

# Texas Commission on Environmental Quality Drinking Water Advisory Work Group (DWA WG) October 19, 2010

## Program Updates

Occupational Licensing Update: Allan Vargas/Meagan Warncke/Terry Thompson -  
Meagan Warncke - Point Of Contact (POC) for occupational licensing  
Terry Thompson - POC for Rules or Policy changes.

- Water Operator Licensing Statistics – September 2010

Number of Applications Received (new & renewal)	464
Number of Examinations Administered	415
Number of New Licenses Issued	297
Number of Licenses Renewed	304
Number of Licensed Water Operators	16430

- Computer Based Testing (CBT) Update  
The “D” water exam has been updated and is available in both paper exams and CBT. The only other scheduled update for water exams is to remove the essay questions from the Water “A” exam and convert it to a completely multiple choice exam. It is anticipated that this will be completed sometime in early 2011. Timing is dependent on completing other exam revisions necessary due to rule changes for the OSSF and MSW programs.
- Surface Water (SW) Job Task Analysis  
We have received the final deliverable and are using it to update the water and waste water exams. We have just signed a new contract for the Ground Water Job Task Analysis which will run from October 1, 2010 – August 31, 2010. We would like to thank the Drinking Water staff for their help and input on the job analysis, particularly Cindy Haynie.  
**Texas Small Public Water System Training Program (TSPWSTP) Joy Schultz –**
- Texas Small Public Water System Training Program (TSPWSTP) Background Information. The Environmental Protection Agency (EPA) awarded federal grant funds between 2002 and 2003 to the Texas Commission on Environmental Quality (TCEQ) for expense reimbursement of operator certification programs pursuant to section 1419 (a) of the Safe Water Drinking Act. In 2004, the Texas Small Public Water System Training Program (TSPWSTP) was implemented to administer grant funds. The TSPWSTP reimbursed the training and licensing costs of personnel operating community or no transient/noncommunity systems serving 3,300 persons or fewer. Cluster training and classroom training was available through contracted training providers. As per request by the EPA, the program focuses much of its efforts on counties impacted by Hurricanes Ike and Gustav.

## II. Participation Statistics:

Since 2004, the TSPWSTP enrolled 75 percent (3,544) of the 4,783 eligible public water systems. Over the life of the program 10,971 operators were enrolled, with 7,929

actively enrolled at the conclusion of the program. The program successfully offered 791 clusters course I events, 452 cluster course II events, and 1,342 classroom events.

### **III. Licensing Fees Reimbursed**

Between November 2004 and August 2010, the TSPWSTP has reimbursed the costs of 4,769 licenses. Of the licenses reimbursed, 3,216 were newly issued and 1,421 were renewals. The D water operator license has accounted for approximately thirty-five percent of license reimbursement costs.

### **IV. Outreach Efforts and Projects**

During Fiscal Year (FY) 2010, program staff attended eight regional schools throughout Texas to continue to recruit new program members as well as provide on-site customer support. Having addressed the general assembly's at these schools, program staff reached an estimated combined audience of 1,600. Furthermore, in FY 2010 the program distributed approximately 1,200 Basic Water Works Operations manuals and technical DVDs to new program members. In March 2010, TSPWSTP began working with two state Workforce Solutions offices to reach anyone interested in becoming a D licensed water operator by volunteering for small water systems already enrolled in the TSPWSTP. In May 2010, the TSPWSTP worked with the EPA to develop and nationally present detailed information to other states with similar programs regarding how funds have been expended over the life of the TSPWSTP. This presentation also included detailed information on which outreach efforts were the least and most effective. As the program drew to a close, excess program manuals and training materials were distributed to systems and operators who had not taken full advantage of program benefits.

### **V. Program Conclusion**

The TSPWSTP expired August 31, 2010.

Plan & Groundwater Review Section Technical Review and Oversight Team (TROT)

Update: Reyna Holmes Emergency Preparedness Plans (EPP)

**Utilities & Districts Section Update: Tammy Benter, Manager –**

**Gregory Charles -**

- Rule Petition to amend 30 TAC Section 293.44(a)(8)  
The Commission received a petition on May 28, 2010, seeking to amend 30 TAC Section 293.44(a)(8). On July 28, 2010, the Commissioners approved the rulemaking petition and directed the Executive Director to initiate the rulemaking process. The proposed rule allows districts to fund more than the pro rata share of oversized water, wastewater, and/or drainage facilities to serve areas outside the district.

The rule is scheduled to go to the Commissioners agenda on December 14, 2010. The comment period is set to begin December 31, 2010, and the rule public hearing is set for January 25, 2011.

**Skip Ferris –**

- Regulatory Guidance Update - DRAFT RGs listed are as follows:
  - \* Leased Water and Wastewater Treatment Plants
  - \* Purchase of Facilities
  - \* Escrow / Do Not Expend - Project Documents
  - \* Excavation Costs
  - \* Developer Interest

## **Leased Water and Wastewater Treatment Plants - DRAFT**

Applicable Statutes or Rules

30 Texas Administrative Code (TAC) Section 293.46 Construction Prior to Commission Approval

30 TAC Section 293.47 Thirty Percent of District Construction Costs to be Paid by Developer

30 TAC Section 293.63 Contract Documents for Water District Projects

Texas Water Code Section 49.273 Contract Award

### **Background**

Some districts lease prefabricated interim packaged water/wastewater treatment plants in lieu of constructing onsite permanent facilities. Some leased projects have not followed bidding requirements or did not receive required approvals<sup>1</sup>. Some districts request a waiver of the 30% developer contribution requirement (30 TAC Section 293.47) based on having or obtaining a ratio of debt (including proposed debt) to assessed valuation of 10% or less. However, for a waiver to be granted, 30 TAC Section 293.47(a)(1) requires a bond issue to include funds to provide sufficient capacity in specified types of facilities to serve all connections upon which the feasibility is based or to be financed by the bond issue. Therefore, granting of the waiver may require a district to purchase leased water/wastewater treatment plants. Some of these lease agreements include purchase-option provisions; other lease agreements, however, do not and require amendments for processing of a bond application to ensure the permanency of the available capacity.

Seeks to clarify Commission rules regarding district funding of leased water and wastewater facilities using bond proceeds<sup>2</sup>.

### **Regulatory Guidance**

1. Plans and specifications for a leased facility must be signed and sealed by a professional engineer licensed by the State of Texas in accordance with the Texas Engineering Practice Act (TEPA), unless the facility is exempt from the TEPA.
2. Plans and specifications for a leased facility must be approved by all entities with jurisdiction in accordance with 30 TAC Section 293.46(3) unless documentation is provided showing that an entity waived the necessity for such approval.
3. Whether leasing only, leasing with an option to purchase, leasing/purchasing, or expanding a facility, a district must follow the competitive bidding requirements set forth in Texas Water Code Section 49.273 in connection with (a) the facility and (b) a contract for site preparation work that must be performed in conjunction with the facility. The facility and site preparation work can be bid as one or more contracts. The agreement for construction/installation of the facility cannot contain terms and conditions that have the effect of preventing expansion of the facility by a different party other<sup>3</sup> than the lessor. For purposes of determining the value of the contract under Texas Water Code Section 49.273, lump sum amounts, the sum of all lease payments due under the lease for the duration of the lease term, plus any additional payment(s) that must be paid to the lessor to acquire the facility pursuant to a purchase option at the expiration of the lease term must be considered.

4. A bond applicant seeking a waiver of the 30% developer contribution requirement under 30 TAC Section 293.47 based on having or obtaining a ratio of debt (including proposed debt) to assessed valuation of 10% or less must include funds to provide sufficient capacity in plant(s) serving the district. If one or more plants are leased, the district can satisfy this requirement<sup>3</sup> by demonstrating that the revenue from the maintenance tax and other operating funds generate revenues that are sufficient to meet operating expenses including the lease payments on the plant(s) without developer advances, and by demonstrating that the combined projected and no-growth tax rate(s) meet the requirements in 30 TAC Section 293.59. If the maintenance tax and/or other operating funds tax do not generate revenues sufficient to meet operating expenses including the lease payments, the district must either (a) include funds in the bond application to purchase the plant(s), or the portion of the plant(s) required to serve the connections upon which the feasibility is based or which are being funded by the bond<sup>3</sup> issue, whichever is greater, under the lease purchase option(s); or (b) include funds in the bond application to construct capacity in a permanent plant.

### **Leased Water and Wastewater Treatment Plants Purchase of Facilities - DRAFT**

Applicable Statutes or Rules

30 Texas Administrative Code (TAC) Section 293.69 Purchase of Facilities

#### **Background**

Under 30 TAC Section 293.69, the executive director must provide written approval to finalize a purchase of facilities by a district, or a reimbursement of funds to, a developer, investor-owned utility, or water Supply Corporation. This approval is subject to an inspection and a report of the condition of the facilities from the district's engineer. The ED may also inspect the facilities. Before mid-2007, all purchase of facility requests were processed by the Districts Review Team. Following a policy change, a bond issue order or other approval may have allowed for a district to purchase facilities upon receipt of a pre-purchase inspection report from the field office stating that no deficiencies were noted.<sup>1</sup>

The document seeks to clarify when a Commission pre-purchase inspection will be required, and the type of documentation required prior to purchasing a facility or reimbursing a developer, investor-owned utility, or water supply corporation.<sup>1</sup>

#### **Regulatory Guidance**

1. If the bond order or other approval authorizes purchase of facilities contingent upon district receipt of a field office pre-purchase inspection report stating that no deficiencies are noted, the district's board of directors may purchase the facilities with no additional approvals, even if the field office letter states that a letter from TCEQ is required. The approval is valid for 120 days from (a) the date of the order approving the bonds, or (b) the letter approving the application request. If

- deficiencies are noted at the time of inspection, a copy of the inspection report must be submitted to the executive director along with a request for the authorization to purchase. The related field office pre-purchase inspection must be conducted after the bond order or other approval.<sup>1</sup>
2. The provision to purchase facilities upon receipt of a pre-purchase inspection report stating that no deficiencies are noted does not apply to the use of proceeds from a bond anticipation note.<sup>1</sup>
  3. If the facilities to be purchased are located within the corporate limits of a municipality, and are transferred to the municipality, then a Commission pre-purchase inspection will not be required, as long as the municipality has indicated in writing that it waives any requirement for an inspection as specified in 30 TAC Section 293.69(h), and the letter has been provided with a bond issue or other application seeking funding approval.<sup>1</sup>
  4. Subject to a district's contractual obligations, if facilities have been conveyed to and are maintained by a district upon completion of construction, and if the Commission field office has provided a final inspection report stating that deficiencies were noted, then the ED may withhold approval of the purchase until deficiencies are corrected.<sup>1</sup>

**Purchase of Facilities**

Stakeholder and Staff Comments	Included in Document?
Stakeholder comment was a pre-purchase inspection by the TCEQ is not required for recreational or road facilities.	Not included: Rule does not make a distinction as to the type of facilities that must be inspected.
Stakeholder comment was to allow a copy of the certificate or letter of acceptance from the municipality, a conveyance document signed by the municipality, or a utility agreement in lieu of a signed letter.	Not included: Rule specifically states that they must indicate in writing to the District that it waives the requirement for inspection.
Stakeholder comment was if the facilities have been conveyed and/or are owned by and are to be, continuously maintained by the District upon completion of the construction and the TCEQ has inspected and approved the facilities in accordance with 30TAC §293.65, the district shall thereafter be responsible for the cost of maintaining the facilities and repairing damages to the facilities	Included: Stakeholders want clarification to indicate which entity is responsible for the maintenance of facilities after a final inspection occurs and before reimbursement occurs. Wording has been modified to make the document more concise.
Stakeholder comment was the District shall require homebuilders to be responsible for the costs incurred by the District to repair damages to the facilities caused by the homebuilders.	Not included: The responsibility for maintenance and repairs of facilities should be a contractual matter between the District and the Homebuilder.
Staff comment was the developer should not be responsible for repairs or damages incurred between the time of the final inspection and the time that reimbursement occurs.	Included: Guidance document clarifies which entity is responsible for the maintenance of facilities after a final inspection occurs and before reimbursement occurs.

Stakeholder comment was TCEQ field office has 30 days from a request for authorization to purchase facilities to provide a letter either approving or disapproving the facilities.	Not included: Would shift responsibility for authorizing the approval or disapproval of a purchase of facilities from the central office to field office staff and a 30 day time frame is not rule based and is likely to be impracticable.
Staff comment was written approval or disapproval of the facilities shall be issued from the Austin office within 30 days after the receipt of a written request from a district or a district's authorized representative.	Included: Provides clarification for the time in which approval or disapproval is issued. Also clarifies that approval or disapproval will come from the Austin office.
Stakeholder comment was even if a letter from the field office states that a letter from the Austin office is required it should not be if inspection shows no deficiencies.	Included: RG indicates to a district that they may proceed with the purchase of facilities upon receipt of an inspection report stating that no deficiencies are noted.
Stakeholder comment was approval being valid for 120 days from 1) the date of the order approving the bonds, or, 2) the letter approving the surplus funds requests should be modified to 120 days from field office memo.	Not included: The 293.69 rule requires the 120 days to be based on executive director approval.
Staff comment was the provision to purchase facilities through bond proceeds or the approval of surplus funds shall not apply to the use of proceeds from a bond anticipation note.	Included: A pre-purchase inspection and request for authorization to purchase the facilities with BAN proceeds must be submitted since there is no prior letter or order authorization to purchase.
<sup>1</sup> Paragraph modified slightly by Todd G.	

**Escrow / Do Not Expend - Project Documents - DRAFT**

Applicable Statutes or Rules

Texas Water Code Section 49.181 Authority of Commission over Issuance of District Bonds

30 Texas Administrative Code (TAC) Section 293.84 District Use of Escrowed Funds

**Background**

Texas Water Code Section 49.181(g) allows the Commission to approve bond issues without plans and specifications being available and to condition approval on terms considered appropriate by the Commission. If project documents are not available, a bond order may direct funds to be escrowed. Application requirements for requesting the release of are available are presented in 30 TAC Section 293.84. Before mid-2007, project costs were directed to be escrowed until Commission receipt of certain project documents. After mid-2007, staff has either directed a district's board not to expend funds or required that project funds be escrowed until Commission receipt of the necessary documentation<sup>1</sup>.

This document seeks to give Commission staff, the regulated community, and the public guidance on the interpretations of Commission rules regarding release of bond funds from escrow and when bond funds will be escrowed versus directing the district’s board of directors not to expend the funds<sup>2</sup>.

**Regulatory Guidance**

If there are projects for which approved plans or other required documents have not been provided, then the order approving the bond application will direct the district to either not expend funds or escrow funds until all necessary documentation is available to the board of directors or the Commission, as directed in the order. Examples of the types of projects, that the board will generally be directed not to expend funds (in lieu of an escrow requirement) include, but are not limited to<sup>1</sup>:

- Rehabilitation of wastewater collection systems
- Improvements to existing water plants, including water well projects, repainting, additional booster pumps, additional pressure tanks, or additional ground storage tanks, as long as the related existing plant/facility site is adequately sized for the improvements and a well permit is not needed
- Emergency generators, as long as the related existing plant/facility site is adequately sized for the generators
- Improvements to existing wastewater treatment plants, as long as the related existing plant/facility site is adequately sized for the improvements and a new discharge permit is not needed
- For other types of projects, including shared facilities where evidence of fund availability for all costs has not been provided; funds may be recommended for escrow.<sup>1</sup>

2. If funds are directed to be escrowed, the district is required to submit an application to request a release from escrow (see 30 TAC Section 293.84 for application requirements). Escrow release applications may be submitted on an expedited basis.

Escrow / Do Not Expend - Project Documents

Stakeholder and Staff Comments	Included in Document?
Under no. 2 Background, first paragraph, last sentence, stakeholders' comment was to delete the "s" from the word "requires".	Included. This change more clearly defines this document.
Under no. 3 Regulatory Guidance, first paragraph, last sentence, stakeholders' comment was to move "for the following instances" from the end of the sentence to the beginning of the sentence.	Included. This change more clearly defines this document
Under no. 3 Regulatory Guidance, stakeholders' comment was make the following changes: (a) remove the word "either" and "or escrow funds" from the following sentence: ...will direct the district to "either" not expend funds" or escrow funds" until all necessary documentation is available. (b) delete the entire	Not Included. Changes the intent of 30 TAC Section 293.84, District Use of Escrowed funds. 30 TAC Section 293 rules provide for to Commission review of projects, either during processing of a bond issue or in subsequent applications such as an escrow release. The stakeholders' requested changes would

<p>section starting with the sentence: "For the following instances, a District's board will generally be directed not to expend funds: ....", (c) delete the sentence: "For all other instances, funds will be recommended for escrow", and (d) add the bold words and strike out the italicized words to the following sentence: "If there are projects for which approved plans or other required documents, including plan approval or recorded deeds or easements, have not been provided, then the order approving the bond application will direct the district to either not expend funds or escrowfunds until all necessary documentation is available."</p>	<p>have denied the Commission staffs opportunity to review projects and determine their eligibility based on required project documents (plans, specifications, etc.) as required by TWC 49.181(b) and 30 TAC Section 293 rules.</p>
<p>Staff recommends no changes to the existing RG, "Escrow Releases."</p>	<p>The RG reflects staff policy since summer 2007.</p>
<p>Paragraph modified slightly by Todd G. Paragraph added by Skip F.</p>	

**Excavation Costs - DRAFT**

**Background**

In certain areas of the state, excavation of a typical 60-foot street right-of-way (ROW) has been performed in lieu of or in combination with clearing and grubbing to facilitate the installation of water, wastewater, and drainage facilities. Since the late 1980s, the Commission has approved bond issues that include up to 50% of excavation costs within street ROWs. Since 2008, some districts have requested funding of both clearing and grubbing, and excavation costs, and the Commission has approved varying percentages of excavation costs to be allowed to be funded by a district.

This document seeks to establish a consistent standard for approval of excavation costs.

**Regulatory Guidance**

Based on field conditions, excavation of a street ROW is sometimes considered a necessary part of street construction, and facilitates the installation of underground facilities by:

- Removing and disposing of material from the street ROW area
- Leveling the ground surface so trench-digging equipment can operate properly
- Reducing the depth of the trench required for utilities

To the extent that standard water, wastewater, and drainage facilities are within a 60-foot ROW, requested excavation costs up to 50% of total excavation costs will be allowed. If the ROW is greater than 60 feet, or if the ROW does not include all three district utility types (that is, water, wastewater, and drainage), excavation costs allowed will be reduced proportionately<sup>1</sup>. This document does not waive competitive bidding requirements for excavation cost

**Excavation Costs**

Stakeholder and Staff Comments	Included in Document?
<p>In version 3, stakeholder comment was to add the bold wording and in italics to the following sentence in the Background paragraph: So, developers in those geographical areas requested a portion of the excavation costs within the ROW to be reimbursed, instead in addition to of clearing and grubbing costs.</p>	<p>Not included. Deleted to keep background clear and concise.</p>
<p>In version 3, stakeholder .comment was to add the following sentences to the background paragraph: In recent years, both clearing and grubbing and excavation costs have been have been requested. A typical subdivision will have internal streets with ROW widths of about 60 has been included but re-worded. feet. Within that 60 feet ROW, a street will be constructed with utility easements 30 foot feet wide to contain the water, wastewater and drainage facilities that will be financed by the District.</p>	<p>First sentence has been included. The second sentence has been included, but re-worded. The third sentence</p>
<p>In version 3, stakeholder comment was to add the bold wording and strike out the words in italics to the following sentences in the Draft Regulatory Guidance portion of the RG: . A typical subdivision will have internal streets with ROW widths of about 60 feet. Within that 60 feet ROW, a street will be constructed with utility easements 30 feet wide to contain the water, wastewater and drainage facilities that will be financed by the District. That 30 foot portion containing the utility easements will also be used by the street. Roads are not eligible for district expenditures['293.44(a)(3)], so assuming excavation benefits the street and the utilities equally, The pro rata share of the excavation costs that benefits the District is 50%, subject to '293.44(a)(3). This document does not waive competitive bidding requirements for excavation costs. Where construction contracts include line items for both clearing and grubbing and excavation costs, both the clearing and grubbing and excavation costs will be allowed.</p>	<p>The first three sentences are not included. They have already been defined in the Background paragraph. The fourth sentence has not been included. The fifth sentence has been included but without referencing 293.44(a)(3). The sixth sentence has been included. The seventh sentence has been included but reworded to the keep the focus on excavation and not clearing and grubbing.</p>

<p>In version 3, Commission legal staff considers that adding excavation costs may require a rule change instead of a guidance document.</p>	<p>Staff considers that since generally 50% of excavation has been approved since the late 1980s, funding should be allowed for 50% of the costs.</p>
<p>Staff recalls that in the Austin and Dallas areas, excavation costs were permitted instead (not in addition to) clearing and grubbing costs.</p>	<p>Not included to keep RG clear and concise.</p>
<p>Staff recalls that requests for both clearing and grubbing and excavation costs are relatively new.</p>	<p>Not included to keep RG clear and concise.</p>
<p>Staff would like to add "based on a typical 60' ROW" for clarification.</p>	<p>Included.</p>
<p>Lyndon Poole offered the following: Please consider revising this guidance to reflect the following pro rata shares, using the 60-ft total ROW as an example:</p>	<p>Not included. Majority of staff has agreed that 50% of excavation costs are a benefit to district until a rule change happens.</p>
<p>For 30-ft Utility Easement(s):  District Share=50% .  Developer Share=50%  For 30-ft Road Portion:  Developer Share=100%  Lyndon believes this breakdown would more closely reflect the spirit of the clearing and grubbing rule (i.e. developer is responsible for costs associated with developer road, and costs for shared easements are shared equally)</p>	
<p>Ruben Soto offered the following: As Todd pointed out, there is no rule definition for clearing and grubbing. So what justifies a clearing and grubbing project vs. an excavation project in the context of District development? As it stands, there is no standard by rule. for clearing &amp; grubbing and obviously no rule exists for excavation. I was thinking that in order to get a better grasp of this, the term above should be changed to something of a more standard phrase like, "clearance of ground" or "ground removal", either one (to mean clearing &amp; grubbing and excavation). So the rule, if written, would no longer just be for clearing &amp; grubbing but would also include excavating. The phrase may read something like, "Ground Removal (to mean clearing &amp; grubbing and excavation)". Now in order to come up with a</p>	<p>Not included. Majority of staff has agreed that 50% of excavation costs are a benefit to district until a rule change happens.</p>

<p>definition for "Ground Removal" maybe we can come up with a measuring stick, if you will, to determine what is clearing &amp; grubbing vs. excavation to be all inclusive. Here is my recommendation - have a minor, moderate and major category.</p> <p>It would look something like this:  Ground Removal (to mean clearing &amp; grubbing and excavation):  Minor equals 0' - 3'  Moderate equals 4' - 5'  Major equals 5' or more.</p> <p>The above criteria would now give a rule definition as to what is clearing &amp; grubbing and would also now include a standard by rule for excavation which in reality would now include both clearing &amp; grubbing as well as excavation.</p>	
<p><sup>1</sup> Word changed by Todd G.</p>	

**Developer Interest - DRAFT**

Applicable statutes or rules

30 Texas Administrative Code (TAC) Section 293.46 Construction Prior to Commission Approval

30 TAC Section 293.50 Developer Interest Reimbursement

**Background**

30 TAC Section 293.46 provides guidelines for a developer proceeding with construction prior to Commission approval of the project. 30 TAC Section 293.46(3) requires that construction plans and specifications have all required approvals prior to construction contract award, and specifies a penalty for not receiving prior approvals. 30 TAC Section 293.46(5) requires contract advertising, award, construction, and installation of facilities to be in substantial compliance with statutory requirements and discusses the limitation of reimbursement to a developer if substantial compliance is not met.

This document seeks to give Commission staff, the regulated community, and the public guidance on the interpretations of Commission rules regarding timely construction, plan and specification approvals, contract advertising, and contract awarding.

**Regulatory Guidance**

1. If a design engineer can provide sufficient documentation from the city or agency with jurisdiction over the project which supports the design engineer’s position that city or agency approval was not necessary, then no reduction in developer interest reimbursement on Commission-approved costs for lack of plan approval prior to contract award or project construction will occur<sup>1</sup>.
2. If approval(s) of plans and specifications by all entities with jurisdiction are not obtained prior to construction contract award, a developer cannot be reimbursed for any additional costs (including interest) resulting from changes required by the city or agency having jurisdictional responsibility after the construction contract is awarded [see 30 TAC Section 293.46(3)].
3. If at the time of submission of a bond application to the Commission for review, construction plans and specifications have not been approved by all cities and agencies having jurisdictional responsibilities over the district, bond proceeds for that project will be escrowed until such time as all approvals have been granted and the district submits a request for release of escrowed funds. An engineer’s certificate of completion or an amended engineer’s certificate of completion for a project must be provided, and must<sup>2</sup> be dated after the date of the final project approval(s). Additionally, reimbursable developer interest shall be calculated through a date that is no later than the bond closing date.
4. If contract advertising, award, construction, or installation of facilities is not achieved in substantial compliance with statutory requirements, developer interest associated with project costs may be denied pursuant to 30 TAC Section 293.46(5). Commission staff will not deny interest solely because necessary plan approvals were not obtained prior to contract award or project construction.

\*This document supersedes any previous guidance document/letter regarding plan approval/developer interest.

Stakeholder and Staff Comments	Included in Document?
	The Background discussion has been modified to more accurately reflect the background of the developer interest as it relates to timely plan approval.
Stakeholders have suggested excluding the following sentence from the 3. Draft Regulatory Guidance section: <del>If plan approvals are not obtained prior to initiation of construction, the following apply:</del>	Included. This change more clearly defines this document.

Stakeholders have suggested including item no. 1 from the 3. Draft Regulatory Guidance section: If plan approvals are not obtained prior to initiation of construction, then a developer cannot be reimbursed for additional costs resulting from changes required by a city or other agency, or for developer interest only on that portion related to such changes, when the developer failed to get all necessary approvals for plans and specifications before awarding the contract, but otherwise shall not be penalized for lack of plan approval subject to paragraph 4 below.

Included. This language is included in §293.46(3) and included in this document, but in a different location.

Stakeholders have suggested including the words: the developer's, whether, and or otherwise. Suggested sentence to read: item no. 2 from the 3. Draft Regulatory Guidance section; If a design engineer can provide documentation (written correspondence, emails) to support the developer's understanding that review was not necessary, then there would be no reduction in developer reimbursement for lack of plan approval whether prior to construction or otherwise.

Included whether and or otherwise, but excluded the developer's. item no. 1 from the 3. Draft Regulatory Guidance section of this document to more accurately reflect the intentions of the TCEQ rules by placing the burden on the design engineer.

Stakeholders have suggested excluding the following: item no. 3 from the 3. Draft Regulatory Guidance section ~~A developer cannot be reimbursed for additional costs resulting from changes required by a city or other agency when the developer failed to get all necessary approvals for plans and specifications before awarding the contract.~~

Not included. The language requested to be removed has been included in this document to reflect the requirements of 30 TAC Section 293.46(3).

Stakeholders have suggested including item no. 3 from the 3. Draft Regulatory Guidance section: 3. If plan approvals are not obtained prior to initiation of construction, then a district should obtain all necessary plan approvals and the TCEQ shall not deny or otherwise limit developer interest for plan approvals obtained after construction is initiated or completed, subject to paragraph 4 below.

Included. This change has been modified slightly and is included in this document.

Stakeholders have suggested excluding the following: item no. 4 from the 3. Draft Regulatory Guidance section ~~construction plans and specifications have not been approved by all cities and agencies having jurisdictional responsibilities over the district, bond proceeds for that project will be escrowed until such time as all approvals have been granted and the district submits a request for release of escrowed funds, or~~

Not Included. Stakeholders apparently do not want funds escrowed until plan approvals have been obtained. They prefer we direct the board not to expend these funds until plans are approved. This document specifies that funds for projects which do not have appropriate approvals will be escrowed to allow for project review.

Stakeholders have suggested including the word only. Suggested sentence to read: Developer interest may be denied only when contract advertising, award, construction and installation of facilities are not achieved in substantial compliance with statutory requirements.

The word only has not been included and the sentence has been modified to more accurately reflect the requirements of 30 TAC Section 293.46(5)

The following has been deleted: Developer interest on change order amounts may be denied when the change order is not in compliance with statutory requirements (30 TAC §293.81). This does not need to be included since this is discussed previously in this document and contradicts the requirements of 30 TAC Section 293.81.

Staff has suggested that the first paragraph under the 3. Draft Regulatory Guidance section: "The goal of this regulatory guidance document is to give TCEQ staff, the regulated community, and public guidance on events to occur prior to projects being constructed, encourage compliance and to have high quality water, wastewater, and drainage systems." is not accurate since the document would not provide for high quality water, wastewater, and drainage systems.

Included. The paragraph has been modified to more accurately reflect the purpose of this document.

Staff has suggested that item no. 1 from the 3. Draft Regulatory Guidance section (If plan approvals are not obtained prior to initiation of construction, then a developer cannot be reimbursed for additional costs resulting from changes required by a city or other agency, or for developer interest only on that portion related to such changes, when the developer failed to get all necessary approvals for plans and specifications before awarding the contract, but otherwise shall not be penalized for lack of plan approval subject to paragraph 4 below) not be included since it is covered by 30 TAC Section 293.46(3) and elsewhere in this document.

Concur with staff and language has not been included in this document.

Staff has suggested that the document could be reduced to item no. 3 from the 3. Draft Regulatory Guidance section (3. If plan approvals are not obtained prior to initiation of construction, then a district should obtain all necessary plan approvals and the TCEQ shall not deny or otherwise limit developer interest for plan approvals obtained after construction is initiated or completed, subject to paragraph 4 below).

This document does not reflect the suggestion by staff.

Staff has suggested that the Stakeholder proposed deletions: ~~construction plans and specifications have not been approved by all cities and agencies having jurisdictional responsibilities over the district, bond proceeds for that project will be escrowed until such time as all approvals have been granted and the district submits a request for release of escrowed funds, or.~~ would not allow staff to review approved plans/specifications and final project costs if changes are required to get plan approvals.

Concur with staff and the requirement to escrow certain funds has remained in this document.

Staff has stated that they disagree with version 3 here since it does not provide a penalty for not getting plan approval prior to construction as previous guidance documents did; but staff considers that if managements decision is to go ahead then to make the document less confusing by:

(1) deleting “encourage compliance, and to have high quality water, wastewater, and drainage systems” from the first paragraph under 3. Draft Regulatory Guidance since compliance is not being encouraged by less of a penalty than previous guidance documents on developer interest, and

(2) deleting paragraphs 1, 2, and 4 under 3. Draft Regulatory Guidance since they do not clarify. Item 1 merely states an existing rule that is referenced in Section 1 of the guidance document. Item 2 seems unnecessary since it is irrelevant what a developer thinks regarding plan approval since it is the engineer’s responsibility to make sure plan approvals are obtained, and it states the same thing as item 3. Item 4 is unnecessary since there is a guidance document on escrowing funds if approved documents are not provided; however, if item 4 remains then the strikeout should be removed and expenditure of funds be subject to review by TCEQ staff (if a district board did not insure that required approvals are obtained prior to construction then it is unlikely they would do so after the fact) to review projects when required documents are available.

Partially concur with staff; however, the suggested language and deletions by staff have been modified to more accurately reflect the purpose of this document, and to reflect that the penalty is no change order costs as a result of late plan approvals.

Staff has suggested that developer interest should be denied for lack of proper plan approvals as a protection mechanism for district residents from potentially expensive and/or unsafe design conditions. Staff indicates that 30 TAC Section 293.46(5) and the Texas Health and Safety Code Section 341.035 gives the Commission the authority to deny developer interest when approval of plans and specifications was not obtained prior to construction of public water supply projects. Staff has also suggested that the "escrow" process rather than the "not to expend process," as discussed above, should be used. Staff has indicated that the determination of who is included in "all entities with jurisdiction" should be left to the Commission and not to a district board. Staff has also indicated replacing the escrow process with a "direct the district not to expend pending receipt" scenario would set a more permissive environment for non-compliance. This scenario would also limit the Commission's ability to review and determine eligibility of project costs, and could ultimately set the stage for irresponsible use of taxpayer dollars.

The denial of developer interest as suggested by staff has not been included; however, this document accurately reflects the 293 rules regarding the consequences for untimely plan approval. The suggestion for the "escrow" process rather than the "not to expend process" has been included in this document.

Paragraph modified by Todd G.  
Word added by Todd G.

#### Utilities & Districts Section Update (cont.)

Vera Poe –

- Rule Ideas and RG Stakeholders Meeting Update
- TWICC Update

Texas Water Infrastructure Coordinating Council (TWICC)

TWICC- Texas Water Infrastructure Coordinating Council. The TWICC attendees are from the funding agencies- TWDB, TDRA, and USDA-RD; regulatory agencies- TCEQ and EPA; as well as other interested agencies, trade associations, water systems and consultants. This group coordinates funding and regulatory activities to make these processes more efficient and effective. The next TWICC meeting is October 27, if you are interested please contact Elston, Dorothy or Doug.

#### Public Drinking Water (PDW) Section

Drinking Water Quality Team (DWQT) Update

Debra Cerda –Disinfection Byproducts Update

Public Drinking Water (PDW) Section

Drinking Water Protection Team (DWPT) Update

John Schildwachter – Program Update

## **Groundwater Rule (GWR) Presentation ([See Presentation](#))**

Field Operations Support Division (FOSD)  
Public Drinking Water Update  
June Ella Martinez -Staff Update

Information below represents the number of regional activities conducted from July 20, 2010 to October 11, 2010:

- 170 complaints
- 73 focused investigations
- 17 compliance record reviews (CRRs)
- 21 follow-up investigations
- 62 reconnaissance investigations (Recons)
- 532 comprehensive compliance investigations (CCIs)

Of those numbers, the following were conducted for FY11 (9/01/10 to 10/11/10):

- 77 complaints
- 40 focused investigations
- 2 compliance record reviews (CRRs)
- 13 follow-up investigations
- 8 reconnaissance investigations (Recons)
- 209 comprehensive compliance investigations (CCIs)
- Direct Supervision

### **DRAFT**

### **DWAWG**

### **Discussion concerning the definition of “Direct Supervision” October 11, 2010**

#### **Proposed Definition:**

Direct Supervision – Direct Supervision can be accomplished by an appropriately licensed individual according to 290.46(e), on-site or by remote means, including but not limited to telephone or radio. An individual not holding a Class D or higher public water system operator license must not perform process control duties, even under the direct supervision of an appropriately licensed individual.

Specifically, a Field Citation or other enforcement action may be issued against the unlicensed individual for performing process control duties without an appropriate level of operator license when one is required.

#### **Summary of the Problem:**

“Direct supervision” is used within the Texas Administrative Code (TAC), but is not defined within the TAC. TCEQ Investigators have noticed that, because of the lack of a clear definition, investigators and public water systems (PWSs) inconsistently apply the rules in regard to employing a water works operator.

**Background:**

According to 30 TAC 290.46(e), a PWS must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. The ambivalence of this rule results in several interpretations of compliance and non-compliance with the rule. Some PWSs and investigators interpret that a PWS is in compliance with the rule, allowing an unlicensed person or a person not holding a license of an adequate Class to perform process control duties, because the water system is under the direct supervision of a person who holds an adequate license. Sometimes, the direct supervision is performed by a person who is at the water system facility. Sometimes, the direct supervision is limited to a contract with, or a hand-shake understanding with, a licensed person who is never or rarely at the water system facility. Sometimes, the person providing the direct supervision has little or no knowledge of the water system. Some investigators allege a violation of the rules for the same or similar situations. Some PWSs require all employees working for the water system, even ditch-diggers and water meter readers, to have at least a Class D license, so that there is no violation of 30 TAC 290.46(e).

**Applicable Rules:****Texas Health and Safety Code Sec. 341.034. LICENSING AND REGISTRATION OF PERSONS WHO PERFORM DUTIES RELATING TO PUBLIC WATER SUPPLIES.**

- (a) A person who operates a public water supply on a contract basis must hold a registration issued by the commission under Chapter 37, Water Code.
- (b) A person who performs process control duties in production or distribution of drinking water for a public water system must hold a license issued by the commission under Chapter 37, Water Code, unless:
- (1) the duties are provided to a transient, noncommunity water system; and
  - (2) the water system uses groundwater that is not under the influence of surface water.

**30 TAC 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, or 37.003, Texas Health and Safety Code, §§341.033, 341.034, 341.102, 341.103, 361.027, 366.014, 366.071, 366.0515, or Texas Occupations Code, §1903.251 and §1904.051. 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.

**30 TAC 30.381. Purpose and Applicability**

- (a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations to:
- (1) public water system operators who perform process control duties in production or distribution of drinking water; and
  - (2) operations companies that operate public water systems on a contractual basis.
- (b) A person 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 §30.402 of this title (relating to Exemptions); and

must comply with the requirements in Chapter 290 of this title (relating to Public Drinking Water).

30 TAC 290.38(63) Process control duties--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.

30 TAC 290.46(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director.

30 TAC 290.46(f)(3)(A)(vii) [The following records shall be retained for at least two years:] for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section.

### **Public Drinking Water (PDW) Section**

#### **Drought Update James Beauchamp – DWA WG Contracts Sub-Committee**

The DWA WG Contracts Sub-Committee held their last meeting on September 29, 2010. As a result, the TCEQ is developing and conducting an internal review of a Draft Contract Guidance Document which will provide:

- Framework Template for Contract Exception Process.
- The next DWA WG Contracts Sub-Committee meeting is scheduled tentatively for November 2010.

#### **Mike Lannen–Drought- [\(See Attached Drought Map Document\)](#) Water Utilities Status**

- October 14, 2010, has 199 public water systems on the agencies drought list. Of this total, 122 have removed all watering restrictions since the first of the year, 46 are asking customers to adhere to a mandatory outside watering schedule based on address and day of the week, and 31 are asking customers to voluntarily limit water usage and avoid waste. The end of the traditional outside watering season and cooler weather has allowed additional public water systems to relax restrictions according to their Drought Contingency Plans and returning to normal operations. This pattern is expected to continue as more water systems review their Drought Contingency Plans. [\(See Report\)](#)