

The Texas Commission on Environmental Quality (commission) adopts amendments to §§30.340, 30.342, and 30.350 *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 970) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems.

The commission adopts amendments to Chapter 30 to include requirements for licensing of operators of subsurface area drip dispersal systems and the wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the subsurface area drip dispersal systems.

The commission also adopts additional rulemaking in 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Drip Dispersal System; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits; Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, to implement HB 2651 in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 30.340, Qualification for Initial License

The adopted amendment to §30.340 prohibits individuals from applying for a new Class D wastewater license if that individual previously held a Class D license and is currently operating a wastewater treatment facility that treats domestic wastewater and disposes of treated effluent through a subsurface area drip dispersal system. Currently, all land application facilities, including subsurface area drip dispersal systems, are required to have a minimum of a Class D wastewater operator. Subsurface area drip dispersal systems require a very high quality effluent on a very consistent basis to prevent the drip lines and emitters from clogging. A higher level of licensed operator will help provide that quality and consistency.

Section 30.342, Qualifications for License Renewal

The adopted amendment to §30.342(c) adds paragraph (3) to prohibit the renewal of a Class D wastewater license for an operator who is operating a wastewater treatment facility that treats domestic wastewater and disposes of treated effluent through a subsurface area drip dispersal system. Subsurface area drip dispersal systems require a very high quality effluent on a very consistent basis to prevent the drip lines and emitters from clogging. A higher level of licensed operator will help provide that quality and consistency.

Section 30.350, Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Licenses Required

Adopted §30.350(e) is amended to require that the chief operator of a wastewater treatment facility that treats domestic wastewater and disposes of treated effluent through a subsurface area drip dispersal

system holds at least a Class C wastewater license. Currently, the commission allows all land application facilities, including subsurface area drip dispersal systems, to be operated by a Class D wastewater operator. Subsurface area drip dispersal systems require a very high quality effluent on a very consistent basis to prevent the drip lines and emitters from clogging. A higher level of licensed operator will help improve quality and consistency.

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 adopted rules do not meet the definition of a “major environmental rule.” Under Texas Government Code, §2001.0225, “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 adopted rules implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The specific intent of this rulemaking is to amend Chapter 30 to include licensing requirements for operators of subsurface area drip dispersal systems and wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the subsurface area drip dispersal systems. The adopted rules do 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 adopted rules simply add licensing requirements for operators of subsurface area drip dispersal systems and wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the subsurface area drip dispersal systems.

The adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §2001.0225(a). Texas Government Code, §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 rules do not meet any of these criteria. First, the adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the adopted rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32.

The adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis

determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to amend Chapter 30 to include licensing requirements for operators of subsurface area drip dispersal systems and wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the subsurface area drip dispersal systems. The adopted rules do not constitute a takings because they do not burden private real property. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency and determined that Chapter 30 does not impact any CMP goals or policies because it prescribes the level of licensure or training required for operators of subsurface area drip dispersal systems and the treatment facilities that supply treated effluent to

subsurface area drip dispersal systems. Chapter 30 is administrative and does not regulate the environment.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral comments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. One comment was related to this chapter.

RESPONSE TO COMMENTS

SOSI commented that the amendments to Chapter 30 requiring that subsurface area drip dispersal systems be operated by a chief operator with at least a Class C wastewater operator license exceeds legislative intent and directive.

RESPONSE

The commission disagrees with the comment. The amendments to Chapter 30 are supported by TWC, §32.003(4), that requires the use of all reasonable methods to implement the policy of

maintaining the quality of fresh water in the state, promote the beneficial reuse of commercial, industrial, and municipal waste, and prevent underground injection that may pollute fresh water.

Because of the level of automation required, a more experienced, more educated operator is warranted.

SUBCHAPTER J: WASTEWATER OPERATORS AND OPERATIONS COMPANIES

§§30.340, 30.342, 30.350

STATUTORY AUTHORITY

The amendments are adopted 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 the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted in HB 2651, §2 to the commission to adopt rules under TWC, Chapter 32.

The adopted amendments implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application

permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§30.340. Qualifications for Initial License.

(a) To obtain a license, an individual must have met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), and the following requirements for each class of license.

Figure: 30 TAC §30.340(a)

License	Education	Required Work Experience	Required Training
Class D or Class I	High School diploma (HSD) or Equivalent	0	20 hours
Class C or Class II	HSD or equivalent	2 years	60 hours
Class B or Class III	Bachelors HSD or equivalent	2½ years 5 years	100 hours 100 hours
Class A	Masters Bachelors HSD or equivalent	4 years 5 years 8 years	160 hours 160 hours 160 hours

(b) At least one-half of the total experience required for a wastewater treatment license must be in actual domestic wastewater treatment facility operation or maintenance duties. Related experience, which involves tasks similar to those required for operation of wastewater treatment facilities, will count at a rate of 50% toward meeting the total experience requirement. For laboratory experience to be applicable, the laboratory must be owned and operated by the permittee and the laboratory technician must consult daily with operational personnel.

(c) Wastewater collection system experience must be in actual wastewater collection system operation or maintenance duties. Credit for experience not directly connected with collection system operation or maintenance shall be approved if the experience involves tasks that are similar to that required for the operation and maintenance of collection systems. Each year of related experience shall count as 1/2 year of experience. Each year of experience in collection system operation and maintenance shall only count as 1/2 year of experience toward a wastewater treatment facility operator license.

(d) Individuals who request to substitute a bachelors or masters degree for experience at the Class A, Class B, or Class III level must have a major in chemistry, biology, engineering, microbiology, bacteriology, or another similar discipline, as approved by the executive director on a case-by-case basis.

(e) For applicants with a high school diploma or equivalent, 32 semester hours of college or an additional 40 hours of training credits may be substituted for one year of the experience requirement. The maximum years allowed for substitution are as follows:

(1) Class A, Class B, and Class III applicants may substitute up to two years of the required work experience; and

(2) Class C and Class II applicants may substitute up to one year of the required work experience.

(f) The hours of training credit required for a license must be in approved courses, which include the following or their equivalents.

Figure: 30 TAC §30.340(f)

License	Required Courses	Elective Courses
Class D	Basic Wastewater Operation	None
Class C	Basic Wastewater Operation Wastewater Treatment plus one elective course	Wastewater Collection Wastewater Laboratory Water Utility Calculations Water Utility Safety
Class B	Wastewater Treatment Wastewater Collection Wastewater Laboratory Water Utility Safety plus one elective course	Water Utility Calculations Water Utility Management Advanced Wastewater Laboratory

Class A	Wastewater Treatment Wastewater Collection Wastewater Laboratory Water Utility Management Water Utility Safety plus one elective course	Water Utility Calculations Advanced Wastewater Laboratory Wastewater Technology Advanced Management
Class I	Wastewater Collection	None
Class II	Basic Wastewater Operation Wastewater Collection plus one elective course	Water Utility Safety Pump and Motor Maintenance
Class III	Basic Wastewater Operation Wastewater Collection Water Utility Safety Pump and Motor Maintenance plus one elective course	Water Utility Management Water Utility Calculations Pre-treatment Facility Inspection

(g) An individual who previously held a Class D license may not apply for a new Class D license if the individual currently operates any activated sludge type facilities, any trickling filter or rotating biological contactor facilities with a permitted daily average flow of 100,000 gallons per day or greater, or any facility that uses a subsurface area drip dispersal system as defined in §222.5 of this title (relating to Definitions) for disposal of its effluent. A trickling filter or rotating biological contactor is a secondary aerobic process that uses microbiological organisms attached to a fixed substrate.

§30.342. Qualifications for License Renewal.

(a) To renew a license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations) and completed ten hours of approved continuing education per year the license is valid; or

(2) met the requirements of Subchapter A of this chapter and passed the examination for the license.

(b) The basic wastewater operation course may not be used to renew a Class B or A license.

(c) Class D licenses are not renewable for operators of:

(1) any activated sludge type facilities;

(2) any trickling filter or rotating biological contractor (RBC) facilities with a permitted daily average flow of 100,000 gallons per day or greater. A trickling filter or RBC facility is a facility that uses secondary aerobic biological processes for treatment of sewage;

(3) any facility that uses a subsurface area drip dispersal system as defined in §222.5 of this title (relating to Definitions) for disposal of its effluent.

(d) To renew an active converted perpetual license, an individual must have met the requirements of this section, with the exception of the renewal fee.

§30.350. Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Licenses Required.

(a) Operators of remote or mobile sludge processing facilities are required to hold a valid Class D or higher license.

(b) Operators of domestic wastewater treatment facilities owned and located on industrial sites which are regulated by industrial-type wastewater disposal permits are required to be licensed. This is required only if the point of discharge is separate from any other industrial outfalls and the domestic wastewater is not mixed with other industrial wastewater before discharge.

(c) An individual first entering the field of wastewater treatment or collection may be employed as an operator-in-training for a period up to one year. An operator-in-training must work in the presence of a licensed operator during this time.

(d) Each holder of a wastewater disposal permit for a wastewater treatment facility shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration.

(e) Domestic wastewater treatment facilities will be classified in accordance with the following criteria.

Figure: 30 TAC §30.350(e)

Treatment System	Permitted Daily Average Flow	Category
No Discharge Treatment Systems	All flows with a disposal system other than a subsurface area drip dispersal system	D
	All flows with subsurface area drip dispersal systems	C
Pond Systems Preceded by Imhoff Tanks, Primary Clarifiers, or Facultative Lagoons	1.0 million gallons per day (MGD) or less	D
	Greater than 1.0 MGD	C
Activated Sludge (Extended Aeration Mode) and Oxidation Ditch Systems	0.10 MGD or less	D
	Greater than 0.10 MGD to 1.0 MGD	C
	Greater than 1.0 MGD to 10.0 MGD	B
	Greater than 10.0 MGD	A
Activated Sludge (Modes other than Extended Aeration)	0.050 MGD or less	D
	Greater than 0.050 MGD to 1.0 MGD	C
	Greater than 1.0 MGD to 10.0 MGD	B
	Greater than 10.0 MGD	A
Trickling Filter, Rotating Biological Contactor, or other Fixed Film Processes	0.50 MGD or less	D
	Greater than 0.50 MGD to 2.0 MGD	C
	Greater than 2.0 MGD to 10.0 MGD	B
	Greater than 10.0 MGD	A

(f) Category D wastewater treatment facilities shall be reclassified as Category C facilities if any of the following conditions exist:

(1) a Category D facility incorporating anaerobic sludge digestion, except Imhoff tanks with sludge drawn off to drying beds;

(2) a Category D facility whose permit requires nutrient reduction; or

(3) a Category D facility whose permit requires the final effluent to meet a daily average biochemical oxygen demand, or total suspended solids concentration less than ten milligrams per liter.

(g) A wastewater treatment facility having a combination of treatment processes which are in different categories shall be assigned the higher category.

(h) The executive director may increase the treatment facility classification for facilities which include unusually complex processes or present unusual operation or maintenance conditions.

(i) The chief operator of each wastewater treatment facility must possess a license equal to or higher than that of the category of treatment facility.

(j) Each category of facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week.

(k) Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed at not less than one level below the category of the facility.

(l) Either the licensed chief operator or licensed operator in charge must be present for scheduled commission inspections.

(m) A licensed wastewater treatment facility operator may perform all duties relating to the operation and maintenance of both wastewater treatment facilities and wastewater collection systems. It is not necessary to hold both types of licenses. A licensed collection system operator may perform only those duties relating to the operation and maintenance of wastewater collection systems.

(n) Each classified wastewater collection system must have at least one licensed operator who holds a license class equal to or higher than that category of system. Wastewater collection systems shall be classified as follows.

Figure: 30 TAC §30.350(n)

Category of Collection System	Daily Average Flow	Minimum Class of Operator Required
Category I	Less than 100,000 gallons per day (gpd)	Class I or Class D
Category II	100,000 gpd to 1 million gallons per day (MGD)	Class II or Class C
Category III	Over 1 MGD	Class III or Class B