

Irrigator Advisory Council (IAC) Meeting

Minutes

Date: May 7, 2015
Time: 9:00 a.m. – 2:30 p.m.
Location: Texas Commission on Environmental Quality, 12100 Park 35 Circle,
Building C, Conference Room 131, Austin, Texas 78753

Chairperson: Paul Ward called the meeting to order at 9:12 a.m.

- I. Roll Call:** Toni Fox, Paul Ward, David Kania, Brooke Furrh, Philip Hathaway, Gary Miles, and Mark Froehlich were present. Jay Hartley and Marsha Carson participated via teleconference.

Texas Commission on Environmental Quality (TCEQ) staff present: Melissa Keller, Andrew Clark, Elizabeth Vanderwerken, Kristi Mills-Jurach, Al Fuentes, Kenny Dykes, Simon Arends, Russell Gardner, Jess Robinson, Jaya Zyman, and Ismael Parra were present.
- II. Agenda Topic:** Consideration of the February 12, 2015 Minutes

Motion made by Council Member Toni Fox and seconded by Vice-Chairperson David Kania. Decision: The Council approved the minutes.
- III. Agenda Topic:** TCEQ Office of Waste, Permitting and Registration Support Section

Subtopic: Licensing Report- Mr. Ismael Parra, TCEQ, gave a brief report on the number of license renewals. (Attachment “A”) An audience member inquired about the percentage of people who let their irrigation license lapse. Mr. Parra will address this question at the next IAC Meeting.

*Subtopic: Number of Irrigators and Inspectors who comply with signing the affidavit to park their license—*Mr. Parra gave a brief report on the number of irrigators with both an inspector license and an irrigator license who have signed an affidavit. (Attachment “B”)

Chairperson Paul Ward asked the definition of “parking” a license. Mr. Parra explained that if a licensed individual has both an inspector license and an irrigator license they must sign an affidavit stating they will not use their irrigator license while actively using their inspector’s license. Mr. Parra explained if an individual has an inspector license and wants to use their

irrigator license they must surrender the inspector license. Mr. Russell Gardner, Section Manager, TCEQ, further explained that according to the statute (Texas Occupation Code Chapter 1903, Section 251), an irrigation inspector cannot use their irrigator's license. If the inspector wants to go back to using the irrigator license, the irrigation inspector license must be surrendered and cannot be "parked". The public audience expressed concerns that the rule interpretation might have changed from being able to park the inspector license.

Decision: The Office of Waste, Permitting and Registration Support Section, will schedule a stakeholder's meeting to further discuss the concerns regarding the licensing affidavit and its procedures.

IV. Agenda Topic: TCEQ Office of Water, Water Supply Division – Update from Backflow and Cross-Connection Control

Subtopic: Update on Cross-Connection Control Program- Mr. Al Fuentes, TCEQ, reported that RG-206 (A Public Water System Guide to Customer Service Inspections) and RG-478 (Establishing and Managing an Effective Cross-Connection Control Program) are being updated. In addition, the Water Supply Division is looking into electronic recordkeeping for required records. EPA has a new definition on "lead free" (0.2%, previously was 8%) that is being added to the TCEQ regulations relating to backflow devices.

Subtopic: Define potential Cross-Connection Program- Mr. Fuentes cited 30 TAC 290.38(62) "Potential contamination hazard"—"A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply."

Subtopic: Subchapter D. 290 rules differ from the 30 Texas Administrative Code 344 rules- Mr. Fuentes explained that 30 TAC 290 covers initial testing of backflow prevention devices and 30 TAC 344 covers annual testing requirements. He indicated that the two rules do not differentiate residential and commercial installation. In summary, there is no Health Hazard present, then testing upon installation is required (30 TAC 290). If there is a Health Hazard present, then testing is required upon installation and annually thereafter (30 TAC 344). **Proposed changes to the rules in 30 TAC 290 are expected to be approved July 1, 2015.**

Subtopic: Backflow Assembly Device Failure Statistics- Mr. Fuentes referred to an Assemblies Report provided by the Benbrook Water and Sewer Authority. (Attachment "C")

Subtopic: Backflow Assembly Device Problems and Codes- Mr. Fuentes stated that the most common problems for backflow assemblies are from rust, non-coded alterations, improper installation, and lack of maintenance.

Audience member Jerry Lewis confirmed that the 30 TAC 290 rules and the 30 TAC 344 rules only require the double-check valve to be tested upon installation.

Vice-Chairperson David Kania inquired why all irrigation systems are not considered High Health Hazard. Mr. Fuentes agreed that this determination could be made.

V. Agenda Topic: IAC Subcommittee Reports

Subtopic: Enforcement, Planning, and Legislative Committee- Committee Chairperson David Kania reported the Committee developed a checklist to assist cities during a review of the application design plan. He stated the checklist is not meant to be a requirement for document retention, but more of a tool to assist inspectors. The checklist will be recommended for addition to the regulatory guidance book. Committee Chairperson Kania inquired to the public audience if other cities have similar documents. Mr. Joe Smolinski, City of Mansfield, stated their city has a checklist that is followed by the inspectors and is used for the inspection of plans. Mr. Smolinski also stated that the City of Mansfield adds extra fees for failing to submit adequate design plans and makes irrigators re-submit until the plans are adequate.

Subtopic: Education, Training, and Licensing Committee- Committee Chairperson Philip Hathaway reported that the Committee wants to address how to make it mandatory statewide for designs to be adequate for installations. He stated that the Committee has recommended providing the cities with checklists, example drawings, and details of what should be approved. Mr. Robert Brown, Benbrook Water and Sewer Authority, asked why the TCEQ cannot enforce against the cities who are not upholding the TCEQ requirements of irrigators. Ms. Melissa Keller, TCEQ, stated the current wording of the rules does not allow for enforcing against cities. Ms. Keller stated that the Council may request rule changes.

*Subtopic: Rules and IAC Administrative Committee—*Committee Chairperson Jay Hartley reported that the Committee wants to clarify the responsibility of each of the irrigation licenses (Licensed Irrigator, Irrigation Technician, and Irrigation Inspector). He also stated the Committee would like to clarify the duties a licensed architect and licensed plumber can perform. Council Member Hartley also reported the Committee wants to clarify that all irrigation systems to high health hazards and clarify the backflow prevention device needs for an irrigation system.

VI. Agenda Topic: TCEQ Office of Compliance and Enforcement, Enforcement Division and TCEQ Office of Legal Services, Litigation Division

Ms. Keller informed that the TCEQ Enforcement Division was unable to attend. All questions will be taken and referred to the Enforcement Division. There were no Enforcement specific questions raised.

Mr. Jess Robinson, TCEQ, reported the case numbers referred to the Litigation Division.

- Current Cases in progress: 7
- Cases referred during FY 15 (starting September 1, 2014): 5
- Cases referred during FY 14: 9
- Cases referred during FY 13: 14

Mr. Robinson explained that the Litigation Division is the third option to resolve a concern. The first is with the investigator and the second is with the Enforcement Division. He explained that penalties are assessed the same penalty policy for all irrigation cases.

Council Member Philip Hathaway asked what the most common violation is for the Litigation Division to receive. Mr. Robinson stated the most common violation is for individuals not having an irrigator's license. Ms. Keller added that with House Bill 2507 (82nd legislative session) cities can locally cite unlicensed operators with misdemeanor charges.

Ms. Keller requested case studies about cities using HB 2507. Ms. Keller stated that counties that regulate On-Site Sewage Facilities (OSSF) send individuals to Justice of the Peace Court and she will check with the TCEQ OSSF Team in Program Support to see how their processes and statutes differ. She explained that for unlicensed individual cases, evidence is very important for the TCEQ to investigate and that a paper trail is needed.

VII. Agenda Topic: TCEQ Office of Compliance and Enforcement, Program Support Section

Subtopic: Introduction- Ms. Melissa Keller introduced the Office of Compliance and Enforcement, Program Support Section, Operations Support Team Leader, Kristi Mills-Jurach.

Subtopic: Legislative Session Update- Ms. Keller gave an update on the status of legislative bills that could impact Landscape Irrigation. Ms. Keller explained that she works closely with Mr. Russell Gardner, Office of Waste, and checks for any bill that could affect cities, irrigators, TCEQ, and other entities.

Subtopic: Enforcement Report - Ms. Melissa Keller delivered the Enforcement Report for Fiscal Year 2015 as follows:

- New Complaint Incidents Received: 56
- Complaints Pending Investigation: 11
- Active Investigations: 9
- Total New Investigations Started: 92
- Investigations resulting in a Notice of Violation (NOV): 45
- NOVs waiting on Corrective Action: 7
- Investigation cases referred to Enforcement: 39
- Investigation cases accepted by Enforcement: 34
 - Field Citations: 11
 - Other Enforcement Actions: 23
 - Direct Referrals to Litigation: 3
 - Agreed Orders Developed: 20

Ms. Keller stated that the most common violation for recent investigations is related to advertising. Ms. Keller recommended further outreach and education on advertisement requirements.

Subtopic: Outreach and Education Update- Mr. Andrew Clark referenced a list of outreach events the TCEQ Landscape Irrigation Program has participated in thus far and will participate in during Fiscal Year 2015 (September 2014-August 2015). (See Attachment “D”)

Council Member Brooke Furrh recommended outreach to TCEQ Regional Offices to have investigators assist with Landscape Irrigation concerns. Ms. Keller explained that in the past upper management had to decline assistance from regional offices. The regional offices do not currently have the manpower to assist in Landscape Irrigation investigations due to current investigator workloads. Ms. Keller recommended from the Council a formal recommendation for landscape irrigation program cross training at biennial training events for TCEQ investigators (such as Public Water Supply or Water Quality trainings).

VIII. Agenda Topic: Update from a local landscape irrigation association

Mr. Bob Daily, Woodlands Joint Powers Agency, gave a presentation over the accomplishments of the Woodlands Joint Powers Agency.

Mr. Joe Smolinski, City of Mansfield, gave a presentation of a study conducted by the City of Mansfield over the fail rate of backflow prevention devices and the presence of bacteria in irrigation systems.

IX. Agenda Topic: Receive, discuss, and act on other items of interest to the Council

An audience member stated that the AWWA labels irrigation systems as high health hazards, and the Plumbing Code states all backflow devices should be tested at least annually. Mr. Smolinski asked if there was anything the TCEQ can do to make the requirement for testing annually. Ms. Keller recommended that the Rules and IAC Administrative Committee take into consideration this change and include in future requests for rule changes.

X. Agenda Topic: Individuals wishing to address the Council

Doug Christenson, Texas Irrigation Association, announced that the organization formally known as Texas Turf Irrigation Association (TTIA) is renamed the Texas Irrigation Association (TXIA) and is a joint membership organization with other irrigation organizations.

Audience member Jerry Lewis stated inspectors should be aware that post mix carbonators, as well as, irrigation systems installed on a property with an on-site sewage facility (OSSF) are both considered high health hazards.

XI. Agenda Topic: Structure and Planning

Subtopic: Discussion of items for inclusion in the next agenda- Chairperson Ward stated that he would like the next speaker to come from the Wichita Falls area. He would like to address the following questions during the next meeting:

- At what point are license renewal notices issued?
- What is the wait time for CEU hours acceptance notification?
- What is the average time frame for license renewal?

Chairperson Ward also stated that the Council would look further into the Enforcement, Planning, and Legislative Committee's plan review checklist.

The next IAC Meeting is scheduled for August 20, 2015 at 9 am.

XII. Agenda Topic: Adjournment

The Chairperson asked for a motion to adjourn. Council Member Toni Fox made the motion and Council Member Brooke Furrh seconded the motion.

The meeting was adjourned on May 7, 2015 at 2:45 p.m.