

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.237, 30.240, 30.242, 30.244, and 30.246.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, 2001, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The commission has determined that individuals licensed as professional geoscientists in the soil science discipline are appropriate to perform site evaluations due to their educational and experience background in classifying soils. Therefore, the commission is proposing amendments to add individuals licensed as professional geoscientists in the soil science discipline to the list of individuals who can obtain a site evaluator license, if all of the other requirements for the site evaluator license are met.

The commission is proposing amendments to delete all of the definitions in §30.237 since the definitions are provided in 30 TAC Chapter 285, On-Site Sewage Facilities, and are duplications. Additionally, the proposed rules delete experience requirements for obtaining Installer II and site evaluator licenses. The commission has determined that otherwise qualified individuals have not been able to obtain an Installer II or site evaluator license because they have been unable to obtain the experience currently required. The proposed rules also provide consistency with language in other agency rules. Further, the current rules provide for staggered licensing dates. Since currently licensed individuals are now on a staggered renewal system and all new licensees will be on the staggered system, the proposed rules delete licensing requirements that are no longer applicable. Finally, the proposed rules make minor corrections in the language.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §30.237, Definitions, would delete all definitions in this section because they are duplicative of definitions in Chapter 285. To provide a reference to the definitions, language has been added that indicates that all words and terms used in the subchapter have the same meanings in the definitions given in Chapter 285.

Proposed §30.240(b)(2) and (5) would delete all requirements for experience to obtain an Installer II license. In many areas of the state, an individual seeking to obtain experience cannot get jobs to install systems allowed under the Installer I license since standard on-site sewage facilities (OSSF) are not installed due to soil and site conditions. In addition, many individuals have reported that no one will hire them to be an apprentice due to possible competition in the future. Finally, the process of verifying experience has become a resource and administrative issue. It has taken a considerable amount of time for agency staff to verify experience. To ensure that Installer IIs who do not have the experience currently required are adequately trained, the commission proposes to change the Installer II basic training course and examination. The training will be revised as necessary to meet the job task's requirements for Installer II. The examination will be changed as necessary to test the individual in the knowledge of that training. The commission has determined that the emphasis on training and testing of that training along with the training provided by the manufacturers of proprietary systems and designers of nonstandard systems will provide individuals with a greater ability to meet the job tasks required for

individuals with an Installer II license than experience on only one type of system. Existing paragraphs (3) and (4) are proposed to be renumbered as new paragraphs (2) and (3). New proposed paragraph (2) adds the word “and” at the end of the phrase.

Proposed §30.240(d)(2)(C) adds a professional geoscientist license to the list of licenses, any of which would allow an individual to obtain a site evaluator license. The language is proposed to include individuals who are licensed by the Texas Board of Professional Geoscientists to practice geoscience in the soil science discipline. The commission has determined that individuals who will be licensed as professional geoscientists in the soil science discipline have the educational background and the practical experience to perform site evaluations. Therefore, the commission is proposing to add these licenses to the list of licenses in this subparagraph. The subparagraph is also proposed to be amended by deleting the certified professional soil scientist certificate from the list of licenses that an individual can have to obtain a site evaluator license. Additionally, it is no longer appropriate to include the professional soil scientist certificate as one of the prerequisites that an individual needs to obtain a site evaluator license, since any individual holding such a certificate is no longer eligible to practice soil science in Texas unless the individual holds a professional geoscientist license.

Existing §30.240(d)(2)(D) is proposed to be deleted. The requirement in the existing rule for two years of experience under another license is keeping individuals from being able to obtain the license even though the individuals have the sufficient experience. In addition, the process of verifying experience has become a resource and administrative issue. It has taken a considerable amount of time for agency staff to verify experience. To ensure that site evaluators who do not have the experience currently

required are adequately trained, the commission proposes to change the site evaluator basic training course and examination. The training is currently being revised as necessary to meet the job tasks requirements for site evaluations. The examination will be changed as necessary to test the individual in the knowledge of that training. The commission has determined that the emphasis on training and testing of that training along with the training necessary to obtain another license will provide individuals with a greater ability to meet the job tasks required for individuals with a site evaluator license than will experience.

Proposed §30.242(a) adds the “site evaluator license” to the list of licenses that are required to be renewed. This will include all of the OSSF licenses. The date of “January 1, 2002,” has been deleted. Proposed §30.242(a)(1) changes “Chapter” to “chapter” for consistency. Proposed §30.242(a)(2) adds, “For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education.” This language is necessary to address individuals who have been issued an initial site evaluator license for one year or more but less than two years. All of these licenses will expire before August 1, 2004. Proposed §30.242(b) corrects an incorrect citation because the currently referenced citation does not exist.

Proposed §30.244(c) changes the language from “An individual holding a current professional engineer license is not required to possess a site evaluator license” to “A professional engineer may perform site evaluations without obtaining a site evaluator license.” The change is necessary for the language in this subsection to be consistent with the definition of site evaluator in §285.2(67).

Existing §30.246(a) is proposed to be deleted since the requirements expired on September 1, 2002, thus they are no longer applicable.

Existing §30.246(b) is relettered to proposed new §30.246(a). Some language from existing §30.246(c), has been combined with the language of this subsection. Individuals who either previously had a site evaluator license, or who had taken the site evaluator training class and passed the examination are required to submit the same materials. Currently, the two types of individuals are addressed in separate subsections. Therefore, combining the two subsections will avoid duplication. The word “the” has been proposed to be changed to “an” before the word “application” to agree with the context of the sentence. Language is proposed to be added after the first sentence which states, “before September 1, 2003” to set a specific date for the submission of the required materials. A new sentence is proposed to be added to provide the requirements for obtaining a site evaluator license if the individual fails to submit the required materials before September 1, 2003. A specific end date is necessary to ensure that individuals obtaining the license are current on the site evaluator training and the OSSF rules since the site evaluation is one of the most important parts of the process of ensuring that the proper system is installed.

Existing §30.246(b)(1), (2), and (c) are proposed to be deleted since the requirements are no longer applicable.

Existing §30.246(d) is relettered to proposed new §30.246(b).

Existing §30.246(e) is relettered as proposed new §30.246(c) and changes the language in the first sentence from “An individual holding a current professional engineer license is not required to possess a site evaluator license” to “A professional engineer may perform site evaluations without obtaining a site evaluator license.” The change is necessary for the language in this subsection to be consistent with the definition of site evaluator in §285.2(67) and language in other subsections of the subchapter. The language in the second sentence of this subsection is proposed to be changed from “However, an individual who holds a current professional engineer license may obtain a site evaluator license by complying with the requirements in this subchapter” to “However, a professional engineer may obtain a site evaluator license by complying with the requirements in this subchapter.” This change is necessary to provide consistency in the subsection.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency because agency staff are not issued site evaluator licenses.

Ms. Conrad also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the agency. It is anticipated the public benefit from site evaluations and installations of OSSFs will be enhanced as individuals

licensed under these rules would potentially receive their licenses sooner and, as such, enter into a business for performing site evaluations and installations offering the public more choices at potentially lower costs. The proposed rules might impact other state agencies or local governments with staff geoscientists who need to become licensed under these rules. The fees associated with obtaining the professional geoscientist license is \$200 to cover the application and first-year license, and \$150 per year after the first year. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has 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 the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a “major environmental rule” as defined in that statute.

A “major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists.

Additionally, the proposed rules would delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that have expired and are no longer applicable. The

proposed rules are not specifically intended to protect the environment or reduce risks to human health.

The proposed rules are intended to allow licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists to obtain a site evaluator license, provided they meet the other requirements for a site evaluator. Additionally, the proposed rules will delete experience requirements for obtaining Installer II and site evaluator licenses. Therefore, it is not anticipated that the proposed rules will 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. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these proposed rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the other requirements for a site evaluator. Additionally, the proposed rulemaking would delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that are no longer applicable.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply would allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the other requirements for a site evaluator; delete experience requirements for obtaining Installer II and site evaluator licenses; and delete requirements that are no longer applicable. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the

applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rule include the construction and operation of solid waste treatment, storage, and disposal facilities and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies do not govern or authorize any actions subject to the CMP. The proposed rulemaking would allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the requirements for a site evaluator. The proposed rulemaking would also delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that have expired and are no longer applicable. The commission invites public comment on the consistency determination of the proposed rules.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 3, 2003 at 10:00 a.m. in Building F, Room 2210, 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 before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-009-030-WT. Comments must be received by 5:00 p.m., June 16, 2003. For further information, please contact Michael Bame, Regulation Development Section, at (512) 239-5658.

**SUBCHAPTER G: ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES,
DESIGNATED REPRESENTATIVES, AND SITE EVALUATORS**

§§30.237, 30.240, 30.242, 30.244, 30.246

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37 and THSC, Chapter 366. The amendments are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(14)(b); TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; and Texas Civil Statutes, Article 3271b, the Texas Geoscience Practice Act (the Act), which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§30.237. Definitions.

The words and terms used in this subchapter shall have the same meanings as the definitions in Chapter 285 of this title (relating to On-Site Sewage Facilities). [The following words and terms, when

used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) **Alter** - To change an on-site sewage facility (OSSF) resulting in:]

[(A) an increase in the volume of permitted flow;]

[(B) a change in the nature of permitted influent;]

[(C) a change from the planning materials approved by the permitting authority;]

[(D) a change in construction; or]

[(E) an increase, lengthening, or expansion of the treatment or disposal system.]

[(2) **Apprentice** - An individual who has been properly registered with the executive director according to this chapter, and is undertaking a training program under the direct supervision of a licensed installer.]

[(3) **Authorized agent** - A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.]

[(4) **Construct** - To engage in any activity related to the installation, alteration, extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.]

[(5) **Designated representative** - An individual who holds a valid license issued by the executive director according to this chapter, and who is designated by the authorized agent to review permit applications, site evaluations, or planning materials, or conduct inspections on OSSFs.]

[(6) **Extend** - To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.]

[(7) **Install** - To put in place or construct any portion of an OSSF.]

[(8) **Installer** - An individual who is compensated by another to construct an OSSF.]

[(9) **Repair** - To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding

maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.]

[(10) **Site evaluator** - An individual who holds a valid license issued by the executive director according to this chapter and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an OSSF. A professional engineer may perform site evaluations without obtaining a site evaluator license.]

§30.240. Qualifications for Initial License.

(a) (No change.)

(b) To obtain an Installer II license, an individual must have:

(1) (No change.)

[(2) met one of the following requirements:]

[(A) held an Installer I license for at least one year;]

[(B) held an Installer I license for six months and possessed an apprentice registration for at least one year before June 13, 2001;]

[(C) held an apprentice registration for at least two years; or]

[(D) previously possessed an Installer II license;]

(2) [(3)] completed the Installer II basic training course; and

(3) [(4)] passed the Installer II examination. [; and]

[(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the individual's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the individual and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:]

[(A) verified experience as an Installer I. The individual shall submit either:]

[(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;]

[(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the individual; or]

[(iii) other documentation of the individual's work experience, approved by the executive director;]

[(B) verified experience as an apprentice. An individual shall submit either:]

[(i) a sworn statement from the installer for whom the individual performed construction services;]

[(ii) a sworn statement from a designated representative who witnessed the individual working on at least six OSSF installations; or]

[(iii) other documentation of the applicant's work experience, approved by the executive director.]

(c) (No change.)

(d) To obtain a site evaluator license, an individual must have:

(1) (No change.)

(2) met the following requirements:

(A) - (B) (No change.)

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice). [or a certified professional soil scientist certificate; and]

[(D) have at least two years of verified experience as an Installer II, designated representative, professional engineer, certified professional soil scientist, or professional sanitarian. Applicants for a site evaluator license must submit statements attesting to the individual's OSSF work experience. The statements shall include a description of the type of OSSF work that was performed by the individual and the physical addresses where the activity occurred or for where the activity was proposed. The experience shall be actual work accomplished under the license specified in subparagraph (C) of this paragraph during the time frames required. The number of systems will not substitute for the time required. The statements must be:]

[(i) sworn statements from at least six individuals for whom the applicant performed OSSF services. Statements cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;]

[(ii) a sworn statement from a designated representative who has approved a minimum of six installations performed by the individual, reviewed six site evaluations performed by the individual before September 1, 2002, or approved six sets of planning materials submitted by the individual; or]

[(iii) other documentation of the individual's work experience, approved by the executive director.]

§30.242. Qualifications for License Renewal.

(a) To renew an Installer I, Installer II, [or] designated representative, or site evaluator license[, issued after January 1, 2002], an individual must have:

(1) met the requirements in Subchapter A of this chapter [Chapter] (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 16 hours of approved continuing education. For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of a [the] current license specified in §30.240(d)(2)(C) [§30.240(d)(4)(C)] of this title (relating to Qualifications for Initial License).

§30.244. Exemptions.

(a) - (b) (No change.)

(c) A [An individual holding a current] professional engineer may perform site evaluations without obtaining [license is not required to possess] a site evaluator license.

§30.246. Application for Site Evaluator.

[(a) The executive director shall mail an application to the most recent address provided to the executive director at least 60 days before September 1, 2002, to:]

[(1) all individuals who have previously held a site evaluator license; and]

[(2) all individuals who have previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license.]

(a) [(b)] An individual who previously held a site evaluator license, or has previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, shall submit an [the] application, application fee, and documentation of a current license specified in §30.240(d)(2)(C) of this title (relating to Qualifications for Initial License) before September 1, 2003. After that date the individual must submit a new application with the appropriate fee and pass the examination. [The application shall be processed as follows.]

[(1) Licenses with odd license numbers shall be for a term of one year or less and shall have an expiration date of the last day of the month the license was first issued. The application fee shall be prorated if the term is less than one year.]

[(A) To renew at the time of the first renewal, the individual must have:]

[(i) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);]

[(ii) demonstrated completion of at least eight hours of approved continuing education training; and]

[(iii) demonstrated possession of a current license as required in §30.240(d)(4)(C) of this title.]

[(B) If the individual meets the requirements in subparagraph (A) of this paragraph, the license will be renewed for two years according to the requirements of §30.242 of this title (relating to Qualifications for License Renewal).]

[(2) Licenses with even license numbers shall be for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the first issue date. The application fee shall be prorated if the term is less than two years. At each subsequent renewal, the individual must meet the requirements in §30.242 of this title.]

[(c) An individual who has previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, shall submit the application, the required statements for experience, the application fee, and must hold the current license specified in §30.240(d)(2)(C) of this title.]

[(1) If the individual meets the qualifications of §30.240(d)(4) of this title, the license will be issued for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the date the site evaluator examination was passed.]

[(2) The application fee shall be prorated if the term is less than two years.]

[(3) The license shall be renewed for two years according to the requirements in §30.242 of this title.]

(b) [(d)] An individual who begins the process to become eligible for a site evaluator license after September 1, 2003 [2002], shall meet the requirements of §30.240(d)(2) of this title.

(c) [(e)] A [An individual holding a current] professional engineer may perform site evaluations without obtaining [license is not required to possess] a site evaluator license [to perform site evaluations]. However, a [an individual who holds a current] professional engineer [license] may obtain a site evaluator license by complying with the requirements in this subchapter.