

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.3, 30.5, 30.7, 30.33, 30.231, and 30.244. The commission also proposes new §30.247.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules implement requirements in House Bill 2510, 79th Legislature, 2005, related to the regulation of on-site sewage disposal systems using aerobic treatment and the maintenance of those systems. The proposed rules also address implementation of enforcement for noncompliance. House Bill 2510 impacts two chapters within 30 TAC: Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This proposal addresses the revisions to Chapter 30. The changes to Chapter 285 will be addressed in a separate rulemaking.

This proposed rulemaking addresses the registration requirements for maintenance providers that provide service or maintenance of on-site sewage disposal systems using aerobic treatment.

The commission administers the On-Site Sewage Facility (OSSF) Licensing and Registration Program that currently includes licenses or registrations for Installer I, Installer II, Site-Evaluator, Apprentice, and Designated Representative.

The proposed rules would create a registration program for maintenance providers defined as a person that services or maintains on-site sewage disposal systems using aerobic treatment.

The proposed program is being placed with other similar programs in Chapter 30, Subchapters A and G.

The proposed rules further define the commission's regulations regarding servicing or maintenance of OSSFs using aerobic treatment under Texas Health and Safety Code (THSC), Chapter 366. The purpose of the statute is to regulate maintenance providers and their ability to service and maintain on-site sewage disposal systems using aerobic treatment. The failure of an OSSF is the fundamental cause of OSSF-related public health hazards and provides a medium for the transmission of disease. The failure of an OSSF may be caused by a large number of circumstances, including inadequate soil texture, improper construction, improper planning, improper installation, and inadequate maintenance. Approximately 25% of all homes in Texas are on OSSF systems. In Fiscal Year 2004 alone, there were more than 41,000 newly permitted OSSFs in Texas.

The proposed rules specify requirements for maintenance providers to obtain an occupational registration to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. The significant revisions in these rules include changes to the requirements for maintenance providers, enforcement proceedings, and training for maintenance providers.

SECTION BY SECTION DISCUSSION

Subchapter A - Administration of Occupational Licenses and Registrations

The proposed amendment to §30.3, Purpose and Applicability, would add On-Site Sewage Facility Maintenance Providers as a program regulated by the commission.

The proposed amendment to §30.5, General Provisions, would add THSC, §366.0515, to the list of statutes describing activities regulated by the commission.

The proposed amendment to §30.7, Definitions, would define the term “Maintenance provider” as a person that, for compensation, services or maintains on-site sewage disposal systems using aerobic treatment. Additionally, the proposed amendment to §30.7 would define the term “Persons” as an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity, as referenced in 30 TAC §3.2, Definitions.

The commission proposes corresponding changes throughout the amended rules to conform the language with this definition. Finally, the proposed amendment to §30.7 would define the term “Aerobic treatment system owner” as persons, that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

The proposed amendment to §30.33, License or Registration Denial, Warning, Suspension, or Revocation, in accordance with THSC, §366.0515, would also allow the executive director, in a manner provided by Texas Water Code (TWC), Chapter 7, Subchapter G, to revoke the registration of a maintenance provider for three or more violations of an order, resolution, or rule described by THSC, §366.0515.

Subchapter G - On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, and Site Evaluators

The commission proposes to change the title of Subchapter G to On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators.

The proposed amendment to §30.231, Purpose and Applicability, would add maintenance providers to those persons performing certain duties related to on-site sewage disposal systems using aerobic treatment. It would also require that those persons that perform the task listed in §30.231(a)(5), meet the qualifications of this chapter, be registered according to Subchapter A, unless exempt under §30.244, and comply with the requirements of Chapter 285.

The proposed amendment to §30.244, Exemptions, would exempt an aerobic treatment system owner, who elects to maintain the system, from the requirement to be registered with the agency as a maintenance provider.

The proposed new §30.247, Registrations of Maintenance Providers, would detail the requirements for the initial registration and renewal registrations for persons that service or maintain on-site sewage disposal systems using aerobic treatment or any part of an on-site sewage disposal system using aerobic treatment for compensation.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed rules are in effect, fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state and local government. Maintenance

providers that provide service or maintenance of on-site sewage disposal systems using aerobic treatment will be required to be registered with the agency and to pay registration and training fees, though these costs are not expected to be significant.

The proposed rules would implement requirements of House Bill 2510 by creating a registration program for persons that service or maintain for compensation, on-site sewage disposal systems using aerobic treatment. The proposed rules would specify the requirements needed to obtain an occupational registration to perform service and maintenance on on-site sewage disposal systems using aerobic treatment, as well as address training requirements and enforcement for noncompliance.

The proposed rules would require that maintenance providers hold a registration issued by the commission by September 1, 2006. To obtain a registration, a maintenance provider must: 1) meet the requirements of 30 TAC Chapter 30, Subchapter A; 2) submit a completed application and a \$70 fee to the agency on a form approved by the executive director; 3) submit documentation by the manufacturer of an on-site sewage disposal system using aerobic treatment that the applicant is certified to maintain the on-site sewage facility systems under a maintenance contract; and 4) submit any additional information required by the executive director. Aerobic treatment system owners who elect to maintain their systems must comply with 30 TAC Chapter 285, including without limitations the Chapter 285 training requirements.

The Compliance Support Division of the agency will be required to accept registration applications and fees for review and issuance of registration certificates by March 1, 2006. Agency staff will also either

be responsible for the development of curriculum or outlines for training manuals, or for the approval of a training course that is to be used by the manufacturers in providing the required training. The agency may contract with a training provider to develop a course and training manual to be used by manufacturers. The cost for the development of the manual and course could range from \$10,000 to \$40,000.

As a result of the rules, modifications to the current database (CCEDS) will need to be made to incorporate the registration program. These modifications will need to be completed prior to March 1, 2006, the date that the commission is required to accept applications for the registrations. The modifications to CCEDS may cost in the range of \$20,000. Costs to implement the new program will be offset through the collection of the \$70 registration fee. Maintenance providers will also be required to pay \$70 every two years for renewal of the registration. It is estimated that there may be anywhere from 2,500 to 4,000 maintenance providers that would register with the agency over a two-year period that would generate approximately \$175,000 to \$280,000 in fee revenue. Fee revenue will be deposited into, and expenses will be paid from, the Occupational Licensing Account 0468. The legislature appropriated the agency \$166,960 in Fiscal Year 2006 and \$127,470 in Fiscal Year 2007 to administer the program.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated from the changes in the proposed rules will be compliance with

state law and the protection of the public health and environment through ensuring the proper servicing and maintenance of on-site sewage disposal systems using aerobic treatment.

Fiscal implications are anticipated to businesses and individuals as a result of the administration and enforcement of the proposed rules, though these costs are not considered significant. Maintenance providers must hold a registration issued by the commission by September 1, 2006. Maintenance providers wishing to obtain a registration will likely have training costs estimated to be between \$150 and \$500. This training cost would be paid to the OSSF system manufacturer providing the training. In addition, the maintenance providers will have to pay an initial registration fee of \$70 and another \$70 every two years thereafter. It is estimated that between 2,500 and 4,000 maintenance providers will be registered.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. It is not known how many of the estimated 2,500 to 4,000 maintenance providers are small or micro-businesses, but for those that are, they can expect to pay between \$150 and \$500 in training costs, \$70 for an initial registration fee, and \$70 every two years thereafter.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules do not meet the criteria for a major environmental rule. Texas Government Code, §2001.0225, defines a major environmental rule as one that is specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The rules are intended to create a registration program for maintenance providers that will service and maintain on-site sewage disposal systems using aerobic treatment. The rules would define a maintenance provider as a person that, for compensation, services or maintains an on-site sewage disposal system using aerobic treatment. Training requirements and enforcement for noncompliance would be addressed. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply add registration requirements for maintenance providers and address training requirements and enforcement for noncompliance. The proposed rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the new and amended sections are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §2001.0225(a). Texas Government Code, §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.

The proposed new and amended sections to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. The United States Environmental Protection Agency does not have a federal program for OSSFs and does not establish requirements for states that implement their own OSSF programs. Second, the rules do not exceed an express requirement of state law but are being adopted to implement state law. Third, there is no delegation agreement that would be exceeded by these rules. Fourth, the commission adopts these rules to allow registration requirements for maintenance providers and address training requirements and enforcement for noncompliance in compliance with the statute. Therefore, the commission does not adopt the rules solely under the commission's general powers. These rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225.

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

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The specific purpose of the proposed rules is create a registration program for maintenance providers. The rules would define a maintenance provider as a person that, for compensation, services or maintains an on-site sewage disposal system using aerobic treatment.

The proposed rules would substantially advance this specific purpose by setting forth the registration requirements for maintenance providers and by setting forth rules that address training requirements and enforcement for noncompliance. The proposed rules do not constitute a takings because they would not burden 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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-039-030-CE. Comments must be received by 5:00 p.m., Monday, October 31, 2005. For further information, please contact Terry Thompson, Compliance Support Division, at (512) 239-6095.

**SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL
LICENSES AND REGISTRATIONS**

§§30.3, 30.5, 30.7, 30.33

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in 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 the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §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; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

The proposed amendments implement TWC, §37.002, which requires the commission to adopt rules to establish registration requirements for maintenance providers that will service and maintain on-site sewage disposal systems using aerobic treatment under THSC, §366.0515, and to impose administrative and criminal penalties under TWC, §§7.173 - 7.175.

§30.3. Purpose and Applicability.

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - K of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators and Installers; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; and Public Water System Operators and Operations Companies) contain the program-specific requirements related to each program.

(b) This chapter applies to applications for issuance or renewal of licenses or registrations that are received on or after January 1, 2002, except that maintenance providers are not required to obtain a registration as a maintenance provider prior to September 1, 2006.

(c) The requirements of this chapter apply to the following occupational licenses and registrations:

(1) - (5) (No change.)

(6) on-site sewage facility [(OSSF)] installers, designated representatives, apprentices, maintenance providers, and site evaluators;

(7) - (10) (No change.)

§30.5. General Provisions.

(a) A person must be licensed or registered by the commission before engaging in an activity, occupation, or profession described by Texas Water Code, §§26.0301, 26.3573, 26.452, 26.456, 34.007, or 37.003, or Texas Health and Safety Code, §§341.033, 341.034, 341.102, 341.103, 361.027, 366.014, [or] 366.071, or 366.0515. The commission shall issue a license or registration only after an applicant has met the minimum requirements for a license or registration as specified in this chapter.

(b) A person may not advertise or represent themselves to the public as a holder of a license or registration unless that person possesses [they possess] a current license or registration. A person may not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.

(c) - (e) (No change.)

§30.7. Definitions.

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

(1) (No change).

(2) **Aerobic treatment system owner** - Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

(3) [(2)] **Continuing education** - Job-related training approved by the executive director used for renewal of licenses and registrations.

(4) [(3)] **License** - An occupational license issued by the commission to a person [an individual] authorizing the person [individual] to engage in an activity covered by this chapter.

(5) **Maintenance provider** - A person that, for compensation provides service or maintenance for one or more on-site sewage disposal systems using aerobic treatment.

(6) **Person** - As defined in §3.2 of this title (relating to Definitions).

(7) [(4)] **Registration** - An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(8) [(5)] **Training credit** - Hours of credit allowed by the executive director for attendance at an approved training event.

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

(a) [Denial.] The executive director may deny an initial or renewal application for:

(1) insufficiency [Insufficiency]. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration). The executive director may determine an application is insufficient for the following reasons:

(A) - (C) (No change.)

(2) cause [Cause]. After notice and opportunity for a hearing, the commission may deny an application for a license or registration by an applicant who:

(A) - (D) (No change.)

(E) fails to keep and transmit records as required by a statute [statue] within the commission's jurisdiction or a rule adopted under such a statute; or

(F) (No change.)

(b) [Warning.] If a person causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the person's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the person may be grounds for suspension, revocation, enforcement action, or some combination [thereof]. A warning is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) [Suspension or revocation.] After notice and opportunity for a hearing, the commission may suspend or revoke a license or registration on any of the grounds in Texas Water Code, §7.303(b) or suspend or revoke a maintenance provider registration on any of the grounds in Texas Health and Safety Code, §366.0515(m). A license may also be suspended if a person is identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(d) - (e) (No change.)

(f) The following procedures for renewal apply to persons that [who] have had their license or registration suspended.

(1) - (2) (No change.)

(g) Persons that [who] have had their license or registration revoked shall not have their license or registration automatically reinstated after the revocation period. After the revocation period has ended, a person may apply for a new license or registration according to this chapter.

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

§§30.231, 30.244, 30.247

STATUTORY AUTHORITY

The amendments and new section are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37 and THSC, Chapter 366. The amendments and new section are also adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §§5.102, 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; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

The new and amended sections implement TWC, §37.002, which requires the commission to adopt rules to establish registration requirements for maintenance providers that will service and maintain on-site sewage disposal systems using aerobic treatment under THSC, §366.0515, and to impose administrative and criminal penalties under TWC, §§7.173 - 7.175.

§30.231. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that [an individual who]:

(1) constructs any part of an on-site sewage facility [(OSSF)];

(2) (No change.)

(3) performs the duties of a site evaluator; [or]

(4) performs the duties of an apprentice; or

(5) performs the duties of a maintenance provider.

(b) A person that [An individual who] performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) (No change.)

§30.244. Exemptions.

(a) Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment are not required to be a licensed installer in order to install or repair an on-site sewage facility servicing that single-family dwelling. Such person must meet all permitting, construction, and maintenance requirements of the permitting authority. If that person compensates a person to construct any portion of an on-site sewage facility, the individual performing the work must be a licensed installer. This provision does not apply to developers or to those that develop property for sale or lease. [The individual owner of a single family dwelling is not required to be a licensed installer in order to install or repair an on-site sewage facility (OSSF) on the owner's property. This provision does not apply to developers or to those that develop property for sale or lease. If the owner compensates a person to construct any portion of an OSSF, the individual performing the work must be a licensed installer. The owner must meet all permitting, construction, and maintenance requirements of the permitting authority. The owner must have the site evaluation performed by an individual who possesses either a current site evaluator or a professional engineer license.]

(b) If the aerobic treatment system owner elects to maintain the system, the aerobic treatment system owner is not required to register with the agency as a maintenance provider, but must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) [(b)] A licensed electrician who installs the electrical components, or a person that [who] delivers a treatment or pump tank and sets the tank or tanks into an excavation, is not required to have an installer license.

(d) [(c)] A professional engineer may perform site evaluations without obtaining a site evaluator license.

§30.247. Registration of Maintenance Providers.

(a) A maintenance provider must be registered with the executive director.

(b) To register as required by Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), a person must:

(1) meet the requirements of Subchapter A of this chapter;

(2) submit a completed application and a \$70 fee to the executive director on a form approved by the executive director;

(3) submit documentation by the manufacturer of an on-site sewage disposal system using aerobic treatment that the applicant is certified to maintain the on-site sewage facility systems under a maintenance contract; and

(4) any additional information required by the executive director.

(c) To renew a maintenance provider registration, a maintenance provider must every two years:

(1) meet the requirements in Subchapter A of this chapter; and

(2) submit a completed renewal application and a \$70 fee to the executive director on a form approved by the executive director.