above) they are different term.

The proposed amendments will place the burden of maintaining proper records on the maintenance providers and would require occasional auditing of records by Austin Water. The reduced number of maintenance reports to be processed by AW would have a positive impact on the program’s workload.

No environmental concerns were noted as result of the proposed amendment. As it is, Austin Water depends on issues to be included in the maintenance report, these issues can be easily omitted on the report (when submitted to us) as well as not be submitted at all under the proposed requirements. The 2019 amendments of COA Chapter 15-5 adopted registration requirements for maintenance providers. This addition would allow AW to enforce the proposed amendment.

Proposed AW changes: Amend 30 TAC 285 to define the terms “Failed” or “Failing”. Revise the proposed language to require reporting of systems in need of repair and failing.

Proposed Changes to Other Requirements

1. Amend Section 285.34 related to other requirements, add language to allow the use of approved direct bury and sun resistant sheathing. As well as allow watertight connections. Currently, all electrical wiring must be installed in approved conduit and all connections shall be in junction boxes.

Item (C) of the existing language and related to electrical wiring states that “All electrical wiring shall conform to the requirements the National Electric Code (1999) or under any other standards approved by the executive director.”

The current State adopted National Electrical Code is 2020. Additionally, the Texas Department of Licensing and Regulation (TDLR) is the state entity responsible for the State of Texas Electrical Occupations Law, Chapter 1305 and Administrative Chapter 73.

210215 PET
COA comments
April 22, 2021

Chapter 1305 has provisions for a municipality to have local electrical amendments. The City of Austin adopts the National Electrical Code with amendments; currently adopted and amended is the 2020 National Electrical Code; Ordinance No. 20200507-027.

The petition has specific language for the wiring; no incorrect comment regarding the type of wiring; however, stating it shall comply with the National Electrical Code, does include all aspects of correct electrical wiring pertaining to the Petition.

Proposed AW changes:

The language should be revised to state "All electrical wiring shall conform to the requirements of the current State of Texas adopted National Electrical Code or any other electrical standards approved by the Texas Department of Licensing and Regulation (TDLR)".

Patricia Duron

From: Yahoo! <dirtibarry@yahoo.com>
Sent: Tuesday, April 6, 2021 8:38 PM
To: Rules
Subject: Wakefield draft

While JJ Wakefield wants to use direct burial electrical cable, it is not a good idea. Electrical cable NEEDS to be in a protective housing, ie: gray pvc pipe. Too many homeowners will dig it up accidently and get shocked. Do not change the rule.

Barry Wilkerson OSSF #0004149

Texas Commission on Environmental Quality



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

Docket No. 2021-0445-PET
Rule Project No. 2021-015-PET-NR

On May 19, 2021, the Texas Commission on Environmental Quality (commission) considered the petition for rulemaking filed by B & J Wakefield Services, Inc. (the petitioner). The petitioner filed the request on April 5, 2021 requesting that the commission initiate rulemaking to amend rules in 30 Texas Administrative Code Chapter 285, On-Site Sewage Facilities (OSSFs), to require maintenance reports only be submitted to Authorized Agent(s) for OSSFs that are failing, or systems that are in need of repair; to require the maintenance provider only provide failing maintenance reports to the permitting authority; to allow the use of approved direct bury wiring and sun resistant sheathing; and allow electrical connections be watertight in lieu of being in a junction box.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to the Administrative Procedure Act, Texas Government Code § 2001.021 and Texas Water Code § 5.102 and § 5.103 to initiate rulemaking concerning the issues raised in the petition in conjunction with the rulemaking concerning the issues raised in the rulemaking petition submitted on November 20, 2020 and considered by the commission on December 16, 2020 (Docket 2020-1450-PET).

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