

## IAC Stakeholder Meeting Minutes

July 15, 2015

The IAC stakeholder meeting took place on Wednesday, July 15, 2015 at 1:30 p.m. in building E, room 201s. A presentation was given by Jaya Zyman, P.E., Director of the Permitting and Registration Support Division and Russell Gardner, Section Manager of the Operational Licensing Section. The main topics of the meeting were:

### **Overview (Why a stakeholder meeting?)**

Ms. Zyman stressed that the main objectives of the meeting were: 1) for the TCEQ to understand stakeholders concerns with regards to surrendering the inspector license when returning to an active licensed irrigator; and 2) for the stakeholders to understand the limitations surrounding the statute and the rules with respect to the real and perceived conflict of interests and the inability to hold both active licenses at the same time. Above all, the main goal was to brainstorm potential short and long term solutions to alleviate some of the stakeholders concerns and to begin the dialogue.

### **Statute: Occupations Code 1903.251**

Mr. Gardner stated that as per the statute a person is **ineligible** for an inspector license if the person engages in or has a financial or advisory interest in an entity that engages in the following activities:

- sells, designs, installs, maintains, alters, repairs, or services an irrigation system
- provides consulting services relating to an irrigation system
- connects an irrigation system to a private or public, raw or potable water supply system or any water supply;

This means that the moment we activate an irrigator license the operator is **ineligible** to hold an inspector license (whether active or not).

### **Rule:30 TAC 30.120**

Mr. Gardner also explained that the rule practically mimics the statute by stating that “to obtain an irrigation inspector license, an individual must successfully complete:

- the basic irrigator training course;
- an approved backflow prevention assembly testing training course; and
- an approved water conservation or water audit course; or
- an approved landscape irrigation inspection course.
- Pass the applicable examination.

It also states that an individual is **ineligible** to obtain an irrigation inspector license if the individual engages in or has financial or advisory interest in an entity that:

- sells, designs, installs, maintains, alters, repairs, or services an irrigation system;
- provides consulting services relating to an irrigation system; or
- connects an irrigation system to any water supply.

The statute can't be changed without a legislative change (which would be time consuming, lengthy and uncertain) and the rule can't be changed unless the statute is changed because the rule mimics the statute.

In conclusion, as the rule and statute stands now:

- 1) A person may have an Active Irrigator **OR** an Active Inspector license but not both at the same time.
- 2) A person may have an Active Inspector **AND** an Inactive (Parked) Irrigator license at the same time. However, under this scenario, you would need to fill out the Affidavit.
- 3) A person may not have an Active Irrigator **AND** an Inactive Inspector license at the same time. If the irrigator license is active, the inspector license must be surrendered.

### **Purpose/Intent of the Inspector Affidavit**

Mr. Gardner indicated that the affidavit is an attestation that no conflict of interest exists. It basically states that the applicant understands that should he/she decide to use his/her Landscape Irrigator License or Landscape Irrigation Technician License, while holding the Irrigation Inspector License, he/she will immediately surrender his/her Irrigation Inspector License to the TCEQ prior to using either the Landscape Irrigator License or Landscape Irrigation Technician License. The applicant also understands that upon issuance of his/her Irrigation Inspector License, he/she **must relinquish ownership of any interest** that he/she may have in any landscape irrigation company or business.

### **Conflict of Interest (Inspectors and Irrigators)**

Ms. Zyman explained that the main reason for the affidavit was to allow licensed irrigators to "park" their irrigator license while becoming an inspector by attesting they had no conflict of interest. It was a way to at least partially and unidirectional address some of the concerns brought up by the stakeholders. This was intended to protect the licensed individual from entering into a situation that could create a real or perceived conflict of interest, including situations that include:

- Inspecting your own design work
- Inspecting your own installation/maintenance work
- Inspecting your company's work
- Inspecting your competition's work (also an ethical issue)
- Concurrent License Use

She also stated that if stakeholders had issues with the wording of the affidavit that could be another conversation to have.

### **Conclusion**

Ms. Zyman stated that, in conclusion, it is clear, from a legal and ethical perspective, that a Licensed Irrigator or Technician **cannot also** hold an Inspector License. Additionally, the language in the statute makes it clear that anyone who has any "interests" in other Irrigator Licenses is **ineligible** to hold an Inspector License.

However, we can certainly explore options for the short term that do not involve a legislative process that would facilitate getting the inspector license back. Some of these options may include: waiving the need to retake the exam, considering a prescribed time to get the inspector license back, honoring all the CECs and training that has been acquired even during inactive license status, etc.

## **Open Discussion**

### Stakeholder concerns and comments

- What is the city's role in ensuring there is no conflict of interest?
- Why couldn't we post a list of systems in by license numbers?
- Perception should not be considered and who is this public who decides which activity is unethical?
- Intent was to treat like a plumbing inspector. Having both a BPAT and an Inspector is absolutely a conflict of interest.
- Should treat Inspector the same as the Real Estate Board. Must send in irrigator license while inspector then renews the irrigator with lower fee.
- Disagree with treating license as a Real Estate or plumbing inspector.
- Should rescind the inspector license and then issue back within a minimum time frame before reissuance- maybe 6 months?
- Should be at least a year wait before reissuance?
- Should not need to wait at all before reissue.
- Waive reissuance timelines if city asks because of lack of inspectors.
- Can an inspector perform water audits for a city? Does this conflict with the inspector license? Is a water conservation audit different than an inspection if there is no enforcement involved?
- In the past TCEQ has said that only an irrigator can do an audit. An audit would not have a financial interest to cause a conflict.
- Don't see a conflict for a city auditor/inspector doing audits.
- Intent was to bring local entities into the picture because the state needed local help with enforcement. Irrigator license was designed to be broad from a contractor's perspective. Inspector differs from that in that they are specifically licensed to do city inspections and water system inspections and do not a broad contractor perspective. Don't jeopardize the inspector license; keep it viable.

- City of Austin does things differently. They hire/require inspectors to do water conservation audits for the city because the training inspectors receive is on point. However, these are not city inspections. Those are done by city inspectors. So legally there is no license requirement for the audits but COA requires it to demonstrate auditors possess the right skill and training.
- Don't change past interpretation.
- We will summarize and regroup after IAC on 8/20.
- Maybe develop a subcommittee for this.
- Must be able at some point to inspect own or competitors work.
- Were told different in the past. Don't change.
- Plumbers are harsher in that they require license to be surrendered completely while an inspector.
- TCEQ responded to legislative comments that audits do not require irrigator license. This should be inspector area of concern.
- Is it consulting to demonstrate to a homeowner how to use their irrigation control box? All inspectors do this. If so exceptions should be made for water systems and city inspectors.
- Distinction to be made on inspections that carry enforcement and audits which do not entail enforcement.

### **Potential Solutions**

Short term:

- Being able to regain/reissue the inspector license by reapplying, paying the fee and signing affidavit; but not needing to retake the exam.
- License holders would like to be able to switch back and forth between the licenses for seasonal/financial reasons
  - Timeline options for switching back and forth: six months, twelve months, no time limit.

Long term:

- Statute/Rule change

### **What's next?**

- Following the IAC meeting on August 20, 2015 will be a focus group at 2:30 p.m. in Bldg. A, Room 173