

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.340, 30.342, and 30.350.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 proposes to amend Chapter 30 to include requirements for licensure 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 proposes additional rulemaking to 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, in this issue of the *Texas Register* to implement HB 2651.

SECTION BY SECTION DISCUSSION

The commission proposes 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

Proposed §30.340(g) is amended to prohibit 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

Proposed §30.342(c)(3) is amended 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

Proposed §30.350(e) is amended to require that {at least} 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, all land application facilities, including subsurface area drip dispersal systems, are allowed 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 provide that quality and consistency.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. Fiscal implications may be anticipated for other state agencies or local governments that own or operate subsurface area drip dispersal systems. The proposed rules would require subsurface area drip dispersal systems disposing of domestic effluent to employ at least one Class C licensed wastewater operator instead of a Class D licensed wastewater operator, and subsurface area drip dispersal systems disposing of industrial effluent would be required to obtain and document more training for their wastewater operators. Local governments utilizing subsurface area drip dispersal systems may see an increase in salary and training costs.

HB 2651, 79th Legislature, added Chapter 32 to the TWC and required the commission to establish a new permit program and specify operating requirements for subsurface area drip dispersal systems by July 31, 2006. Permitting requirements are proposed in 30 TAC Chapter 222 in this issue of the *Texas*

Register. This proposed rulemaking would affect wastewater systems disposing of both domestic and industrial effluent through subsurface area drip dispersal systems.

Subsurface Area Drip Dispersal Systems Disposing of Domestic Effluent

New subsurface area drip dispersal systems disposing of domestic effluent would be required to comply with more stringent licensing, and therefore, more training requirements beginning November 1, 2006. Existing subsurface area drip dispersal systems disposing of domestic effluent would be required to comply with more stringent licensing, and therefore, more training requirements, beginning November 1, 2008, for wastewater operators. Subsurface area drip dispersal systems disposing of domestic effluent require a very consistent, high quality effluent to prevent the clogging of drip lines and emitters. The training and licensing of a higher level operator will help ensure that the needed consistency and quality of domestic effluent is such that the system functions properly.

The licensing costs of a Class C and D operator costs \$35 per year. However, a Class D license is issued once every two years, for a total two-year cost of \$70. A Class C operator license is issued once every three years for a total three-year cost of \$105. Both licenses require a high school equivalency, but a Class C wastewater operator license requires two commission-approved training classes and two years of experience versus one commission-approved training class for a Class D license. The average training class is estimated to be \$125, so training costs could increase for local governments employing Class D operators by \$125 the first year a Class C operator license is required. In addition, according to a 2002 salary survey conducted by the Texas Water Association, salary costs for a Class C operator are \$2,000 to \$3,000 higher on an annual basis than the salary costs for a Class

D operator. Local governments owning or operating subsurface area drip dispersal systems for domestic effluents could see their operator costs increase by \$2,125 to \$3,125 during the first year they are required to have a Class C wastewater operator.

Subsurface Area Drip Dispersal Systems Disposing of Industrial Effluent

Due to the diversity of industrial wastes, operators of industrial subsurface area drip dispersal systems must specialize in the characteristics of the system, pollutants, and facility they work in. Because of the diversity and complexity of systems treating industrial wastes, the licensing of industrial wastewater operators is not required. The proposed rules, in keeping with the current rules, do not require licensing of industrial subsurface area drip dispersal systems operators. However, the proposed rules require that training, either formal or informal, take place, be documented, and be adequate for the proper operation and maintenance of both the treatment unit and the subsurface area drip dispersal systems. Subsurface area drip dispersal systems training costs for local governments that operate industrial wastewater facilities may be free or low cost because such training can be provided by the manufacturers of the equipment or by a consultant overseeing the design and installation of an industrial facility.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater protection of water quality because more highly trained operators will be required to operate subsurface area drip dispersal systems.

Individuals or businesses that operate subsurface area drip dispersal systems disposing of domestic effluent will be required to utilize a Class C wastewater operator instead of a Class D operator required by current rules.

The costs for hiring, training, and licensing for individuals and businesses will be the same as those incurred by a local government, and costs could increase by as much as \$2,125 to \$3,125 during the first year that a Class C wastewater operator is required. Individuals or businesses that operate a subsurface area drip dispersal system disposing of industrial effluent will be subject to the same training requirements as those experienced by local governments. Training costs for subsurface area drip dispersal systems disposal of industrial effluent are not expected to increase because of the flexibility of how the training can be acquired.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses owning or operating subsurface area drip dispersal systems for the disposal of domestic effluent. A small business is defined as having fewer than 100 employees or less than \$1 million in annual gross receipts. Small or micro-businesses utilizing subsurface area drip dispersal systems for the disposal of domestic effluent will incur the same increase in salary and training costs as those experienced by local governments, individuals, and large businesses. These costs are estimated to range between \$2,125 to \$3,125 during the first year that a Class C wastewater operator is required. A micro-business is defined as having no more than 20 employees. The cost per employee for a small business is estimated to be approximately

\$21 to \$31 during the first year of implementation. For a micro-business, the cost is estimated to be approximately \$106 to \$156 per employee during the first year of implementation.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are 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 proposed 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 proposed rules would 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 proposed rules 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 proposed

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

In addition, the proposed 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 proposed rules do not meet any of these criteria. First, the proposed rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the proposed rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are proposed to implement HB 2651. Third, the proposed 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 propose 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 proposed rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed 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 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 proposed rulemaking and found that the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 30 TAC §505.11(b)(4), relating to rules subject to the Texas Coastal Management Program (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.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed in the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle.

The hearing will be structured for the receipt of oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-050-222-PR.

Comments must be received no later than 5:00 p.m., March 20, 2006. For further information, please contact Sherry Smith, Water Quality Division at (512) 239-0571 or Louis C. Herrin, III, P.E., Water Quality Division at (512) 239-4552.

SUBCHAPTER J: WASTEWATER OPERATORS AND OPERATIONS COMPANIES

§§30.340, 30.342, 30.350

STATUTORY AUTHORITY

The amendments are proposed 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, §5.013; §5.501, which authorizes the commission to issue temporary and emergency orders; §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 proposed 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) - (f) (No change.)

(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, [or] 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) - (b) (No change.)

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

(1) any activated sludge type facilities; [or]

(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) (No change.)

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

(a) - (d) (No change.)

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

Figure: 30 TAC §30.350(e)

[Figure: 30 TAC§30.350(e)]

Treatment System	Permitted Daily Average Flow	Category
No Discharge Treatment Systems	All flows <u>with a disposal system other than a subsurface area drip dispersal system</u>	D
	<u>All flows with subsurface area drip dispersal systems</u>	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) - (n) (No change.)