

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: June 27, 2012

DATE OF REQUEST: June 8, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2012-0610-RUL. Consideration for publication of, and hearing on, proposed amended sections of 30 TAC Chapter 30, Occupational Licenses and Registrations, Subchapter K, Section 30.387, Definitions and Section 30.402, Exemptions.

The proposed rulemaking would amend the 30 TAC Chapter 30 rules relating to definitions by defining a Military Operator-in-Training and clarify the existing definition of an Operator-in-Training.

Additionally, the proposed rules would amend the 30 TAC Chapter 30 rules relating to exemptions to allow active military personnel who have successfully completed the Bioenvironmental Engineering Apprentice (BEA) or equivalent military training, as determined by the executive director, to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems, without holding a TCEQ issued public water system operator license. (Terry Thompson, Jessica Rogers) (Rule Project No. 2012-024-030-WS)

Brent Wade

Deputy Director

Lynne Haase

Division Director

Bruce McAnally

Agenda Coordinator

Copy to CCC Secretary? NO

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 8, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2012-0610-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 30, Occupational Licenses and Registrations
Military Personnel Licensing Requirements
Rule Project No. 2012-024-030-WS

Background and reason(s) for the rulemaking:

As a result of a Public Water System comprehensive compliance investigation, Sheppard Air Force Base (SAFB) submitted a request to the TCEQ Public Drinking Water Program requesting an exception to the commission's rule requirement that all individuals who perform process control duties in the distribution of drinking water be licensed. Specifically, SAFB requested that individuals who have successfully completed the Bioenvironmental Engineering Apprentice (BEA) training be allowed to perform microbiological sampling and determine disinfection residuals within the military facility's water distribution system, without holding a public water system operator license issued by the executive director.

SAFB contends that active duty military personnel that have successfully completed the BEA training are certified by the military to perform various duties relating to the drinking water distribution system. These duties include collecting microbiological samples and determining disinfection residuals in the military facility's water distribution system. Therefore, the time and expense that would be incurred by the military to have active duty military personnel take the additional training and exams needed to obtain a license issued from the executive director does not add to the protection of the environment or public health.

Due to legislative interest, executive director's staff from the Field Operations Support Division, the Water Supply Division (Public Drinking Water Section) and the Permitting and Registration Support Division (Occupational Licensing Section) met and developed guidance to address SAFB's issue on an interim basis until rulemaking could be initiated.

The executive director's staff evaluated the BEA course, exam categories and questions and concludes that active duty military personnel who have successfully completed the BEA or equivalent military training, as determined by the executive director are qualified to collect microbiological samples and determine disinfection residuals within military facilities' water distribution systems.

The executive director's staff also recognizes, while the exception request came from SAFB, the majority of Texas military facilities utilize active duty military personnel to collect microbiological samples and determine disinfection residuals and would benefit from the exception.

Scope of the rulemaking:

Re: Docket No. 2012-0610-RUL

A.) Summary of what the rulemaking will do:

- Amend the 30 TAC Chapter 30 rules by adding a provision that would create a Military Operator-in-Training and allow active duty military personnel who have successfully completed the BEA or equivalent military training to collect microbiological samples and determine disinfection residuals within the military facility's water distribution system, without holding a public water system operator license issued by the executive director; and
- Clarify the existing definition of Operator-in-Training

B.) Scope required by federal regulations or state statutes: None

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

Statutory authority:

Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, which provides the commission with the authority to establish and approve all general policies of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission with the authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.008, concerning Training; Continuing Education, which provides the commission with the authority to approve training; Texas Health and Safety Code (THSC), §341.033, concerning protection of public water supplies; THSC, §341.034 concerning licensing and registration of persons who perform duties relating to public water supplies; and THSC, §341.0315 which requires public water systems to comply with commission rules and adopted to ensure the safe supply of drinking water.

Effect on the:

A.) Regulated community: The only effect to the regulated community would be to active duty military personnel who have successfully completed the BEA or equivalent military training. The rulemaking would allow these individuals to collect microbiological samples and determine disinfection residuals within military facilities' distribution systems without holding a public water system operator licenses issued by the executive director.

B.) Public: There is no anticipated effect to the public.

C.) Agency programs: There is no anticipated effect to the commission's programs.

The rulemaking would not create a group of affected persons who were not affected previously. There will be no fiscal impacts to the regulated community, public, or the commission.

Stakeholder meetings:

A stakeholder meeting was held on April 23, 2012. No one from the public or regulated community attended this meeting.

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Potential controversial concerns and legislative interest:

Due to legislative interest, a permanent solution to the problem is being sought through rulemaking.

Will this rulemaking affect any current policies or require development of new policies?

This rulemaking will not affect any current policies or require development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The commission could elect not to update the rules and continue to address the issue through the interim guidance developed to address the issue.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 27, 2012

Anticipated *Texas Register* publication date: July 13, 2012

Public hearing date: July 26, 2012

Public comment period: July 13, 2012 – August 13, 2012

Anticipated adoption date: December 5, 2012

Agency contacts:

Terry Thompson, Rule Project Manager, 239-6095, Permitting and Registration Support Division

Jessica Rogers, Staff Attorney, 239-0627

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

None

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Office of General Counsel
Terry Thompson
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §30.387 and §30.402.

Background and Summary of the Factual Basis for the Proposed Rules

The agency's Public Drinking Water Program received a request from Sheppard Air Force Base (SAFB) requesting an exception to the existing rules requiring that all individuals who collect microbiological samples and determine disinfection residuals within its drinking water distribution system be licensed in accordance with 30 TAC Chapters 30 and 290. Specifically, SAFB requested that active duty military personnel, who have completed the Bioenvironmental Engineering Apprentice (BEA) training, be allowed to collect microbiological samples and determine disinfection residuals within its drinking water distribution system without holding a public water system operator license issued by the executive director.

According to §30.381(b), public water system operators who perform process control duties in the production or distribution of drinking water, as defined in Chapter 290, must be licensed.

Section 290.38(63) defines process control duties as "...Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution;

maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director."

The BEA course reviewed by the executive director's staff includes training on: laboratory safety; the Hazardous Communications Act; chlorine safety; characteristics of various water sources, waterborne diseases, and the hydrologic cycle; monitoring plans and sampling requirements for public water systems; basic chemistry and math related to water treatment, distribution, and dosage calculations; cross-connection control and backflow prevention basics in a distribution system; and disinfection concepts and types used in public water systems. The executive director's staff evaluated the BEA course, exam categories and questions and determined that the BEA course is comparable, but not identical, to the agency's occupational licensing section's basic public drinking water system training.

Once an individual has successfully completed the BEA training, and passed the applicable exam, they are certified by the military to perform various duties relating to the drinking water distribution system. SAFB contends that active duty military

personnel that have completed the BEA training possess sufficient knowledge and skill to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems and that the time and expense incurred by the military to have active duty military personnel take the additional training and exam to obtain a license issued from the executive director, does not add to the protection of the environment or public health.

The executive director's staff concurs with SAFB that requiring active duty military personnel to take the additional training and exam to obtain a license issued by the executive director does not add to the protection of the environment or public health.

The executive director's staff also concludes that active duty military personnel who have successfully completed the BEA or equivalent military training, as determined by the executive director are qualified to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems. The executive director's staff also recognizes that, while the exception request came from SAFB, the majority of Texas military facilities uses active duty military personnel to collect microbiological samples and determine disinfection residuals and would benefit from the exception.

The rulemaking would amend Chapter 30 by adding a provision that defines a military operator-in-training and a provision that would allow individuals who have successfully

completed the BEA, or equivalent military training, as determined by the executive director, to collect microbiological samples and determine disinfection residuals at military facilities, without holding a public water system operator license issued by the executive director. Additionally, the rulemaking would clarify the existing definition of operator-in-training.

Section by Section Discussion

Subchapter K, Public Water System Operators and Operations Companies

The proposed amendment to §30.387, Definitions, would add a definition for military operator-in-training. The proposed change is necessary to identify active duty military personnel who collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems. Additionally, the proposed amendment to §30.387 would clarify the existing definition of operator-in-training. This proposed change is necessary to add clarity and improve the readability of the rule.

The proposed amendment to §30.402, Exemptions, would allow active duty military personnel who do not hold a public water system operator license issued by the executive director, but have successfully completed the BEA or equivalent military training, as determined by the executive director, to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems. The proposed change is necessary to save the military the time and expense that is incurred

by having active duty military personnel take the additional training and exam to obtain the license issued by the TCEQ.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules would not have any fiscal impact on other units of state or local government.

The proposed rules would apply only to active military personnel at military facilities who have completed the BEA or equivalent military training (as determined by the executive director). The proposed rules would allow active duty military personnel to collect microbiological samples and determine the level of disinfection residuals in drinking water at military facilities' water distribution systems without holding a license issued by the executive director for a public water system operator as required by Chapters 30 and 290. The agency has analyzed the BEA course, exam categories, and exam questions and has determined that active duty military personnel that have completed the BEA training possess the basic knowledge and skill to perform these specific tasks.

The proposed rules would save the military the time and expense of having active military personnel take additional training and exams without compromising the protection of the environment or public health, since agency rules would still require the public drinking water system of a military facility to be under the supervision of a licensed public water system operator. The proposed exemption of active duty military personnel from public water system operator licensing requirements is limited in scope and would only allow active duty military personnel to collect microbiological samples and determine the levels of disinfection residuals at military facilities' water distribution systems. Currently, there are 11 major military facilities in Texas. Cost savings resulting from the proposed license exemption for the military are not expected to be significant, but the proposed rules are expected to save the military the time and expense of having their personnel study for a license and taking the required examination. Cost savings for the military would include, per individual, \$250 for the basic water operator training course, an estimated \$400 for 30 hours of continuing education, \$111 to take the test to obtain an initial three-year license, and \$111 every three years afterward for the renewal of the license.

The agency would not experience a significant decrease in revenue (Account 468 - Occupational Licensing Account) as a result of the proposed rules, and there would be no fiscal impact on other state agencies or units of local government.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of the environment and public health coupled with efficient use of military resources.

The proposed rules would not have a fiscal impact on individuals. The proposed rules would allow military facilities in Texas to save the cost associated with requiring active duty military personnel who have completed the BEA or equivalent military training to obtain a public water system operator license issued by the executive director.

The proposed rules are not expected to have a fiscal impact on large businesses. The proposed rules would only apply to active duty military personnel on military facilities in Texas, and the proposed exemption is limited in scope to collecting microbiological samples and determining levels of disinfection residuals at military facilities' water distribution systems, without obtaining a public water system operator license issued by the executive director.

Small Business and Micro-Business Assessment

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not

adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to that statute. Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the proposed rules is

to provide an exception for active duty military personnel who have successfully completed the BEA, or equivalent military training to collect, microbiological samples and determine disinfection residuals without obtaining a public water system operator license issued by the executive director. Additionally, the proposed rules will clarify the existing definition of operator-in-training. The proposed rules are not specifically intended to protect the environment or reduce risk to human health from environmental exposure, but rather to provide an exception for active duty military personnel from obtaining a license issued by the executive director, provided that they have sufficient training. The proposed rules will also provide clarification for the existing definition of operator-in-training. The proposed rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Thus, the proposed rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis.

Furthermore, the proposed rules do not meet any of the four applicability requirements listed in Texas Government, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards regulating occupational licensing. These rules do not exceed state law requirements, and state law requires their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. And finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of the proposed rules is to provide an exception for active duty military personnel, who have successfully completed the BEA, or equivalent military training, to collect microbiological samples and determine disinfection residuals

without obtaining a public water system operator license issued by the executive director. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking will neither restrict or limit the owner's right to property nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules are specific to certain functions within water distribution systems at military facilities and do not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 26, 2012, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called

upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-024-030-WS. The comment period closes August 13, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Terry Thompson, Occupational Licensing Section, (512) 239-6095.

**SUBCHAPTER K: PUBLIC WATER SYSTEM OPERATORS AND
OPERATIONS COMPANIES**

§30.387 and §30.402

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, which provides the commission with the authority to establish and approve all general policies of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission with the authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.008, concerning Training; Continuing Education, which provides the commission with the authority to approve training; Texas Health and Safety Code (THSC), §341.033, concerning protection of public water supplies; THSC, §341.034 concerning licensing and registration of persons who perform duties relating to public water supplies; and THSC, §341.0315 which requires public water systems to

comply with commission rules and adopted to ensure the safe supply of drinking water.

§30.387. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Chief operator--An individual who has overall responsibility for the operation of a public water system.

(2) Honorary license--License converted from a perpetual license that has been discontinued by the commission. This honorary license does not award the licensee the authority to perform process control duties in production or distribution of drinking water for public water systems.

(3) Military operator-in-training--An individual who is an active duty member of the military of the United States and has successfully completed the Bioenvironmental Engineering Apprentice (BEA) or equivalent military training, as determined by the executive director, and collects microbiological samples and determines disinfection residuals for military facilities' water distribution systems. This

individual may not perform any other process control duties in the water distribution or treatment facilities of a military installation.

(4) [(3)] Operator-in-charge--An individual who has overall responsibility for the operation of a public water system in the absence of the chief operator.

(5) [(4)] Operator-in-training--An unlicensed individual entering the field of public water system operation for the first time who has less than one year of experience and is in training to perform process control duties in production or distribution of public drinking water.

(6) [(5)] Public water system operations company--A person or other nongovernmental entity that provides operations services to one or more public water systems on a contractual basis.

(7) [(6)] Public water system operator--Licensed operator who performs process control duties in production or distribution of drinking water.

(8) [(7)] Work experience--The actual performance of job tasks in a public water supply system, that are considered essential for the treatment or distribution of drinking water.

§30.402. Exemptions.

(a) An individual who performs process control duties in production or distribution of drinking water for a transient non-community [noncommunity] water system as defined in §290.38(76) [§290.38(46)] of this title (relating to Definitions), is exempt from the licensing requirements of this subchapter, if the source water for the water system is purchased treated water or groundwater that is not under the direct influence of surface water.

(b) An operator-in-training under the direct supervision of a licensed public water system operator is exempt from the licensing requirements of this subchapter.

(c) A military operator-in-training under the direct supervision of a licensed public water system operator is exempt from the licensing requirements of this subchapter for the purpose of collecting microbiological samples or determining disinfection residuals at military facilities' water distribution systems. The military operator-in-training is not exempt from the licensing requirements of this subchapter for the purpose of performing any other process control duties in the distribution or treatment facilities of a public water system.

(d) [(c)] An individual who holds a groundwater or surface water license may

perform duties relating to the operation and maintenance of drinking water production, purchased water, and water distribution systems and is not required to hold a distribution license.