

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 8, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2012-0610-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 30, Occupational Licenses and Registrations
Military Personnel Licensing Requirements
Rule Project No. 2012-024-030-WS

Background and reason(s) for the rulemaking:

As a result of a Public Water System comprehensive compliance investigation, Sheppard Air Force Base (SAFB) submitted a request to the TCEQ Public Drinking Water Program requesting an exception to the commission's rule requirement that all individuals who perform process control duties in the distribution of drinking water be licensed. Specifically, SAFB requested that individuals who have successfully completed the Bioenvironmental Engineering Apprentice (BEA) training be allowed to perform microbiological sampling and determine disinfection residuals within the military facility's water distribution system, without holding a public water system operator license issued by the executive director.

SAFB contends that active duty military personnel that have successfully completed the BEA training are certified by the military to perform various duties relating to the drinking water distribution system. These duties include collecting microbiological samples and determining disinfection residuals in the military facility's water distribution system. Therefore, the time and expense that would be incurred by the military to have active duty military personnel take the additional training and exams needed to obtain a license issued from the executive director does not add to the protection of the environment or public health.

Due to legislative interest, executive director's staff from the Field Operations Support Division, the Water Supply Division (Public Drinking Water Section) and the Permitting and Registration Support Division (Occupational Licensing Section) met and developed guidance to address SAFB's issue on an interim basis until rulemaking could be initiated.

The executive director's staff evaluated the BEA course, exam categories and questions and 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 within military facilities' water distribution systems.

The executive director's staff also recognizes, while the exception request came from SAFB, the majority of Texas military facilities utilize active duty military personnel to collect microbiological samples and determine disinfection residuals and would benefit from the exception.

Scope of the rulemaking:

Re: Docket No. 2012-0610-RUL

A.) Summary of what the rulemaking will do:

- Amend the 30 TAC Chapter 30 rules by adding a provision that would create a Military Operator-in-Training and allow active duty military personnel who have successfully completed the BEA or equivalent military training to collect microbiological samples and determine disinfection residuals within the military facility's water distribution system, without holding a public water system operator license issued by the executive director; and
- Clarify the existing definition of Operator-in-Training

B.) Scope required by federal regulations or state statutes: None

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

Statutory authority:

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 adopted to ensure the safe supply of drinking water.

Effect on the:

A.) Regulated community: The only effect to the regulated community would be to active duty military personnel who have successfully completed the BEA or equivalent military training. The rulemaking would allow these individuals to collect microbiological samples and determine disinfection residuals within military facilities' distribution systems without holding a public water system operator licenses issued by the executive director.

B.) Public: There is no anticipated effect to the public.

C.) Agency programs: There is no anticipated effect to the commission's programs.

The rulemaking would not create a group of affected persons who were not affected previously. There will be no fiscal impacts to the regulated community, public, or the commission.

Stakeholder meetings:

A stakeholder meeting was held on April 23, 2012. No one from the public or regulated community attended this meeting.

Commissioners

Page 3

June 8, 2012

Re: Docket No. 2012-0610-RUL

Potential controversial concerns and legislative interest:

Due to legislative interest, a permanent solution to the problem is being sought through rulemaking.

Will 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 commission could elect not to update the rules and continue to address the issue through the interim guidance developed to address the issue.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 27, 2012

Anticipated *Texas Register* publication date: July 13, 2012

Public hearing date: July 26, 2012

Public comment period: July 13, 2012 – August 13, 2012

Anticipated adoption date: December 5, 2012

Agency contacts:

Terry Thompson, Rule Project Manager, 239-6095, Permitting and Registration Support Division

Jessica Rogers, Staff Attorney, 239-0627

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

None

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Office of General Counsel
Terry Thompson
Bruce McAnally