

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the repeal of Chapter 290, Subchapter B: §290.27, General; §290.28, Definitions; §290.29, Administration; §290.30, Qualifications; §290.31, Applications; §290.32, Examinations; §290.33, Certificates; §290.34, Training Approval; §290.35, Reciprocity; and §290.36, Fees; and adopts the repeal of Subchapter C: §290.37, Processing Permit Applications for Water Hygiene Operations. The repeal of Subchapters B and C are adopted without changes to the text published in the July 28, 2000, issue of the *Texas Register* (25 TexReg 7073).

In simultaneous rulemaking, the commission adopts these provisions, with changes, into new sections of 30 TAC Chapter 325. Until June 1, 2001, public water system certified operators and public water system operations companies will follow the requirements in Chapter 290, Subchapter B.

The United States Environmental Protection Agency (EPA) established water certification standards and developed federal requirements. These requirements were effective February 5, 1999 (64 FR 5916), and were issued under the authority of the Safe Drinking Water Act Amendments of 1996, 42 United States Code (USC) §§300f et seq.

In addition to repealing the provisions of Chapter 290, Subchapters B and C, and moving the provisions to Chapter 325, other modifications to Chapter 325 are adopted. The commission adopts new provisions in Chapter 325 which are consistent with EPA requirements. On June 1, 2001, water operators, water operations companies, and public water systems in Texas will be required to comply with the adopted rules in Chapter 325, Subchapters A and B. The new provisions adopted in Chapter

325 for immediate compliance, as well as the new provisions adopted in Chapter 325 for compliance by June 1, 2001, are discussed in Chapter 325 in the Adopted Rules section of this issue of the *Texas Register*.

An extension of time is being created by the compliance requirements in Chapter 325. This extension is needed to allow public water systems to hire additional operators, if necessary, and to allow operators to attend training courses and take the required examinations to become certified and compliant with the new rules.

This action is associated with the commission's review of the rules contained in Chapters 290, Subchapter B and C, and 325, in accordance with Texas Government Code (TGC), §2001.039; and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for reoption each of their rules every four years.

The commission reviewed the rules in Chapter 290, Subchapters B and C, Public Drinking Water, as well as in Chapter 325, Certificates of Competency, as mandated by TGC, §2001.039; and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for reoption every four years each of their rules that were adopted under the Administrative Procedure Act. A review must include an assessment of whether the reasons for the rules continue to exist.

The commission conducted a preliminary review of the rules in Chapter 290, Subchapters B and C, and determined that the reasons for adopting these rules continue to exist. These rules are needed for compliance with EPA requirements under the federal Safe Drinking Water Act (42 USC §§300f et seq.) and to implement provisions of state law including Texas Health and Safety Code (HSC), §§341.031, 341.033, and 341.034 regarding Public Drinking Water, Protection of Public Water Supplies, and Water Supply System Operator Certificate of Competency; and TGC, §2005.003 regarding Permit Processing Periods. These rules are also needed for the protection of public health and the environment through certification of operator competency.

The commission's review of Chapter 290, Subchapters B and C also revealed provisions which require modifications to improve program efficiency. The commission repeals Chapter 290, Subchapters B and C. These changes are a result of the commission's rule review of Chapters 290 and 325 and for consistency with the commission's ongoing regulatory reform initiative. The provisions are still needed and are adopted, with changes, for inclusion as new provisions in Chapter 325. The specific changes are noted in the rule preamble for Chapter 325 in this issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Many operators hold dual certification under both the water and wastewater programs. In accordance with the commission's ongoing regulatory reform initiative, these certification requirements are consolidated in Chapter 325. The repeals and new provisions will clarify requirements, thereby making them easier for the commission, the regulated community, and the public to read, reference, and understand.

On June 1, 2001, all public water system certified operators and public water system operations companies in Texas must comply with the provisions of new Chapter 325, which are concurrently adopted in this edition of the *Texas Register*. The new provisions in Chapter 325 are adopted to fulfill statutory provisions and to comply with the recently enacted federal requirements that were mandated by EPA requirements under the 1996 Safe Drinking Water Act Amendments, §1419. After June 1, 2001, the commission intends to repeal the provisions of Chapter 325, Subchapters D and E.

Chapter 290, Subchapter B, Certification of Waterworks Personnel, is repealed and replaced with Chapter 325, Subchapter A, Certification of Public Water System Operators and Public Water System Operations Companies. This adopted subchapter provides the requirements for the certification of public water system operators and public water system operations companies. This rulemaking is meant to comply with the EPA's new operator certification requirements as specified in the February 5, 1999, *Federal Register* (64 FR 5916).

The existing provisions of Chapter 325 are also repealed and replaced with a new Chapter 325, Subchapter B, Certification of Wastewater Operators and Wastewater Operations Companies, which will provide the requirements for the certification of wastewater operators and wastewater operation companies.

This action is also associated with the commission's notice of intention to review the rules contained in Chapters 290 and 325 in accordance with the provisions of TGC, §2001.039; and the General

Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999, which requires state agencies to review and consider each rule for readoption every four years.

Specifically, the rules increase the fees assessed on public water system operators when their current certification expires. The rules also change the renewal period for both A and B operators. For the approximately 3,500 Class D operators, the certification fee would increase from \$20 per two-year term to \$40 per two-year term. The certification fee for the nearly 6,000 Class C operators would increase from \$30 per three-year term to \$60 per three-year term. The certification fee for the approximately 2,500 Class B operators would increase from \$50 per five-year term to \$60 per three-year term. The certification fee for the approximately 826 Class A operators would increase from \$80 per eight-year term to \$60 per three-year term. Additionally, the estimated 300 perpetual certificate holders would be required to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their Class. These costs are estimated at \$100 per 20-hour training course.

The adopted rules require anyone performing process control activities at a public water system to receive a certification from the commission. Approximately 5,704 public water systems are required to have certified operators, and it is estimated that 1,900, or one-third, of these systems will now be required to certify an additional operator to perform systems process control activities. Because these rules pose no additional work requirement, the commission does not anticipate an increase in the number of operators at any facility. This certification could be at any given level and the commission anticipates that operators will apply for the lowest class, Class D. The estimated cost of certification

will be \$140 per individual operator. This cost includes the required training course of \$100 per 20-hour training course and the \$40 certification fee.

The rules would also require Class D operators who operate multiple systems, where the total number of connections exceed 250 connections, to upgrade their certifications to a Class C. The estimated cost for training and licensing to upgrade this certification is \$200. This estimate includes the cost of two 20-hour training courses at \$100 per course to go from a Class D to a Class C certification.

In 2003, surface water systems will be required to have a Class B surface water operator on staff.

There are approximately 475 surface water systems and the commission estimates that 30%, or 142 systems, do not currently employ a Class B surface water operator. The estimated cost of upgrading from a Class C to a Class B certification is \$300. This estimate includes the cost of three 20-hour training courses at \$100 per course to go from a Class C to a Class B certification.

Operations companies will be required to register the number of systems served and the individuals operating them. The commission estimates that there are 100 water operations companies and the fee will be based on the number of systems served. The fee for companies operating zero to four systems would be \$75; for five to nine systems, \$150; for 10 to 19 systems, \$250; and for 20 or more systems, \$400.

The rules would also require public water systems and wastewater systems to designate a chief operator or operators who must be present at the facility daily. The commission assumes that most systems are

operated by a person or persons who would be able to comply with this provision without any additional cost.

The adopted rules would change the renewal period for both Class A and Class B wastewater plant operators. The approximately 840 Class A operators would be required to renew their certifications every three years instead of the current eight years and the approximately 2,070 Class B operators would be required to renew their certification every three years instead of the current five years.

Wastewater collection systems transporting over one million gallons per day (MGD) will be required to have at least one operator certified at the Class III or Class B level. There are 359 permitted domestic waste treatment facilities with a permitted daily average flow of one MGD or greater and approximately 35 separate collection systems with a daily average flow of one MGD or greater. The commission believes that the majority of these systems currently comply with the adopted rules. The estimated cost of upgrading from a Class C to a Class B certification is \$200. This estimate includes the cost of two 20-hour training courses at \$100 per course to go from a Class C to a Class B certification.

Operators of mobile and remote sludge facilities will be required to hold a Class D Wastewater Operator Certificate. The commission does not know how many mobile facilities are in operation; however, there are two known remote sludge facilities in Texas, and both currently have operators certified above the Class D level. The estimated cost of Class D certification is \$100, which is the cost of the required 20-hour training course.

The rules would also require the estimated 300 wastewater plant operators who hold a perpetual certificate to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their class. These costs are estimated at \$100 per 20-hour training course.

Finally, anyone requesting a duplicate or replacement water or wastewater certificate would be required to pay a \$10 fee. The agency currently produces 50 to 100 duplicate certificates per year. However, it is assumed that the number of requests will go down once a fee is charged for this service.

Although not required to do so, many public water and wastewater systems are owned and operated by units of state and local government that may choose to pay for the costs to comply with the adopted rules.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of TGC, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in TGC. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). The adopted repeals and new sections reduce risks to human health from environmental exposure by ensuring that water and wastewater treatment plants as well as facilities for water distribution and collection will be operated correctly. Although the rules reduce the risk to human health from environmental exposure, this is not a major environmental rule because the rules will not adversely affect in a material way the economy, a

sector of the economy, productivity, competition, jobs, the environment, while they maintain the public health and safety of the state. The rules update the state's current water certification standards to be compliant with newly established federal requirements, which were effective February 5, 1999 (64 FR 5916) and which were issued under the authority of the Safe Drinking Water Act Amendments of 1996, 42 USC §§300f et seq. The adopted rules ensure competent operation of water and wastewater facilities, which in turn provide an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state.

The adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The adopted rules do not exceed a standard set by federal law, because the purpose of this adoption is to adopt state rules which are substantially equivalent to the corresponding federal requirements. This adoption does not exceed an express requirement of state law, because the express requirements of state law are equivalent to the requirements set forth in this proposal. This adoption does not 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. In addition to the repeal of Chapter 290, Subchapters B and C, the commission adopts water treatment plant operator certification rules under Chapter 325 that are substantially equivalent to federal requirements in order to receive the maximum amount of federal funds for the state's drinking water state revolving fund.

Water and wastewater operator certifications have been mandatory requirements under state law since 1945. This adoption makes minor changes to the wastewater operator certification rules under Chapter 325 that do not exceed state law. This adoption does not adopt a rule solely under the general powers of the agency (e.g., Texas Water Code (TWC), §5.103 and §5.105), but rather under a specific state law (i.e., HSC, §§341.031, 341.033, and 341.034; and TWC, §26.0301).

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted repeals under TGC, §2007.043. The following is a summary of that assessment. The purpose of the adopted repeal of Chapter 290, Subchapters B and C and the adopted new provisions of Chapter 325 bring the water treatment plant operator certification rules into compliance with the federal requirements issued under the Safe Drinking Water Act Amendments of 1996, 42 USC §§300f et seq. effective February 5, 1999 (64 FR 5916). Chapter 325 adopts new, revised rules and reorganizes the wastewater operator certification rules for greater consistency and clarity. The adopted rules substantially advance this stated purpose by introducing language intended to ensure that state rules regarding water operator certification are substantially equivalent to the corresponding federal requirements. Promulgation and enforcement of these adopted rules do not affect private real property which is the subject of the rules because the adopted rules bring certain water operator certification regulations into equivalence with federal requirements and ensure that wastewater rules are consistent with state law requirements. There is no burden on private real property because the rules do not subject any private real property to regulation. Also, the following exception to the application of TGC, §2007.003(b) applies to a portion of these adopted rules: this action is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the adoption is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in the Coastal Coordination Act Implementation rules, 31 TAC §505.11, nor will it affect any action or authorization identified in 31 TAC §505.11. Therefore, the adoption is not subject to the CMP. The purposes of these rules are to bring the water treatment plant operator certification rules into compliance with the federal requirements adopted under the Safe Drinking Water Act Amendments of 1996, 42 USC §§300f et seq. effective February 5, 1999 (64 FR 5916); to conduct the required quadrennial rule review; and to revise the wastewater operator certification rules for greater consistency and clarity. The rulemaking does not govern air pollutant emissions, on-site sewage disposal systems, or underground storage tanks which would make it subject to the CMP under 31 TAC §505.11(b)(2). The rulemaking also does not govern or authorize actions listed in Coastal Coordination Act Implementation Rules (i.e., 31 TAC §505.11(a)(6)), and is not a rule certified under the CMP.

HEARING AND COMMENTERS

A public hearing was conducted on August 24, 2000. Three commenters provided comments on the proposed rules. Eco-Resources, Inc. (ECO) and Texas Water Utilities Association (TWUA) presented both oral and written comments. The City of Fort Worth (FW) submitted written comments.

TWUA agreed with all of the proposed rules and recommended that they be adopted. ECO generally disagreed with the proposed rules and FW disagreed with one subsection of the rules. After the close of the comment period, additional comments were received from the Office of the Attorney General

(AG) regarding child support delinquency enforcement requirements and the Texas Guaranteed Student Loan Corporation (TGSLC) regarding student loan default enforcement requirements. Staff added text to one of the subsections for clarity.

General Comments:

TWUA believes that adoption of the rules is necessary for proper protection of the public health and water environment for the citizens of Texas. TWUA supports the rule package and encourages the commission to adopt the rules as published in the Texas Register.

The commission appreciates the positive response to the rules from TWUA.

ECO stated that the Chapter 290 rules for public water system operators should remain in Chapter 290 instead of moving the rules to Chapter 325. ECO mentioned that it would be easier to find all rules related to water system operations and certification in the same chapter.

The commission disagrees with the commenter. Many operators hold dual certification as water and wastewater operators; therefore, it is more convenient for them to find the related occupational licensing rules in one chapter.

ECO stated that these rules make it apparent that contract operations companies were either ignored or poorly represented in the rulemaking procedure. ECO stated that of the thirteen members of the advisory committee, only one member had anything to do with an operations company.

The commission disagrees with the commenter. There are at least two members on the water utility operator certification advisory committee representing operations companies and one member representing quasi-governmental entities. The advisory committee provided input, review, and feedback in this rulemaking process.

ECO stated the rules present a total lack of understanding as to how contract operations companies function and reflect in-house operations only. ECO asserted that with a tight labor force, and in a field that presents little glamour, it is very difficult to attract talented trainees or qualified operators, and as the rules are written, the time frame in which trainees prove themselves as stand alone operators is extended to the time they are certified. ECO stated that at some point, prior to certification, we must be able to judge their competence, and that riding around with a certified operator, who will end up doing the work themselves because it's faster, does no one any good.

The commission disagrees with the commenter. The rules were written for the certification of individual operators and for operations companies with significant consideration given in both areas while revising these rules. The commission firmly believes that there are many simple tasks that operator trainees can learn and perform on their own before obtaining their licenses.

However, no operator-in-training should be allowed to perform process control operations without

being closely supervised until they are certified at the appropriate level. At a surface water treatment plant, this will mean obtaining a Class C Surface Water certificate. Chapter §325.8(b) states that a person first entering the field of drinking water treatment may be employed as an operator-in-training for a period up to one year. During that year, the trainee may take the Class D examination upon becoming qualified. If operations companies train their new personnel by merely riding around with them, this indicates a lack of oversight or training that could be a problem. To ensure the competency of new operators, TNRCC requires a certified operator to be present while trainees are performing operational duties.

ECO recommended that in §325.4(3), the definition and all references to chief operator should be deleted from the rules.

The commission disagrees with the commenter. The chief operator is the operator of record. This is the individual who serves as the main contact and is knowledgeable with the overall operations of the facilities and systems. This designation is necessary to correspond to the facility and system classifications.

ECO recommended that §325.4(7) be changed to read “certified operator who has been charged with the daily on-site responsibility of a public water system.”

The commission disagrees with the commenter. This is the operator who is in charge in the absence of the chief operator. “In charge of the supervision of the system” is preferable since the overall responsibility lies with the system owner and the chief operator.

ECO recommended that §325.4(8) be changed from “for the first time” to “who is not certified.” ECO added that this person could have experience and not be certified or may have let their certificate expire.

The commission disagrees with the commenter. This designation is for those persons first entering the field, not for those with previous experience who are re-entering the profession. This status is intended for people to obtain employment and gain a minimal amount of training and experience before testing for certification. It is not the commission’s intent to allow persons who have experience and have been operating without the required certification to continue to operate in violation of these rules. If a person has participated in the certification program and their certificate has expired, it is the responsibility of the license holder to renew their license before performing operational duties again.

In §325.8(b)(1), ECO questioned whether it is the state’s intent that an operator in training never be left alone to perform the simplest duties such as, but not limited to, flushing dead ends, recording readings or cleaning a drying bed. ECO also requested that “presence” be defined in the rules.

The commission disagrees with the commenter. In performing simple tasks such as those listed in the question, an operator-in-training would need to be in the immediate presence of a certified operator until the trainee's competence for the simple routine tasks such as flushing dead ends have been established. However, for more complicated tasks, such as process control, the trainee needs constant, close supervision for an extended period of time until certification is obtained. This section allows persons to perform maintenance activities outside the presence of a certified operator. However, performing process control duties can directly affect the quality of the drinking water. Persons not familiar with operational duties ("new to the field") should have constant supervision by the presence of a knowledgeable, certified operator while learning and performing process control duties.

ECO recommended that in the second line of §325.8(d) and in Figure: 30 TAC §325.8(d) all references to "chief" be deleted. Also, ECO questioned the requirement to have two operators assigned to a distribution or purchased water system of more than 1,001 connections seems excessive. ECO asked if it is the intent that both operators must visit the system daily or both be available to that system? For instance, a purchased water system with no, or minimal, facilities, operated by an operations company would not need two operators. The operators and other maintenance workers would be available if necessary. ECO stated that the workload is simply not there to justify the expense of two operators. The same case could be made for all water systems operated by operations companies.

The commission disagrees with the commenter. For larger purchased water or distribution systems, two Class C or higher operators must be on staff due to more connections and more miles of line at these systems. Also, having better trained operators on staff provides a higher level of protection to public health and the environment. Either the chief operator or the operator in responsible charge must visit the system daily while another operator with an appropriate level of certification must be available or on standby capacity.

ECO referred to Figure: 30 TAC §325.8(d) constantly showing a "C" Class operator as a chief operator. ECO asked what experiences will that "C" operator have and if the title will be given as a convenience? ECO believes that §325.8(e) requires the secondary operator to be of the same class or higher. ECO then questioned whether the commission will deny "B" and "A" Class operators the title of chief operator or take it away to satisfy the rule. ECO suggested that all references to chief operator be deleted and replaced with operator in responsible charge.

The commission disagrees with the commenter. All system requirements in figure §328.8(d) allow for higher than the minimal level of certification at the systems. This certainly does not exclude the Class B & A certificate holders from these positions, and historically, they have never been excluded. The title of chief operator will not be given as a convenience; it will be awarded as requirements are met. If two operators are required at the facility or system, they must be of the same level or higher. Class A, B, C, & D operators can be chief operators depending upon the size and type of the system according to §325.8(d). References to chief operator will remain in the rules.

ECO disagreed with §325.8(g) regarding not issuing certificates of competency to inspectors and felt that persons who stand in judgment of operations should be certified. ECO questioned how the state justifies an inspector telling an "A" certified operator their operation and maintenance is poor, if the inspector has no experience to back that statement.

The commission disagrees with the commenter. The TNRCC investigators who are certified upon becoming employed by the agency may keep their certificates and renew them; however, those licenses may not be upgraded. Water and wastewater investigators may not obtain new certifications since they have access to the examinations. In the Professional Development Plan for Field Investigators, the TNRCC Field Operations Division requires extensive on-the-job training, training courses, required reading and videos, and field work for all field investigators. This also includes 16 hours of continuing education each year, compared to the ten hours of continuing education required for water operators.

ECO stated that, in §325.8(i), the requirement to operate a system should be based on the skill requirement of that individual system, not the number of systems operated. ECO also asked what makes the system harder to operate.

The commission disagrees with the commenter. The operation of multiple systems increases the probability of having systems of varied complexity. Therefore, a Class C operator should be better qualified to deal with the challenges presented by the various types of systems which might

be operated. The current rule requires a Class C operator for systems with 250 connections or more; therefore, this merely combines the number of connections to make it more equitable.

ECO questioned §325.8(j)(1) and (2) whether all contractors installing water systems, expanding water systems or making repairs, must have a certified operator on-site during construction. ECO asked if this would be in addition to the engineer's inspector or if the inspector would have to be certified.

The commission clarifies that a person with a certification must be on-site. This may be the engineer's inspector, an operator, an inspector from the utility, or someone who is employed by the contractor.

ECO commented that in §325.12(c) the case-by-case basis for additional training, as assigned by the executive director, seems ambiguous. ECO questioned that if the applicant has taken the required courses, what other training would be beneficial?

The commission explains that the executive director may require an applicant to take additional training when that person continually fails exams and has not taken any training courses in several years. It is possible for an applicant to meet the certification requirements but not have taken training in ten or more years. The commission believes that any training applicable to the water utility profession is beneficial to operators.

AG stated that in §325.24 upon receipt of a final order from an AG proceeding involving a license suspension, a state agency must proceed as described in Texas Family Code, Chapter 232, regarding child support delinquency license suspension requirements.

In response to the information received, the commission has changed the rules to refer directly to Chapter 232 of the Texas Family Code and to Chapter 57 of the Texas Education Code.

ECO stated that in §325.28(e) the certification term of two years is too short. ECO mentioned that operator certification terms will be for three years and that the operations companies certifications should also be for three years.

The commission disagrees with the commenter. The commission requires operations company certification renewal every two years for better oversight of the operations companies and systems operated. As stated in the rules, not all certificate terms are three years. There are four types of operator certifications that are proposed to have two-year terms.

ECO requested in §325.28(i) that the ten day term be changed to ten days after the month in which the change occurs. While system changes do not occur that frequently, personnel is a different matter. ECO also wanted clarification on whether changes in personnel also include new hires, terminations or assignments to systems.

The commission agrees with the commenter and has revised the rule to require notification of changes on the tenth day of the month following the change. New hires, terminations, and re-assignments are all considered a change in personnel or change in the systems operated.

ECO requested clarification of §325.28(k) with the phrase “reorganized such that control of the operation of the company is transferred from one person to another.” ECO asked if a president stepped down or retired, and a new president was named, is the certificate invalid? This section appears to be written for sole proprietorships or partnerships, whereby the sale or reorganization and the transfer of control from one person to another would have a major effect. ECO asked if the reference to reorganization applies to bankruptcy? ECO also asked if there should be provisions for issuing new certificates prior to the expiration of old certificates.

The commission agrees with the commenter that the rule as stated is confusing. The rule has been clarified that if a company is bought or sold and a name change occurs, the new company must apply for a new certificate. When a company will be operating under another name, there are no provisions which prohibit issuing a new certificate before the old certificate expires.

ECO stated that in §325.28(l) governmental entities and quasi-governmental entities should meet the conditions as set under §325.28(g) and (h), as well as (i). ECO saw no difference in the importance of this information from private companies to governmental or quasi-governmental agencies.

The commission agrees with the commenter and the rule has been changed in §325.28(l). The commission agrees with the comment that governmental and quasi-governmental agencies should comply with §325.28(i) and this has been included in the rule. However, the commission will not charge governmental and quasi-governmental agencies a fee under §325.28(h). The rules already require them to comply with §325.28(g).

ECO requested clarification of §325.30 concerning the issuance of reprimands, suspensions, or revocations of certificates or other penalties. ECO requested a means of protest or challenge to this enforcement.

The commission agrees with the commenter and the rule has been revised to state that the executive director issues reprimands, suspension, and revocation of certificates. The rules governing hearings are located in 30 TAC Chapters 39, 55, and 80.

ECO recommended that the definition in §325.102(3) and all references to chief operator should be deleted from the rules.

The commission disagrees with the commenter. The chief operator is the operator of record. This is the individual who serves as the main contact and is knowledgeable with the overall operations of the facility. This designation is necessary to correspond to the facility classifications.

ECO recommended that §325.102(6) be changed to read “certified operator who has been charged with the daily on-site responsibility of a system.”

The commission disagrees with the commenter. This refers to the operator who is in charge in the absence of the chief operator. “In charge of the supervision of the system” is preferable since the overall responsibility lies with the permittee and the chief operator.

ECO recommended that §325.102(7) be changed from “for the first time” to “who is not certified.” This person could have experience and not be certified or have let their certificate expire.

The commission disagrees with the commenter. This designation is for those persons first entering the field, not for those with previous experience who are re-entering the profession. This status is intended for people to obtain employment and gain a minimal amount of training and experience before testing for certification. It is not the commission’s intent to allow persons who have experience and have been operating without the required certification to continue to operate in violation of the rules. If a person has participated in the certification program and lets their certificate expire, it is the responsibility of the license holder to renew their license before performing operational duties again. This should not be a loophole for operators who let their certificates expire and want to continue to operate.

In §325.106(e), ECO questioned whether it is the state's intent that an operator in training never be left alone to perform the simplest duties such as, but not limited to, flushing dead ends, recording readings or cleaning a drying bed. ECO also requested that "presence" be defined in the rules.

The commission disagrees with the commenter. When performing simple maintenance tasks such as those listed in the question, an operator-in-training would not have to be directly supervised at all times by the presence of a certified operator. However, for more complicated tasks, such as process control, the trainee needs constant, close supervision for an extended period of time until certification is obtained. This section allows persons to perform maintenance activities outside the presence of a certified operator. However, performing process control duties can directly effect quality of the effluent and the potential for pollution. Persons not familiar with operational duties ("new to the field") should have constant supervision by the presence of a knowledgeable, certified operator while learning and performing process control duties. This concept is stated in current Chapter 325 and this provision only clarifies that "constant supervision" means being in the presence of a certified operator.

FW is concerned with the requirement in §325.106(l) for a chief operator, or operator of the same class, to operate the facility on a daily basis. FW pointed out that for a large treatment system, this would require a class A certified operator to be present every day. It is recommended that this requirement be changed to allow for an operator who is certified at not less than one level below the category of the facility to operate the facility for a day or weekend period, which would allow for prudent scheduling of class A operators.

The commission disagrees with the commenter. The presence of the chief operator is required to oversee the proper operation of the facility. The commission clarifies the statement that the chief operator must operate the facility on a daily basis. The chief operator (or operator with an equivalent or higher level of certificate) for Category D, C, and B wastewater treatment facilities must be present at the facility once each working day, but not less than five days per week. The chief operator (or operator with an equivalent or higher level of certificate) for Category A wastewater treatment facilities must be present at the facility once each day of the week. The length of time the chief operator is required to be present each day is not stipulated in the rules.

ECO asked in §325.106(p) if flows are not measured, then what is the basis for category determination? ECO also commented that the skill level requirements are overstated and a series of manholes and pipe need little operational skill. ECO stated that a Class "D" operator should be able to cover a system up to one million gallons per day (MGD), and anything above, by a Class "C".

The commission explains that category determination in a collection system is based on flows which would be measured upon arrival at the treatment plant. Some larger systems may have flow measuring devices in the lift stations. If flows are not measured at the treatment plant or lift stations, the system should have in place a way to estimate the daily average flow. The commission disagrees about the skill level requirement for the larger systems. The larger collection systems require at least one supervisor with advanced troubleshooting and problem solving skills, a greater understanding of safety and management issues, and an understanding of industrial pre-treatment and how industry contributions affect the collection system and treatment

plant operation. Only one person employed by each system that transports over 1 MGD will be required to hold a Class III or Class B certificate. The other supervisors in the collection system are required to hold some level of certification.

ECO disagreed with §325.106(q) regarding not issuing certificates of competency to inspectors and felt that persons who stand in judgment of operations should be certified. ECO questioned how the state justifies an inspector telling an "A" certified operator their operation and maintenance is poor, if the inspector has no experience to back that statement?

The commission disagrees with the commenter. TNRCC investigators who are certified upon becoming employed by the agency may keep their certificates and renew them; however, those licenses may not be upgraded. Water and wastewater investigators may not obtain new certifications since they have access to the examinations. In the Professional Development Plan for Field Investigators, the TNRCC Field Operations Division requires extensive on-the-job training, training courses, required reading and videos, and field work for all field investigators. This also includes 16 hours of continuing education each year, compared to the required ten hours of continuing education required for wastewater operators.

ECO commented that in §325.110(c) the case-by-case basis for additional training, as assigned by the executive director, seems ambiguous. ECO questioned that if the applicant has taken the required courses, what other training would be beneficial?

The commission explains that the executive director may require an applicant to take additional training when that person continually fails exams and has not taken any training courses in several years. It is possible for an applicant to meet the certification requirements but not have taken training in ten or more years. The commission believes that any training applicable to the water utility profession is beneficial to operators.

ECO stated that in §325.126(e) the certification term of two years is too short. ECO mentioned that operator certification terms will be for three years and that the operations companies certifications should also be for three years.

The commission disagrees with the commenter. The commission requires operations company certification renewal every two years for better oversight of the operations companies and the facilities operated. As listed in the rules, not all certificate terms are three years. There are four types of operator certifications that are proposed to have two-year terms.

ECO requested in §325.126(i) that the ten day term be changed to ten days after the month in which the change occurs. While system changes do not occur that frequently, personnel is a different matter. ECO also wanted clarification on whether changes in personnel also includes new hires, terminations or assignments to systems.

The commission agrees with the commenter and has revised the rule to require notification of change on the tenth day of the month following the change. New hires, terminations, and re-

assignments are all considered a change in personnel or change in the systems and facilities operated.

ECO requested clarification of §325.126(k) with the phrase “reorganized such that control of the operation of the company is transferred from one person to another.” ECO asked if a president stepped down or retired, and a new president was named, is the certificate invalid? This section appears to be written for sole proprietorships or partnerships, whereby the sale or reorganization and the transfer of control from one person to another would have a major effect. ECO asked if the reference to reorganization applies to bankruptcy? ECO also asked if there should be provisions for issuing new certificates prior to the expiration of the old certificates.

The commission agrees with the commenter that the rule as stated is confusing, and has revised the rule to state that if a company is bought or sold and a name change occurs, the new company must apply for a new certificate. When a company will be operating under another name, there is not a provision that prohibits issuing a new certificate before the old certificate expires.

ECO stated that in §325.126(l) governmental entities and quasi-governmental entities should meet the conditions as set under §325.126(g) and (h), as well as (i). ECO saw no difference in the importance of this information from private companies to governmental or quasi-governmental agencies.

The commission agrees with the commenter and the rule have been changed in §325.126(l). The commission also agrees with the comment that governmental and quasi-governmental agencies

should comply with §325.126(i) and this has been included in the rules. However, the commission will not charge governmental and quasi-governmental agencies a fee as set forth in §325.126(h). The proposed rules already require them to comply with §325.126(g).

ECO requested clarification of §325.128 concerning the issuance of reprimands, suspensions, or revocations of certificates or other penalties. ECO requested a means of protest or challenge to this enforcement.

The commission agrees with the commenter and the rules have been revised to state that the executive director issues reprimands, suspension, and revocation of certificates. The rules governing hearings are located in 30 TAC Chapters 39, 55, and 80.

ECO strongly objects to this entire section. The issuance of these certificates, which hold the jobs of many people in the balance, should not be based on alleged incompetence by the public. The TNRCC, by its very nature, is in the best position to judge the competency of an operating company. Even the executive director's judgment may be challenged. This could easily be turned into a witch-hunt.

The commission explains that this is an interim rule and will be phased out on June 1, 2001.

ECO asked if to retain a perpetual certification, one must meet both the September 1, 1985 rule, and have 30 years of experience, or just one of these conditions?

The commission clarifies that §325.432, titled Perpetual Certificates, will only be effective until June 1, 2001. Perpetual certificates issued by the Texas Department of Health prior to September 1, 1985 will continue to be exempt from the certification renewal requirements until June 1, 2001, at which time all perpetual certificates will be converted to active or honorary certificates. Additionally, operators with renewable certificates may apply for and obtain a perpetual certificate, upon verification of 30 years of continuous certification as a wastewater operator, until June 1, 2001.

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under HSC, §§341.031, 341.033, and 341.034, which authorize the commission to adopt and enforce rules to implement the water operator certification program.

CHAPTER 290. PUBLIC DRINKING WATER

SUBCHAPTER B: CERTIFICATION OF WATERWORKS PERSONNEL

§§290.27 - 290.36

§290.27. General.

§290.28. Definitions.

§290.29. Administration.

§290.30. Qualifications.

§290.31. Applications.

§290.32. Examinations.

§290.33. Certificates.

§290.34. Training Approval.

§290.35. Reciprocity.

§290.36. Fees.

SUBCHAPTER C: PERMIT APPLICATION

30 TAC §290.37

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (HSC), §§341.031, 341.033, and 341.034, which authorize the commission to adopt and enforce rules to implement the water operator certification program.

§290.37. Processing Permit Applications for Water Hygiene Operations.