

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §330.2, Definitions and §330.52, Technical Requirements of Part I of the Application. The commission also proposes the repeal of §330.381, Purpose and Applicability; §330.382, Definitions; §330.383, Administration; §330.384, Application for Letter of Competency; §330.385, Qualification; §330.386, Renewal; §330.387, Revocation; §330.388, Recommendations for Solid Waste Facility Owners/Operators; and §330.389, Fees.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking project implements House Bill (HB) 3111, which requires the agency to consolidate rules for the occupational licensing programs by December 1, 2001. The proposed rules will consolidate all administrative functions which affect various licensing programs administered by the commission into one chapter, newly created 30 TAC Chapter 30, Occupational Licenses and Registrations. The new rules will require that a licensed solid waste facility supervisor be employed at all solid waste facilities. These rules will apply to all individuals regardless of whether they have a prior site operating record. Current municipal solid waste facility supervisors who are not licensed at the time these rules are adopted, must obtain a municipal solid waste facility supervisor license or become a supervisor in training by January 2004. The current program rules will remain in effect to address the technical portions of the programs such as design criteria, construction, and planning while excluding the elements included in the administration of occupational licensing. New Chapter 30 is concurrently proposed in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Section 330.2(69) is amended to clarify the definition of “license” to incorporate the definition for occupational licenses as described in Chapter 30.

Section 330.52(b)(9)(C) is proposed to be amended to delete the requirement for evidence of competency, and to add the licensing requirements for a solid waste facility supervisor.

Section 330.52(b)(9)(E) is proposed to be amended to replace “letter of competency” with “license” to reflect correct terminology. The wording is changed to improve readability and to provide consistency with subparagraphs (A) - (D).

Subchapter M is repealed and is readopted in Chapter 30 as part of the consolidation of the administration licenses and registrations.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state government or local government.

The proposed rulemaking implements certain provisions in HB 3111 (relating to occupational licenses and registrations issued by the commission), 77th Legislature, 2001, and provisions in HB 2912 (relating to the continuation and functions of the commission; providing penalties), 77th Legislature,

2001.

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements for several commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rulemaking would repeal Chapter 330, Subchapter M provisions relating to the municipal solid waste technician training and certification program. This subchapter provides requirements for the issuing and renewal of licenses to individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste.

Adoption of the proposed rulemaking would affect approximately 1,000 municipal solid waste license holders and result in the loss of fee revenue to the commission of an estimated \$7,455 each year in license and renewal fees. Currently, there are four classes of certification: Class A is valid for four years for a cost of \$40; Class B is valid for four years and costs \$30; Class C is valid for four years and costs \$20; and Class D is valid for four years and costs \$20.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who supervises or manages municipal solid waste facilities, or in the collection or transportation of municipal solid waste, are established in a new Chapter 30, Subchapter F. Those provisions establish new fee rates and

renewal cycles for municipal solid waste licenses. The proposed fee rates are higher than current fee rates. Municipal Solid Waste A licenses will increase by \$50 over a two-year period, B licenses will increase by \$55 over a two-year period, and C and D licenses will increase by \$60 over a two-year period. It is not known how many units of state or local government pay these fees or how much in fees they may pay. However, the cost is not anticipated to be significant for any one unit of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rulemaking will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of the commission occupational licensing programs.

Adoption of the proposed rulemaking would repeal the qualification and licensing requirements for municipal solid waste licenses. If amendments in concurrent rulemaking are not adopted, the adoption of this rulemaking would result in cost savings for those individuals or companies that pay for municipal solid waste licenses, though these cost savings are not considered significant.

The proposed rulemaking implements HB 3111 and provisions in HB 2912.

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements for several commission-regulated licensing and registration programs into one new chapter. The bill

also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rulemaking would repeal Chapter 330, Subchapter M provisions. This subchapter provides requirements for the issuing and renewing of licenses to individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste.

Adoption of the proposed rulemaking would affect approximately 1,000 municipal solid waste license holders and result in the loss of fee revenue to the commission of an estimated \$7,455 each year in license and renewal fees. Currently, there are four classes of certification: Class A is valid for four years for a cost of \$40; Class B is valid for four years and costs \$30; Class C is valid for four years and costs \$20; and Class D is valid for four years and costs \$20. Individuals seeking certification to supervise, manage, or operate municipal solid waste facilities or who are involved in the collection or transportation of municipal solid waste, pay these fees or companies that employ these individuals may pay these fees. It is not known how many businesses or individuals pay these fees.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who supervises or manages municipal solid waste facilities, or the collection or transportation of municipal solid waste, are established in a new Chapter 30, Subchapter F. Those provisions establish new fee rates and renewal cycles for municipal solid waste licenses. The proposed fee rates are higher than current fee rates. Municipal Solid Waste A licenses will increase by \$50 over a two-year period, B licenses will

increase by \$55 over a two-year period, and C and D licenses will increase by \$60 over a two-year period. Businesses or individuals that pay these fees will have increased costs though these costs are not considered significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for those small or micro-businesses who may employ individuals or otherwise possess municipal solid waste licenses, as a result of implementation of the proposed rulemaking. For those small or micro-businesses not affected by this rulemaking, there will be no fiscal implications. The proposed rulemaking would repeal certification and fee requirements for individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste, and small or micro-businesses that employ these individuals or have these licenses would realize cost savings if they currently pay these license fees.

The proposed rulemaking would repeal Chapter 330, Subchapter M provisions. This subchapter provides requirements for the issuing and renewing of licenses to individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste.

Adoption of the proposed rulemaking would affect approximately 1,000 municipal solid waste license holders and result in the loss of fee revenue to the commission of an estimated \$7,455 each year in license and renewal fees. Currently, there are four classes of certification: Class A is valid for four years for a cost of \$40; Class B is valid for four years and costs \$30; Class C is valid for four years and costs \$20; and Class D is valid for four years and costs \$20.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who supervises or operates municipal solid waste facilities, or the collection or transportation of municipal solid waste, are established in a new Chapter 30, Subchapter F. Those provisions establish new fee rates and renewal cycles for municipal solid waste licenses. The proposed fee rates are higher than current fee rates. Municipal Solid Waste A licenses will increase by \$50 over a two-year period, B licenses will increase by \$55 over a two-year period, and C and D licenses will increase by \$60 over a two-year period. Small or micro-businesses that pay these license fees will have higher costs, though these costs are not considered significant.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rulemaking is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human

health and the environment may be a by-product of the proposed rulemaking, but it is not the specific intent of the proposed rules. Furthermore, the proposed rulemaking would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply consolidate existing rule language into one chapter. Thus, the proposed rulemaking does not meet the definition of a “major environmental rule” as defined in Texas Government Code, §2001.0225(g)(3), and thus, does not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter. The proposed rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for: the initial application; examinations; and renewal applications. The proposed rules do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would they affect any action or

authorization identified in §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The amendment will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for solid waste facility supervisors (Texas Health and Safety Code (THSC), §361.027).

The amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, Chapter 37, which provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

SUBCHAPTER A: GENERAL INFORMATION

§330.2

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (68) (No change.)

(69) License -

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(70) - (174) (No change.)

SUBCHAPTER E: PERMIT PROCEDURES

§330.52

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The amendment will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for solid waste facility supervisors (THSC, §361.027).

The amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, Chapter 37, which provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§330.52. Technical Requirements of Part I of the Application.

(a) (No change.)

(b) Additional requirements of Part I.

(1) - (8) (No change.)

(9) Evidence of competency.

(A) - (B) (No change.)

(C) [If the applicant does not have a prior site operating record, he must possess a commission letter of competency for the type of facility involved, evidence of completion of an approved course, evidence of equivalent qualification, or evidence that the proposed site supervisor has such qualification.] The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), [an appropriately qualified site supervisor] be employed before commencing site operation.

(D) (No change.)

(E) Evidence of competency to operate the site shall also include landfilling

and earthmoving experience, other pertinent experience, or licenses as described in Chapter 30 of this title (relating to Occupational Licenses and Registrations) [commission letters of competency] possessed by key personnel and the number and size of each type of equipment to be dedicated to site operation.

(10) - (11) (No change.)

**SUBCHAPTER M: SOLID WASTE TECHNICIAN TRAINING AND CERTIFICATION
PROGRAM**

§§330.381 - 330.389

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for solid waste facility supervisors (THSC, §361.027).

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed repeals implement TWC, Chapter 37, which provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§330.381. Purpose and Applicability.

§330.382. Definitions.

§330.383. Administration.

§330.384. Application for Letter of Competency.

§330.385. Qualification.

§330.386. Renewal.

§330.387. Revocation.

§330.388. Recommendations for Solid Waste Facility Owners/Operators.

§330.389. Fees.