

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§30.237, 30.240, 30.242, 30.244, and 30.246. Sections 30.237 and 30.240 are adopted *with changes* to the proposed text as published in the May 16, 2003 issue of the *Texas Register* (28 TexReg 3900). Sections 30.242, 30.244, and 30.246 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Senate Bill (SB) 405, 77th Legislature, 2001, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The commission has determined that individuals licensed as professional geoscientists in the soil science discipline are appropriate to perform site evaluations due to their educational and experience background in classifying soils. Therefore, the commission adds individuals licensed as professional geoscientists in the soil science discipline to the list of individuals who may obtain a site evaluator license, if all of the other requirements for the site evaluator license are met.

The commission is deleting all of the definitions in §30.237 since the definitions are provided in 30 TAC Chapter 285, On-Site Sewage Facilities, and are duplications. Additionally, the adopted rules delete experience requirements for obtaining site evaluator licenses. The commission has determined that otherwise qualified individuals have not been able to obtain a site evaluator license because they have been unable to obtain the experience currently required. The adopted rules also provide consistency with language in other agency rules. Further, the current rules provide for staggered licensing dates. The existing rules provide a mechanism to spread the renewals over a two-year period.

This initial two-year period has passed, and this language is no longer necessary. Since currently licensed individuals are now on a staggered renewal system and all new licensees will be on the staggered system, the adopted rules delete licensing requirements that are no longer applicable.

SECTION BY SECTION DISCUSSION

Adopted §30.237, Definitions, deletes all definitions in this section because they are duplicative of definitions in Chapter 285. To provide a reference to the definitions, language is added that indicates that all words and terms used in the subchapter have the same meanings as the definitions given in Chapter 285. In addition, the proposed language was revised to read: “The definitions in Chapter 285 of this title (relating to On-Site Sewage Facilities) apply to this subchapter.”

Adopted §30.240(b)(2) and (5) originally proposed to delete all requirements for experience to obtain an Installer II license. Based on comments received during the comment period, the experience requirements to obtain an Installer II license are not deleted as proposed. The commission proposed deleting these paragraphs because more stringent training standards will replace the experience requirement. However, since these training standards are not yet in place, the commission has determined not to delete the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the more stringent training and testing programs take effect.

Adopted §30.240(d)(2)(C) adds a professional geoscientist license to the list of licenses, which would allow an individual to also obtain a site evaluator license. The language includes individuals who are

licensed by the Texas Board of Professional Geoscientists to practice geoscience in the soil science discipline. The commission has determined that individuals who will be licensed as professional geoscientists in the soil science discipline have the educational background and the practical experience to perform site evaluations. Therefore, the commission adds professional geoscientist licenses to the list of licenses in this subparagraph. The subparagraph also deletes the certified professional soil scientist certificate from the list of licenses that an individual may use to obtain a site evaluator license. Additionally, it is no longer appropriate to include the professional soil scientist certificate as one of the prerequisites that an individual needs to obtain a site evaluator license, since any individual holding such a certificate is no longer eligible to practice soil science in Texas unless the individual holds a professional geoscientist license.

Previously existing §30.240(d)(2)(D) is deleted. The requirement in the previously existing rule for two years of experience under another license in order to obtain a site evaluator license may keep individuals from being able to obtain the site evaluator license even though the individuals have otherwise acquired sufficient experience. In addition, the process of verifying experience has become a resource and administrative issue as it takes a considerable amount of time for agency staff to verify experience. To ensure that site evaluators who do not have the experience currently required are adequately trained, the commission proposes to change the site evaluator basic training course and examination. To compensate for the deletion of the experience requirements the training has been revised to prepare an individual to be a site evaluator. The examination will be changed to adequately test on the revised training materials. The commission has determined that the emphasis on training

and testing along with the training necessary to obtain another license will provide individuals with the ability to meet the job tasks required for individuals with a site evaluator license.

Adopted §30.242(a) adds the “site evaluator license” to the list of licenses that are required to be renewed. This will include all of the on-site sewage facility (OSSF) licenses. The date “January 1, 2002,” is deleted.

Adopted §30.242(a)(1) changes “Chapter” to “chapter” for consistency. Section 30.242(a)(2) adds, “For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education.” This language is necessary to address individuals who have been issued an initial site evaluator license valid for less than two years. Section 30.242(b) corrects an incorrect citation because the currently referenced citation does not exist.

Adopted §30.244(c) changes the language from “An individual holding a current professional engineer license is not required to possess a site evaluator license” to “A professional engineer may perform site evaluations without obtaining a site evaluator license.” The change is necessary to be consistent with the definition of site evaluator in §285.2(67).

Previously existing §30.246(a) is deleted since the requirements expired on September 1, 2002, and they are no longer applicable.

Previously existing §30.246(b) is relettered to new §30.246(a). Language from existing §30.246(c), regarding Application for Site Evaluator, is combined with the language of this subsection. Individuals who either previously had a site evaluator license or who had taken the site evaluator training class and passed the examination are required to submit an application, application fee, and documentation of a different kind of license. Currently, the two types of individuals are addressed in separate subsections. Therefore, combining the two subsections avoids duplication. The word “the” has been changed to “an” before the word “application” to agree with the context of the sentence. The language “before September 1, 2003” is added after the first sentence to set a specific date for the submission of the required materials. A new sentence is added to provide the requirements for obtaining a site evaluator license if the individual fails to submit the required materials before September 1, 2003. A specific end date is established to ensure that individuals obtaining the license are current on the site evaluator training and the OSSF rules since the site evaluation is necessary to ensure that the proper system is installed.

Previously existing §30.246(b)(1), (2), and (c) is deleted because the requirements are no longer applicable.

Previously existing §30.246(d) is relettered to new §30.246(b).

Previously existing §30.246(e) is relettered as new §30.246(c). The language in the first sentence is changed from “An individual holding a current professional engineer license is not required to possess a site evaluator license” to “A professional engineer may perform site evaluations without obtaining a site

evaluator license.” The change is necessary to be consistent with the definition of site evaluator in §285.2(67) and language in other subsections of the subchapter. The language in the second sentence of this subsection is changed from “However, an individual who holds a current professional engineer license may obtain a site evaluator license by complying with the requirements in this subchapter” to “However, a professional engineer may obtain a site evaluator license by complying with the requirements in this subchapter.” This change is necessary to provide consistency in the subchapter.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted 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 because it does not meet the criteria for a “major environmental rule” as defined in that statute.

A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rules are adopted to implement the statute and provide licensing and training requirements.

These adopted rules are anticipated to have a minimal effect on the economy, competition, and jobs.

The adopted rules establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Texas Geoscience Practice Act (the Act). The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report

required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. Additionally, the rules delete experience requirements for obtaining site evaluator licenses and delete requirements that have expired and are no longer applicable. The rules are intended to allow licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists to obtain a site evaluator license, provided they meet the other requirements for a site evaluator. Therefore, it is not anticipated that the rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these rules do not meet the definition of a major environmental rule.

In addition, the amendments are not subject to Texas Government Code, §2001.0225, because they do not meet the four criteria specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted amendments to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. The United States Environmental Protection Agency does not have a federal program for OSSFs and does not establish requirements for states that

implement their own OSSF programs. Second, the rules do not exceed an express requirement of state law but are being adopted to implement state law. Third, there is no delegation agreement that would be exceeded by these rules. Fourth, the commission adopts these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not adopt the rules solely under the commission's general powers. Thus, these rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the rules is to allow individuals licensed as professional geoscientists by the State of Texas to become site evaluators, provided the individuals meet the other requirements for a site evaluator. Additionally, the rulemaking deletes experience requirements for obtaining site evaluator licenses and deletes requirements that are no longer applicable.

Promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the rulemaking. These rules would allow individuals licensed as professional geoscientists by the State of Texas to become site evaluators, provided the individuals meet the other requirements for a site

evaluator; delete experience requirements for obtaining site evaluator licenses; and delete requirements that are no longer applicable. These rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists. Therefore, the commission determined that these adopted rules will not result in a takings.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

In the proposed rulemaking the commission had found that this rulemaking was subject to the Coastal Coordination Act Implementation Rules. However, after reconsideration of the adopted rulemaking, the commission has found that the 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 will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the CMP.

PUBLIC COMMENT

A public hearing was held in Austin on June 3, 2003, at 10:00 a.m., in Building F, Room 2210 at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. Six individuals presented oral statements and two individuals provided written comments during the public hearing.

The comment period closed on June 16, 2003.

A total of 31 commenters provided both general and specific comments, either orally or written, on the proposed rules. The following commented on the proposal: City of College Station; Environmental Construction Services (ECS); J & S Designs (JSD); SBCC Inc. (SBCC); Texas Board of Professional Geoscientists (TBPG); Texas On-Site Wastewater Association (TOWA); TOWA-Alamo Area Chapter (TOWA-Alamo); TOWA-Capitol of Texas Chapter (TOWA-Capitol); TOWA-East Texas Chapter (TOWA-East); TOWA-Gulf Coast Chapter (TOWA-Gulf); TOWA-Heart of Texas Chapter (TOWA-Heart); TOWA-West Texas Chapter (TOWA-West); Texas Society of Professional Engineers (TSPE); and 18 individuals.

The following commenters generally supported the proposed rule: City of College Station and TBPG.

The following commenters generally opposed the proposed rule: ECS; JSD; SBCC; TOWA; TOWA-Alamo; TOWA-Capitol; TOWA-East; TOWA-Gulf; TOWA-Heart; TOWA-West; TSPE; and 18 individuals.

RESPONSE TO COMMENTS

General

TBPG stated that the proposed rules add needed clarification to commission rules as the rules relate to the role of professional geoscientists.

The commission appreciates the comment in support of the rules.

City of College Station commented that the proposed rule changes should be accepted as proposed, and any individual who has attended the required training classes should have the knowledge to install an OSSF correctly. City of College Station also commented that the inspections made by the designated representatives should identify any problems with systems so that problems can be corrected.

The commission appreciates the comment in support of the proposed rules; however, because of comments received, and because the commission has not implemented more stringent training standards, the commission has determined not to delete the experience requirement for installers.

TOWA-Alamo, ECS, City of College Station, and an individual commented in support of improving the course and examination for the Installer II training course.

The commission appreciates the comment in support of the proposed rules; however, because of comments received, and because the commission has not implemented more stringent training standards, the commission has determined not to delete the experience requirement for installers.

Comments concerning the reduction of experience requirements

TOWA, TOWA-Capitol, TOWA-Heart, TOWA-Gulf, TOWA-Alamo, TOWA-East, TOWA-West, JSD, TSPE, and ECS commented that they are against reducing requirements, experience, or education as it could negatively impact the public and the environment.

Sixteen individuals expressed strong disagreement with the proposal to abolish the experience requirement to obtain Installer II certification.

JSD commented that taking the experience requirements away will allow individuals who may not know the business to come into the industry and create environmental hazards as well as create an enforcement burden on authorized agents.

TOWA, TOWA-Capitol, TOWA-Heart, TOWA-Gulf, TOWA-Alamo, and TOWA-East commented that the majority of environmental licenses require experience and training and that by removing this experience and training from the on-site program, there will be a perception that this business is easy to get into. OSSF licenses will fall to the bottom rung of the environmental professional ladders.

ECS commented that installers without proper training and experience in the industry and lack of experience leads to the majority of problems in the industry.

TOWA-Heart and TOWA-Capitol commented that the experience requirement for the Installer II license should not be lowered and that comparable experience in related fields should also be considered.

SBCC commented that the commission should not change the current licensing procedure for the Installer II license, especially in regard to the apprentice program for experience. The commenter stated, "To throw out this 'apprentice' rule is not fair to the people who have done their time as an apprentice."

An individual commented that the experience requirement should not be removed since a new training course and examination have not been developed. The individual also commented that the process will take time to complete.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted. This section is deleted because the commission is planning to adopt more stringent training standards. However, since these standards are not yet in place, and in response to this and other comments, the commission has determined not to delete the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the training and testing programs take effect. Additionally, discussions with stakeholders will be held regarding the amount of experience appropriate for Installer II licenses.

Comments regarding training and education of apprentices to become Installer II's

JSD commented that “none of the approved licensing certification courses teach an individual how to inspect, install, site evaluate, or maintain a system,” and that the approved courses must be made 40 hours in length and revised to meet their stated purpose. An individual also commented that the courses and examinations for the Installer I, Installer II, designated representative, and site evaluator classes should be strengthened.

ECS and TOWA-Gulf commented that a new installer course is needed and that this course should be put together by installers and other people in the industry. ECS, TOWA-Gulf, and an individual also commented that the new course should be more hands-on and comprehensive than the current course.

The commission will consider these comments when creating the more stringent training and testing programs. No changes were made in response to these comments.

ECS and an individual commented that an Installer I in-training course that had been proposed by the industry in the past where the individual would have to take the test or class ahead of time and then follow it up with training in the field should be implemented instead of removing the experience requirement. ECS suggested that the installers-in-training should be responsible for all paperwork indicating who they were working under and that the installers-in-training should be allowed to work for multiple installers doing multiple tasks. ECS, TOWA-Gulf, and an individual further commented that an installer-in-training program should replace the current apprentice program and that the apprentice should be allowed to work for multiple installers to increase experience.

The commission is not adopting the proposed changes to §30.240(b), which would have removed the experience requirement for obtaining an Installer II license. The executive director has received numerous complaints from individuals that licensed installers will not hire them as apprentices, which would allow the apprentices to obtain work experience, because the licensed installers consider them to be future competition. These same complainants have indicated that the regulations are restricting them from entering the industry. Some county regulators have

indicated that there is a shortage of installers, which has resulted in higher costs to the owners.

The commenters' suggestion of on-the-job training would be met with the same resistance from licensed installers. In addition, the suggestion presented by the commenters for an "Installer-in-Training" would require significant additional resources to verify experience. The current rules do not prohibit an individual from working for multiple installers; there are currently individuals who work for more than one installer. Therefore, no changes have been made in response to these comments.

JSD commented that to ease the administrative burden, verification of installer and site evaluator experience could be done by means of a three-part affidavit formulated by the commission under §30.240. JSD suggested that the affidavit be signed by the training installer or site evaluator, the apprentice, and the designated representative who reviews and or inspects the work performed.

TOWA-Heart, TOWA-East, and TOWA-West also commented that if installers are required to sign affidavits, the burden of proof is not on TCEQ, but is supported by forms, similar to other licenses.

Currently, §30.240(b)(5) requires that a sworn statement, which includes the number and types of systems, to be filed to document work experience. A three-part affidavit will not reduce the administrative burden because all information submitted in the affidavit would still be verified.

No changes were made in response to the comments.

An individual further commented that the licensees should be required to take certain continuing education courses to maintain their licenses.

Under current rules, each licensee is required to take 16 hours of continuing education to renew his license. The commission will consider this comment as the continuing education program is reviewed as part of the more stringent training program discussed previously in the preamble.

JSD commented that the commission must codify the experience requirements for number and type of system(s) and/or work hours of experience.

Currently, §30.240(b)(5) requires that a sworn statement be filed to document work experience, which includes the number and types of systems. Therefore, no changes were made in response to the comments.

ECS commented that new installers in the field could lower prices in an industry that is already struggling from low prices associated with cutting corners. TOWA-Gulf and ECS further commented that the up-front lower costs from cutting corners ends up being more expensive because more experienced installers end up being called out to fix problems created by installers who have made errors in their work.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted. The change is necessary to allow TCEQ to create more stringent training and testing programs which will provide individuals with the necessary skills to conduct their job tasks. Additionally, discussions with stakeholders will be held regarding the amount of experience

appropriate for Installer II licenses. The comments by TOWA-Gulf and ECS regarding costs are beyond the scope of this rulemaking.

City of College Station disagreed with the statement made by other commenters that the rule changes will make the business unprofitable since it is not the commission's responsibility to ensure that a business is profitable.

The commission appreciates the comment; however, as previously stated, the proposal to remove the experience requirement to obtain an Installer II license has been deleted. No changes are made in response to the comment.

ECS commented that education, experience, and enforcement must be used to have a good OSSF program. ECS inquired how more qualified people will be in the field sooner and who will educate them.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted because the commission is planning to adopt more stringent training standards. However, since these standards are not yet in place, and in response to this and other comments, the commission is not deleting the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the training and testing programs take effect. Additionally, discussions with stakeholders will be held regarding the amount of experience appropriate for Installer II licenses.

ECS and JSD commented that they have apprentices working for them and that they know of installers who are having a difficult time finding apprentices to hire. JSD, TOWA-Gulf, and an individual commented that the TCEQ website indicated there over 1,000 apprentices compared to 1,891 Installer II's.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted. The change is necessary to allow TCEQ to create more stringent training and testing programs which will provide individuals with necessary skills to conduct their job tasks. Additionally, discussions with stakeholders will be held regarding the amount of experience appropriate for Installer II licenses.

JSD and ECS commented that the apprenticeship program should be extended to include a six-month minimum experience requirement for designated representatives, as the current rules do not require prior experience before taking the certification course and examination. JSD commented that a designated representative needs on-the-job training prior to being issued a license as a designated representative, especially since the designated representative is responsible for inspecting the installer's work.

These comments are beyond the scope of this rulemaking.

JSD commented that doing away with the experience and licensing requirements is inconsistent with the Texas Coastal Management Program in that the wrong kinds of technology will be installed in improper conditions and increase the level of pollution in the state's waterways, estuaries, and bays.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted.

JSD commented that Galveston County is allowing the wrong systems to be installed. JSD also commented that 17 subdivisions along Dickinson Bayou have been surveyed and found to have systems that are either discharging into the bayou or are failing and nothing has been done to correct them. ECS also commented that Surfside Beach should have been closed several times due to high fecal counts, primarily from improperly installed and improperly approved and inspected systems.

The commission acknowledges the comments. In regard to the comment about Galveston County, the commission has recently performed a review of the Galveston County Health District, the entity responsible for the OSSF program in Galveston County. A number of deficiencies were found in the program, including what the commenter alleged. The Galveston County Health District has been advised to correct the deficiencies. The commission agrees that enforcement of the rules is an important part of the OSSF program. In addition, over 98% of the permitting and enforcement of OSSFs is performed by authorized agents. The commission staff will continue to evaluate authorized agents' enforcement programs during compliance reviews to determine if enforcement is being performed and to provide assistance to those authorized agents not taking

enforcement action. Further, the commission's OSSF program will continue to forward cases through the commission's enforcement process when received. No changes have been made in response to the comments since the comments are beyond the scope of this rulemaking.

An individual commented that training provided by the manufacturers of proprietary systems and designers of nonstandard systems needs to be addressed.

This comment is beyond the scope of this rulemaking.

ECS and an individual commented that a tougher examination and course will result in pressure being applied to change the examination if the failure rate goes up and expressed concern that the examination would be changed back to the original examination.

The failure rate for examinations in other licensing programs has been high, and changes to the examination have not been made. More stringent training requirements should result in better scores on licensing examinations. Therefore, no changes have been made in response to this comment.

ECS commented that the commission's statement that there will be no increase in cost to the state is not true because there will be a "greater burden on the regional offices, cities and counties who are authorized agents." The commenter stated that the authorized agents will have to deal with the problems created by lack of experience.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted because the commission is planning to adopt more stringent training standards. However, since these standards are not yet in place, and in response to this and other comments, the commission has decided not to delete the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the training and testing programs take effect.

ECS and an individual commented that the commission stated that these changes could increase enforcement, and ECS does not understand how this is possible. ECS and TOWA-Gulf further commented that lack of enforcement is one of the biggest problems in the OSSF program and more enforcement and follow-up is needed. ECS further commented that the commission should consider using a “board like Engineers and Well Drillers have.”

The commission agrees that enforcement of the rules is an important part of the OSSF program. In addition, over 98% of the permitting and enforcement of OSSFs is performed by authorized agents. The commission staff will continue to evaluate authorized agents’ enforcement programs during compliance reviews to determine if enforcement is being performed and to provide assistance to those authorized agents not taking enforcement action. Further, the commission’s OSSF program will continue to forward cases through the commission’s enforcement process when received. Finally, a “board like Engineers and Well Drillers” is not authorized in Texas Health and Safety Code, Chapter 366. No changes have been made in response to the comments since the comments are beyond the scope of this rulemaking.

An individual expressed disagreement with the statement that, “the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the agency.”

The comment appears to be addressing the proposed deletion of §30.240(b), which removed the experience requirement necessary to obtain an Installer II license. The reason for proposing to delete this section was that the commission is planning to adopt more stringent training standards. However, since these standards are not yet in place, and in response to this and other comments, the commission has determined not to delete the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the more stringent training and testing programs take effect.

An individual commented that the current rules are sound, but enforcement is not.

The commission agrees that enforcement of the rules is an important part of the OSSF program. In addition, over 98% of the permitting and enforcement of OSSFs is performed by authorized agents. The commission staff will continue to evaluate authorized agents’ enforcement programs during compliance reviews to determine if enforcement is being performed and to provide assistance to those authorized agents not taking enforcement action. Further, the commission’s OSSF program will continue to forward cases through the commission’s enforcement process when received. No changes have been made in response to the comments since the comments are beyond the scope of this rulemaking.

ECS and an individual commented that the commission stated that a public benefit was anticipated by improving the environmental performance of persons regulated by the agency, but disagreed because there will be people without experience doing work that cannot be learned only in the classroom.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted because the commission is planning to adopt more stringent training standards. However, since these standards are not yet in place, and in response to this and other comments, the commission has determined not to delete the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the training and testing programs take effect. Additionally, discussions with stakeholders will be held regarding the amount of experience appropriate for Installer II licenses.

TSPE commented that if these rules are passed, the safety and welfare of the public may be compromised; therefore, “. . . the study mandated by House Bill 1646 should be conducted by the House Environmental Regulation Committee as an Interim Legislative Study as opposed to an ‘in-house’ review by the TCEQ.”

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted because the commission is planning to adopt more stringent training standards. However, since these standards are not yet in place, and in response to this and other comments, the commission has decided not to delete the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the training and

testing programs take effect. Additionally, discussions with stakeholders will be held regarding the amount of experience appropriate for Installer II licenses.

TOWA, TOWA-Capitol, TOWA-Heart, TOWA-Gulf, TOWA-Alamo, TOWA-East, TOWA-West, and an individual commented that the proposed rule changes for experience requirements should not be addressed at this time and no action taken until it can be considered along with the entire OSSF program in the Interim Legislative Study. ECS also commented that a committee of industry stakeholders appointed by the House Environmental Regulations Committee working with TCEQ would help resolve problems in the future.

The proposal to remove the experience requirement to obtain an Installer II license in §30.240(b) has been deleted because the commission is planning to adopt more stringent training standards. However, since these standards are not yet in place, and in response to this and other comments, the commission has determined not to delete the experience requirement. The retention of §30.240(b) will leave in place a baseline performance level that installers must meet until the training and testing programs take effect. Additionally, discussions with stakeholders will be held regarding the amount of experience appropriate for Installer II licenses.

ECS commented that the statement “these rules are not intended to protect the public health and the environment” is appalling or wrong because installers, designated representatives, and sanitarians are there to protect the environment and to protect the consumer.

The statement “these rules are not intended to protect the public health and the environment” is stated in the context of an analysis and finding that this is not a major environmental rule. A major environmental rule means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although these rules enhance the protection of the environment and the public health and safety of citizens of the state, the rules are not specifically intended to protect the environment or reduce risks to human health. The rules are intended to allow licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists to obtain a site evaluator license, provided they meet the other requirements for a site evaluator.

An individual commented that the commission staff should be held to the same standard as staff for authorized agents and be required to hold the same license and be accountable.

Since the effective date of the current rules in 1997, employees of the commission performing the duties and responsibilities of a designated representative have been required to take the designated representative course and pass the examination. However, a license is not issued to employees in order to avoid any conflict of interest. No changes have been made in response to this comment.

Specific

JSD commented that §30.240 must be modified to allow an individual to apprentice under more than one installer to provide a wider degree of experience and working conditions for the individual.

The current rules do not prohibit an individual from working for multiple installers. In fact, there are currently individuals who work for more than one installer. Therefore, no changes have been made in response to the comments.

TOWA-Gulf and an individual commented that adding proposed §30.240(d)(2)(c), which adds a professional geoscientist list to the list of licenses, makes sense due to the educational background and practical experience needed to hold the geoscientist license.

The commission appreciates the comment in support of the rules.

**SUBCHAPTER G: ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES,
DESIGNATED REPRESENTATIVES, AND SITE EVALUATORS**

§§30.237, 30.240, 30.242, 30.244, 30.246

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the Texas Legislature in Texas Water Code, Chapter 37 and Texas Health and Safety Code, Chapter 366. The amendments are also adopted under the general authority granted in Texas Water Code, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under Texas Water Code and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under Texas Water Code, §5.013(14)(b); §7.002, which authorizes the commission to enforce provisions of Texas Water Code and Texas Health and Safety Code; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

§30.237. Definitions.

The definitions in Chapter 285 of this title (relating to On-Site Sewage Facilities) apply to this subchapter.

§30.240. Qualifications for Initial License.

(a) To obtain an Installer I license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) completed the Installer I basic training course; and

(3) passed the Installer I examination.

(b) To obtain an Installer II license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) met one of the following requirements:

(A) held an Installer I license for at least one year;

(B) held an Installer I license for six months and possessed an apprentice registration for at least one year before June 13, 2001;

(C) held an apprentice registration for at least two years; or

(D) previously possessed an Installer II license;

(3) completed the Installer II basic training course;

(4) passed the Installer II examination; and

(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the individual's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the individual and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:

(A) verified experience as an Installer I. The individual shall submit either:

(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;

(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the individual; or

(iii) other documentation of the individual's work experience, approved by the executive director;

(B) verified experience as an apprentice. An individual shall submit either:

(i) a sworn statement from the installer for whom the individual performed construction services;

(ii) a sworn statement from a designated representative who witnessed the individual working on at least six OSSF installations; or

(iii) other documentation of the applicant's work experience, approved by the executive director.

(c) To obtain a designated representative license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) completed the designated representative basic training course; and

(3) passed the designated representative examination.

(d) To obtain a site evaluator license, an individual must have:

(1) met the requirements of Subchapter A of this chapter and §30.246 of this title (relating to Application for Site Evaluator); and

(2) met the following requirements:

(A) complete the site evaluator basic training course;

(B) pass the site evaluator examination; and

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice).

§30.242. Qualifications for License Renewal.

(a) To renew an Installer I, Installer II, designated representative, or site evaluator license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 16 hours of approved continuing education. For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of a current license specified in §30.240(d)(2)(C) of this title (relating to Qualifications for Initial License).

§30.244. Exemptions.

(a) The individual owner of a single family dwelling is not required to be a licensed installer in order to install or repair an on-site sewage facility (OSSF) on the owner's property. This provision does not apply to developers or to those that develop property for sale or lease. If the owner compensates a person to construct any portion of an OSSF, the individual performing the work must be a licensed installer. The owner must meet all permitting, construction, and maintenance requirements of the permitting authority. The owner must have the site evaluation performed by an individual who possesses either a current site evaluator or a professional engineer license.

(b) A licensed electrician who installs the electrical components, or a person who delivers a treatment or pump tank and sets the tank or tanks into an excavation, is not required to have an installer license.

(c) A professional engineer may perform site evaluations without obtaining a site evaluator license.

§30.246. Application for Site Evaluator.

(a) An individual who previously held a site evaluator license, or has previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, shall submit an application, application fee, and documentation of a current license specified in §30.240(d)(2)(C) of this title (relating to Qualifications for Initial License) before September 1, 2003. After that date the individual must submit a new application with the appropriate fee and pass the examination.

(b) An individual who begins the process to become eligible for a site evaluator license after September 1, 2003, shall meet the requirements of §30.240(d)(2) of this title.

(c) A professional engineer may perform site evaluations without obtaining a site evaluator license. However, a professional engineer may obtain a site evaluator license by complying with the requirements in this subchapter.