

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 19, 2010

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard A. Hyde, P.E., Deputy Director
Office of Permitting and Registration

Docket No.: 2010-0623-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 30, Occupational Licenses and Registrations
Review and amend, repeal or add as necessary provisions to Chapter 30,
Subchapter F
Rule Project No. 2010-013-030

Background and reason(s) for the rulemaking:

30 TAC Chapter 30, §30.201(b) requires that at least one individual who supervises or manages the operation of a municipal solid waste facility be licensed according to 30 TAC, Chapter 30, Subchapter A (relating to Administration of Occupational Licenses and Registrations).

30 TAC Chapter 30 rules effective September 27, 2007, required that effective September 1, 2009, all MSW facilities were required to have a supervisor who held the appropriate level of license for that particular type of facility. Before September 27, 2007, any level of MSW licensee could operate any type of facility, unless that facility's permit specified the level of license required. Because of the expressed concerns that there was not sufficient time or available training for the regulated community to comply with the September 1, 2009, deadline, a discretionary enforcement policy was approved allowing MSW facilities to be supervised with their current level of licensed supervisor until September 1, 2010, without the initiation of enforcement. The Office of Permitting & Registration (OPR) recommended that the above discretionary enforcement policy be modified and extended. The Office of Compliance and Enforcement has approved the recommended extension. Therefore, additional enforcement discretion will be given to allow the regulated community to become compliant with the Chapter 30 rules. This discretion will be in effect until December 31, 2011 to allow facilities ample time to obtain a supervisor holding the appropriate level of license.

30 TAC Chapter 30 rules effective September 27, 2007, stated that MSW provisional or solid waste facility supervisor in training letters that were issued before the effective date of the rules shall remain in effect until their expiration date and that no applications for provisional or solid waste facility supervisor in training letters will be accepted after September 1, 2008.

The regulated community has contacted the agency and voiced concerns that the current rules limit the types of facilities that a class 'A' MSW supervisor can oversee. The issue being that individuals who obtained their class 'A' license prior to September 27, 2007, had to complete the training and pass the examination for the lower levels of licenses (progression method) prior to being issued a class 'A' license. Therefore these licensees would be qualified to supervise any level or type of MSW facility. The regulated community feels that the current rules are creating a hardship by requiring those individuals having a class 'A' license to spend resources to obtain another license, when the class 'A' should be sufficient. Additionally, the regulated community has concerns that the elimination of the provisional licenses from the current rules hampers their ability to fill vacated

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positions. The provisional license allowed individuals that did not meet all of the licensing qualifications (i.e. educational, work experience) to supervise an MSW facility while completing the necessary requirements for obtaining the standard license.

Upon reviewing licensing data, it has been determined that of the approximately 477 individuals holding class 'A' licenses, over 95% had obtained their license under the pre-2007 rules that utilized the progression method and are qualified to supervise any type or level of MSW facility.

Additionally, it has been determined that the Type VII (land application facilities) and Type VIII (used or scrap tire facilities) should not be required to be supervised by an individual holding a MSW supervisor license.

Scope of the rulemaking:

The Occupational Licensing Section proposes to review and amend, repeal or add as necessary provisions to Chapter 30, Subchapter F in this rulemaking.

A) Summary of what the rulemaking will do:

- Amend 30 TAC Chapter 30 Subchapter F, to allow individuals holding class 'A' MSW Facility Supervisor licenses to supervise any level or type of MSW facility.
- Amend 30 TAC Chapter 30 Subchapter F, to add MSW provisional licenses which would allow individuals that did not meet all of the qualifications needed (i.e. educational, work experience) to obtain a standard license, to be issued a provisional license and supervise an MSW facility while completing the necessary requirements for obtaining the applicable standard license.
- Amend 30 TAC Chapter 30 Subchapter F, to exempt Type VII (land application facilities) and Type VIII (used or scrap tire facilities) from having to be supervised by an individual holding a MSW supervisor license.
- Amend 30 TAC Chapter 30 Subchapter F, to eliminate the class 'C' MSW facility supervisor license.
- Amend 30 TAC Chapter 30 Subchapter F, to add alternative training options for individuals applying for a class 'A' MSW facility supervisor license.
- Amend 30 TAC Chapter 30 Subchapter F, to reword and broaden the language where needed to:
 - Provide consistency for licensing requirements contained in this subchapter;
 - Improve readability and enhance enforceability of the rules; and
 - Make grammatical and punctuation corrections.

B) Scope required by federal regulations or state statutes:

None of the recommended rule changes are required by federal regulations or state statutes.

C) Additional staff recommendations that are not required by federal rule or state statute:

None

Statutory authority:

The amendments are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37 and THSC, Chapter 361. 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

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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.

Effect on the:

A) Regulated community:

The rule amendments will have a positive effect on the regulated community as the amendments will address issues raised with the current rules with regards to the class 'A' license and provisional licenses. Individuals currently holding a class 'A' license would not have the \$111 license fee expense of obtaining another level license, as well as the renewal fee associated to that license. Additionally, the rule amendments will have a positive effect on the regulated community, as the amendments will eliminate the requirements for Type VII (land application facilities) and Type VIII (used or scrap tire facilities) to be supervised by a licensed individual. The rule amendments will have an impact to those regulated entities that process medical waste and compost. The rule amendments will require individuals who manage or supervise specialized MSW facilities, such as medical waste and compost facilities complete specialized training that would be applicable to that facility prior to the issuance of a standard class 'B' MSW facility supervisor license. This specialized training will be an added expense for this part of the regulated community. Because of the limited number of these types of facilities the impact should be insignificant.

B) Public:

There will be no direct regulatory or fiscal impact to the public, and the environment, and public health will continue to be protected due to these rules. The duties currently being performed by TCEQ licensed MSW Facility Supervisors will continue to be done by competent, trained, and licensed professionals. These rules would not create a group of affected persons who were not affected previously.

C) Agency programs:

The program areas which might be affected are:

- Permitting & Registration Support Division;
- Field Operations Support Division;
- Regional Areas;
- Enforcement Division; and
- Waste Permits Division

Stakeholder meetings:

A stakeholder meeting was held on March 15, 2010, with the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council). The Council was very pleased to see that the agency was initiating rulemaking to address the concerns that had been voiced relating to the existing MSW facility supervisor licensing rules. The Council was very supportive of the suggested changes to the rules and offered their full support to the project.

A stakeholder meeting was held on March 16, 2010, with the Texas Lone Star Chapter of the Solid Waste Association of North America (TxSWANA). As with the Council, TxSWANA was very

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pleased to see that the agency was initiating rulemaking to address the concerns that had been voiced relating to the existing MSW facility supervisor licensing rules.

Public comment:

The commission held a public hearing on September 7, 2010. The comment period closed on September 13, 2010. The commission received comments from Republic Services, Stericycle, Inc. (Stericycle), Texas Environmental Training & Compliance, LLC (TETC) and The Lone Star Chapter of the Solid Waste Association of North America (TXSWANA). Republic Services supported adoption of the rules as proposed. Stericycle requested that Type V, Medical Waste Processing Facilities be exempted from the requirement to be supervised by an individual holding an MSW facility supervisor license. TETC was supportive of the agency correcting and updating references, however, asked the agency to reconsider some of the language used in the proposed rules. TXSWANA was supportive of the proposed rules, however, requested that certain additional provisions be included in the rules.

Significant changes from proposal:

Changes were made to §30.210, Qualification for Initial License, based on comments received. Those changes were:

To require an individual who manages or supervises specialized MSW facilities, such as medical waste and compost facilities complete specialized training that would be applicable to that facility. The individual would need to complete the training prior to the issuance of a standard class 'B' MSW Facility Supervisor license. The individual would be issued a provisional class 'B' license until completion of the specialized training.

Potential controversial concerns and legislative interest remaining after proposal and public comment:

Because of the regulated community's encouragement and support for amendments to 30 TAC Chapter 30, Subchapter F, and their comments supporting specialized training, staff does anticipate any controversy or legislative interest.

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

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

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

The agency could continue with the rules as they are. However, current rules:

- Create a hardship by requiring those individuals that obtained their class 'A' license through progression to spend resources to obtain another license to supervise those types of MSW facilities requiring a license other than the class 'A' (i.e. facilities requiring a class 'B' license);
- Hamper the regulated community from filling vacated positions with individuals that have MSW experience, but do not meet all of the qualifications necessary (i.e. educational, work experience) to obtain a standard license and are not able to obtain the necessary training in

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- a timely manner through the progressive method to allow them to obtain a standard license and supervise a facility; and
- Subject Type VII (land application facilities) and Type VIII (used or scrap tire facilities) to possible enforcement action for not having a licensed supervisor. Additionally, there would be the expense of having to maintain a licensed supervisor for facilities.

Key points in adoption rulemaking schedule:

***Texas Register* proposal publication date: August 13, 2010**

Anticipated *Texas Register* publication date: December 30, 2010

Anticipated effective date: January 5, 2011

Six-month *Texas Register* filing deadline: January 28, 2011

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