

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

The amendments to §30.387 and §30.402, as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5194) are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

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

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

Section 290.38(63) defines process control duties as "...Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director."

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

Once an individual has successfully completed the BEA training and passed the applicable exam, they are certified by the military to perform various duties relating to the drinking water distribution system. SAFB contends that active duty military personnel that have completed the BEA training possess sufficient knowledge and skill to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems and that the time and expense incurred by the military to have active duty military personnel take the additional training and exam to obtain a license issued by the executive director does not add to the protection of the environment or public health.

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

The rulemaking will amend Chapter 30 by adding a provision that defines a military

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

Section by Section Discussion

Subchapter K, Public Water System Operators and Operations Companies

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

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

adopted change is necessary to save the military the time and expense that is incurred by having active duty military personnel take the additional training and exam to obtain the license issued by the executive director.

Final Regulatory Impact Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the adopted rules are not subject to that statute. Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the adopted rules is to provide an exception for active duty military personnel who have successfully completed the BEA, or equivalent military training, to collect microbiological samples and determine disinfection residuals without obtaining a public water system operator license issued by the executive director. Additionally, the adopted rules will clarify the existing definition of operator-in-training. The adopted rules are not specifically intended to protect the environment or reduce risk to human health from environmental exposure, but rather to provide an exception for active duty military personnel from obtaining a license issued by the executive director, provided that they have sufficient training. The adopted rules will also provide clarification for the existing definition of operator-in-training. The adopted rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the

environment, or the public health and safety of the state or a sector of the state. Thus, the adopted rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis.

Furthermore, the adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

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

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. There were no public comments received regarding the draft regulatory impact analysis determination during the public comment period.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of the adopted rules is to provide an exception for active duty military personnel who have successfully completed the BEA, or equivalent military training, to collect microbiological samples and determine disinfection residuals without obtaining a public water system operator license issued by the executive director. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking will neither restrict nor limit the owner's right to property nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules are specific to certain functions within water distribution systems at military facilities and do not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted 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 adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no public comments received regarding the consistency with the coastal management program during the public comment period.

Public Comment

The commission held a public hearing on July 26, 2012. The comment period closed on August 13, 2012. The commission received one written comment from the Department of Defense (DOD). The DOD supported adoption of the rules as proposed.

Response to Comments

Comments to Subchapter K: Public Water System Operators and Operation Companies

Comment

In regards to the proposed revisions to Subchapter K, the DOD commented that it supported the commission's full adoption of the rules as published in the *Texas Register* on July 13, 2012. In particular, the amendment to §30.402, that exempts a military operator-in training from certain public water system licensing requirements.

Response

The commission acknowledges support of the rules by the DOD. The commission made no changes to the rules in response to this comment.

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

§30.387 and §30.402

Statutory Authority

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

water.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 37.002, 37.003, and 37.008, and THSC, §§341.033, 341.034, and 341.0315.

§30.387. Definitions.

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

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

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

(3) Military operator-in-training--An individual who is an active duty member of the military of the United States and has successfully completed the Bioenvironmental

Engineering Apprentice (BEA) or equivalent military training, as determined by the executive director, and collects microbiological samples and determines disinfection residuals for military facilities' water distribution systems. This individual may not perform any other process control duties in the water distribution or treatment facilities of a military installation.

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

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

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

(7) [(6)] Public water system operator--Licensed operator who performs process

control duties in production or distribution of drinking water.

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

§30.402. Exemptions.

(a) An individual who performs process control duties in production or distribution of drinking water for a transient non-community [noncommunity] water system as defined in §290.38(77) [§290.38(46)] of this title (relating to Definitions), is exempt from the licensing requirements of this subchapter, if the source water for the water system is purchased treated water or groundwater that is not under the direct influence of surface water.

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

(c) A military operator-in-training under the direct supervision of a licensed public

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

(d) [(c)] An individual who holds a groundwater or surface water license may perform duties relating to the operation and maintenance of drinking water production, purchased water, and water distribution systems and is not required to hold a distribution license.