

Comal County Enforcement Guidance Document
Related to Renting of Single Family Residences

January 2010

Background: In 2006, the Comal County Engineer's Office, based on guidance provided by the Texas Commission on Environmental Quality (TCEQ), began enforcing "change in use" or permit violations. These violations typically had to do with structures that were permitted as single family residences (SFRs), but were operating as commercial establishments (i.e. hotel/motels). This enforcement was predicated on TAC 285.2(2)(C) which defined an alteration as a change from the planning materials approved by the permitting authority. Simply put, if a permit was issued for a SFR, but was being utilized as a commercial operation, as documented by advertising, regardless of the amount of wastewater that was being generated by the commercial operation, it was a change in use that triggered the need for a new permit.

In August 2009, several Notices of Violation (NOVs) were sent to structures that were operating as described above. Questions arose about some of these structures regarding the structures' water usage as commercial operations compared to their water usage as SFRs. The questions centered on the assumption that water usage for the commercial operation was less than water usage for the SFR usage based on the way that these structures were managed as rental properties.

These questions led to a meeting held on September 3, 2009 attended by representatives from Comal County, the company that managed the "commercial" establishments, and the TCEQ. Based on the discussion that occurred during that meeting, Comal County sent a letter to the TCEQ asking for clarification on certain issues related to the issue of changing use from SFRs to commercial operations. A response to that letter was received by Comal County on September 18, 2009 (attached). In addition, a follow-up e-mail from the TCEQ was received by Comal County on September 21, 2009 (attached).

Guidance: Based on the letter from the TCEQ, the following will be enforced regarding alleged changes in use from SFRs to commercial operations:

- 1) A change in use from SFR to commercial requires a new permit only if the change in use results in a change in the nature of the effluent (i.e. the change is from an SFR to a restaurant) or an increase in the permitted flowrate.
- 2) The permitted flowrate for a commercial rental facility will be calculated based on the larger figure between Design Occupancy (60 gpd per person) or design number of beds (60 gpd per bed). The Design Occupancy of an existing SFR will be the permitted number of bedrooms, plus one.
- 3) The Design Occupancy or Number of Beds of a facility can be determined by a physical inspection of the facility, information obtained from advertisement of the facility, or other means. The largest flowrate from these determinations will be used for the permitted flowrate.
- 4) Water use records, if used to show flowrate usage at or below the existing permitted flow, must be daily water use records collected during several months of peak usage. Monthly water use records, averaged over the number of days in the month, may not be used.
- 5) Structures that are documented as changed in use from SFR to commercial, but can demonstrate that a flowrate in permitted flow has not increased based on daily water use records, Design Occupancy, or the design number of beds will not require a new permit. However, the change must be documented by the owner and made a part of the original permit file.
- 6) A SFR is considered commercial if it is rented out for periods of less than 30 days at a time.

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 18, 2009

Robert Boyd, P.E.
Comal County Assistant Engineer
Office of Comal County Engineer
195 David Jonas Drive
New Braunfels, Texas 78130

RE: Clarification of OSSF Rules Regarding Permit Violations within Comal County

Dear Mr. Boyd:

This letter is in response to your September 8, 2009 letter asking for clarification on a number of topics. The answers below show how TCEQ would interpret the rules and pursue enforcement, and should not prevent any Authorized Agent (AA) from interpreting the statute or rules in a more stringent manner.

The following are your questions and TCEQ's italicized responses:

1. One of the structures discussed was permitted as a single family residence with three bedrooms (currently 240 gpd according to Table 3 of TAC 285). The structure is being used for short term rentals with four motel beds (240 gpd according to Table 3 of TAC 285). Does the change of use from single family residence to short term rental with equivalent wastewater usage rates according to Table 3 elicit a new permit?

The factor that determines if a new permit is needed is whether the system has been altered according to Chapter 285. The definition of alter has three meanings relevant to this question: an increase in the volume of permitted flow; a change in the nature of the permitted flow; and a change from the planning materials approved by the permitting authority.

The TCEQ's policy is to pursue alterations that affect the performance of the OSSF and thereby the risk to the public health and the environment. Therefore, the focus would be on whether the switch to commercial changed the nature of the effluent or increased the volume of permitted flow. In the example above, an AA could pursue enforcement by considering the change to commercial use as a "change from the planning materials approved by the permitting authority." However, if it cannot be determined that there is an increase in permitted flow a referral to enforcement is not warranted.

2. The structure described above, with four motel beds is advertised as sleeping eight. According to our meeting, this structure should have an OSSF designed to handle 480 gpd because the TCEQ views each occupant as generating 60 gpd. Should 60 gpd per occupant be used in determining

whether or not an increase in permitted flow has occurred when a structure has changed from single family residence to short term rental?

An OSSF for a three bedroom home is designed for four people. If someone is advertising a rental for eight people, it is apparent that there will be an increase in permitted flow and therefore a potential threat to the public health and environment. Therefore, TCEQ would consider this an enforceable violation.

3. If 60 gpd per occupant should be used to determine that an increase in permitted flow has occurred, should the new commercial permit be designed according to the number of beds in the structure or the number of people that can be accommodated in the structure?

It is unclear whether this should be considered as a hotel. If it is advertised as a rental house sleeping eight, then it should be designed and permitted as such: A rental house with a capacity of 480 gallons per day.

4. If a structure has been documented as changing from a single family residence to a short term rental, can the owner of the structure provide water use records showing flow usage at or below the existing permitted flow and avoid having to obtain a new permit?

As you know, the permitted flow is on a daily basis. Therefore, if the data shows that the daily flow into the system never exceeds the permit, TCEQ would not pursue enforcement. However, if the owner provided monthly data, which cannot distinguish the flow during periods of high usage, those records would not be considered representative of the situation.

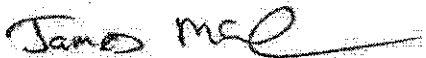
5. A hypothetical structure is permitted for a three bedroom home. The structure is converted to a use with a much smaller permitted flow (i.e. office space with three people). The system that is serving the structure was permitted in 1979 with a single compartment tank and a drainfield that was designed according to 1979 soil classifications and sizing specifications. Will the change of use from single family residence to office space prompt a new permit?

The TCEQ would not pursue enforcement in the example above since the change in use did not increase the permitted flow or change the nature of the effluent. However, as stated above, an AA might want to pursue enforcement in such a case, using the "change in planning materials" definition of alter.

We hope we have sufficiently answered your questions. The answers provided define how TCEQ implements Chapter 285. However, it is recognized that some AAs may choose to employ a more stringent interpretation of Chapter 285 and we do not wish to hinder their actions.

If you have any further questions concerning this matter, please contact me by telephone at (512) 239-4777, by E-mail at jmccaine@teeq.state.tx.us or by facsimile at (512) 239-6390. When responding by mail, please be sure to use mail code MC-235.

Sincerely,



James McCaine
On-site Wastewater Program

From: James McCaine [JMCCAINE@tceq.state.tx.us]
Sent: Monday, September 21, 2009 2:32 PM
To: Boyd, Robert
Subject: Reply to your 9-18-09 e-mail

Robert,

As we stated in the letter, we don't know why this is being considered as a hotel. It sure looks like a rental house advertised to sleep eight.

As to Table III and short term rentals. When the rules are opened again, we can look into estimating a design flow for rented homes advertised to sleep eight. As to hotels, I think that the 60 gallons per bed is an outgrowth of an assumption that on any given night, the hotel will average one person per bed.

All in all, I think the focus on how these homes fit into Table III is somewhat diversionary. Table III is used for estimating wastewater flows for design purposes. However, the text in the Table indicates that if the actual water usage exceeds Table III, then the actual flow should be used for the design.

The important factor is that these homes are being advertised and used in a manner which exceeds their permitted flow. If, for example, a three-bedroom home was advertised as a three bedroom home, and rented out as such, there would be no issue.

Additionally, this is not an issue of short-term rental, or long-term rental, it is that the homes are clearly being used in a manner which exceeds their permitted flow. Think of it this way: If a new, commercial facility came before your office today, with an expressed intent to house and sleep eight, you would presumably permit it for 480 gallons per day (60 gallons per person). 480 gallons is larger than the present, permitted flow.

If you have any questions concerning this matter, please either e-mail me back or call me at 512-239-4777.

>>> "Boyd, Robert" <boydro@co.comal.tx.us> 9/18/2009 3:41 PM >>>
 James,

Thank you for your quick response to our letter dated September 8, 2009. Attached is a draft letter from Shelby McDougall that we received on 9/17/09. We thought you would be interested in his proposed communication to the owners of the properties that he manages.

In light of Mr. McDougall's letter, have you considered issuing an amended Table III, Wastewater Usage Rate, or a Guidance Document that standardizes usage of a hotel/motel to 60 gpd per occupant? In addition, have you considered issuing a Guidance Document that specifies Wastewater Usage Rates for short-term rentals or even single family residences that are rented on a short term basis?

Finally, a hotel/motel is defined as 60 gpd per bed. This would mean that each bed is meant for one occupant, which seems high. Would it be reasonable to consider that a bed in a hotel/motel is meant for 2 people, and therefore 30 gpd per occupant? Have you considered making the gpd per occupant for a short term rental 30 gpd per occupant?

Thanks for your time in discussing these issues.

Robert Boyd, P.E.
 Comal County Assistant Engineer
 Phone: (830) 608-2090
 Fax: (830) 608-2009

www.cceo.org

From: Shelby McDougall [mailto:smc-srp@msn.com]

Sent: Thursday, September 17, 2009 1:42 PM

To: Boyd, Robert

Subject: Draft Letter from SRP to OWners

Robert,

Does this letter include an accurate and fair description of the roles & actions of Comal County and TCEQ in this issue?

Thanx for any comments.

Shelby