

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) adopts amendments to §§30.3, 30.111, 30.120 and 30.122.

Sections 30.3, 30.120 and 30.122 are adopted *with changes* to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 867). Section 30.111 is adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted amendments create two new license classifications to be consistent with changes made to 30 TAC Chapter 344, Landscape Irrigation, Texas Occupations Code, §1903.251 and the addition of Texas Water Code (TWC), §49.238, and Local Government Code, §401.006, by House Bill (HB) 4, §13, HB 1656, §1, and Senate Bill (SB) 3, §2.34, 80th Legislature, 2007.

HB 4, §13 and §19 and SB 3, §2.34, direct the commission to adopt and enforce rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators. Additionally, as a result of this legislation, in a separate rulemaking, amendments are being adopted to Chapter 344 to enhance the duties of the installer and eventually, eliminate the installer license altogether.

HB 1656, §1, directs municipalities with populations of 20,000 or more to adopt ordinances that require an installer of an irrigation system to be licensed by the commission and obtain a permit before installing an irrigation system. These municipalities must adopt standards and specifications for designing, installing, and operating irrigation systems and include at a minimum, any rules adopted by the

commission related to landscape irrigation. These municipalities may also employ or contract with a licensed plumbing inspector or licensed irrigation inspector to enforce the ordinances. Additionally, HB 1656 allows water districts to adopt rules that meet the same criteria as municipalities and may employ or contract with a licensed plumbing inspector, a licensed irrigation inspector, the district's operator, or other governmental entity to enforce the rules.

The commission administers the Landscape Irrigator and Installer Licensing Program that currently includes licenses for installers and irrigators. The adopted amendments specify requirements for individuals to obtain and maintain an occupational license to sell, design, install, maintain, alter, repair, or service an irrigation system, provide consulting services relating to an irrigation system, connect an irrigation system to any water supply, or inspect irrigation systems and perform other enforcement duties as an employee or as a contractor of a water purveyor.

TWC, §37.002 requires the commission to adopt any rules necessary to establish occupational licenses and registrations prescribed by Texas Occupations Code, §1903.251. Therefore, to meet the statutory requirements, the agency must create a new irrigation technician and landscape irrigation inspector license classification. The adopted amendments ensure that the agency's rules are consistent with statutory standards and that the rules are up-to-date and effective. The adopted amendments also make grammatical and punctuational corrections and incorporate language modifications needed to improve readability and enhance enforceability.

The requirements of HB 1656 became effective September 1, 2007. As required by §19 of HB 4, and SB 3, the commission must adopt standards no later than June 1, 2008, with an effective date of January 1, 2009. The effective date of the amendments to Chapter 30, Subchapters A and D is June 26, 2008.

SECTION BY SECTION DISCUSSION

Subchapter A - Administration of Occupational Licenses and Registrations

The adopted amendments to §30.3, Purpose and Applicability, add irrigation technicians and irrigation inspectors as entities regulated by the commission. To avoid any problems that could result if there were a delay in getting the applicable irrigation technician training and exam developed, the dates of December 31, 2008 and January 1, 2009 contained in §30.3(c) of the proposed rules was changed to June 1, 2009.

Subchapter D - Landscape Irrigators and Installers

The adopted amendments change the title of Subchapter D to Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors.

The following phrase has been removed from the statutory authority language of Subchapter D.

"Additionally, these amendments are also adopted under TWC, §49.238, concerning Irrigation Systems. These amendments are also adopted under Local Government Code, §401.006, concerning Irrigation Systems." These two statutes require or allow certain actions of municipalities and water districts with respect to the installations of landscape irrigation systems. However, they do not provide statutory authority to the commission with regards to rulemaking.

The adopted amendments to §30.111, Purpose and Applicability, add enforcement and inspection duties related to landscape irrigation systems. The adopted amendments also allow individuals holding an irrigation technician license issued after December 31, 2008, to perform those duties approved for the installer licensees in Chapter 344. Additionally, the adopted amendments require that those individuals

that perform the tasks listed in adopted §30.111(a)(4) meet the qualifications of this chapter, be licensed according to Subchapter A, unless exempt under §30.129, and comply with the requirements of Chapter 344.

The adopted amendments to §30.120, Qualifications for Initial License, detail the requirements for individuals to obtain an initial installer license prior to June 1, 2009 and for obtaining an initial irrigation technician license after December 31, 2008. The date was changed to June 1, 2009 from the January 1, 2009 date in the proposed rules to avoid any problems that could result if there were a delay in getting the applicable irrigation technician training and exam developed. The adopted amendments also detail the requirements to obtain an initial irrigation inspector license. Additionally, the phrase "an approved landscape irrigation inspection course" has been added to §30.120(e) to allow completion of an approved landscape irrigation inspection course as an alternative for individuals who had not completed the basic irrigator, backflow prevention assembly testing and water conservation or water audit training courses.

The adopted amendments to §30.122, Qualifications for License Renewal, detail the requirements for individuals to renew an installer license which expires prior to June 1, 2009 and to renew irrigation technician and irrigation inspector licenses. The December 31, 2008 and January 1, 2009 dates contained in the proposed rules was changed to June 1, 2009 to avoid any problems to the regulated community that could result if there were a delay in getting the applicable irrigation technician training and examination developed in a timely manner.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules do not meet the criteria for a major environmental rule. Texas Government Code, §2001.0225, defines a major environmental rule as one that is specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The adopted rules are intended to create a licensing program for individuals who perform irrigation technician duties. An irrigation technician is defined as an individual who, under the direct supervision of a licensed irrigator, installs, maintains, alters, repairs, or services an irrigation system, or connects an irrigation system to any water supply. The adopted rules are also intended to create a licensing program for individuals that will perform irrigation inspector duties. An irrigation inspector is defined as a person who inspects irrigation systems and performs other enforcement duties as an employee or as a contractor of a water purveyor and is required to be licensed under Chapter 30. Training requirements and enforcement for noncompliance for the irrigation technician and irrigation inspector will be addressed in the adopted rules. Protection of human health and the environment may be a by-product of the adopted rules, but it is not the specific intent of the adopted rules. Furthermore, the adopted rules will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply add licensing requirements for irrigation technicians and irrigation inspectors and address training requirements and enforcement for noncompliance. The adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted amended sections are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in §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 amended sections to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these rules will exceed. The United States Environmental Protection Agency does not have a federal program for landscape irrigation systems and does not establish requirements for states that implement their own landscape irrigation 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 could possibly be exceeded by these rules. Fourth, the commission adopts these rules to allow licensing requirements for irrigation technicians and irrigation inspectors, and address training requirements and enforcement for noncompliance, in compliance with the statute. Therefore, the commission does not adopt the rules solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these adopted

rules is to ensure consistency between the rules and their applicable statutes, by creating a licensing program for irrigation inspectors and irrigation technicians. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property.

Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules would only make non-substantive changes to the existing rules and adopt new regulations that do not affect private real property.

The commission invited public comment regarding the consistency with the Takings Impact Assessment during the public comment period. No comments were received.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial, administrative, and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

PUBLIC COMMENT

The proposal was published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 867). The commission held a public hearing on February 26, 2008. The comment period closed on March 3, 2008. The commission received comments from Accord Irrigation Technologies (Accord), Austin Lawn Sprinkler Association (Austin Lawn), Austin Water Utility (AWU), City of El Paso (El Paso), Dallas Irrigators Association (DIA), Degreed Landscaping (Degreed), Dew Drip Irrigation (Dew Drip), East Texas Irrigation Association (East Texas), El Paso Irrigation Association (EPIA), Green Industry Alliance (GIA), Irrigation Association (IA), James Stewart Irrigation (Stewart), Lone Star Chapter of the Sierra Club (Sierra Club), Longhorn Services (Longhorn), Lower Colorado River Authority (LCRA), Mac's Landscaping & Irrigation (Mac's), Texas Panhandle Irrigation Association (TPIA), Prince Irrigation (Prince), Rio Grande Valley Irrigation Association (Rio Grande Valley), San Antonio Irrigation Association (SAIA), Smart Outdoor Services (Smart), South Plains Irrigation Association (SPIA), Turf Pro (Turf), Water Smart Irrigation, Inc (Water Smart) and nine individuals. The overall comments were supportive of the rule revisions. There were two commenters with issues that resulted in changes to the proposed rules. These changes are identified in the section titled Response to Comments. Additionally, there were several comments that addressed issues or suggested changes that were outside the scope of this rulemaking and no changes were made as a result of those comments.

RESPONSE TO COMMENTS

General Comments

Prince commented that paying a \$111 licensing fee, completing a week long training course and passing an exam that has been simplified because too many applicants were failing has made it too easy to get into the irrigation business.

The commission responds that the commenter did not provide sufficient details as to the particular license at issue. Additionally, the commission has not made changes to any examinations in order to increase the passing rate. Therefore, the commission was not able to provide a response to this comment. No changes were made to the rules as a result of the comment.

Prince commented that it is ironic that the new rules require an irrigation drawing on each system and the requirement for creating an irrigation drawing was removed from the exam during the last revision of the irrigator exam.

The commission responds that the basic irrigator course includes the necessary training for designing and drawing irrigation systems. A review of the irrigator examination was conducted in 2001. The work group that was comprised of Irrigation Council members and commission staff determined that the irrigation drawing completed during the examination was burdensome and not necessary to determine the competency of the applicant for the license. Instead, the workgroup developed questions that use depictions of irrigation drawings and charts to test the individual's knowledge of this subject. No changes were made to the rules as a result of this comment.

Prince commented that it seemed the state would rather maintain a lot of licensees who are poorly qualified and place the burden of professionalism and efficiency on the water purveyors by requiring them to inspect the irrigation systems.

The commission responds that the commenter did not provide specific details or examples of inadequacy to demonstrate that licensees are poorly qualified, nor identify any problems in the

required training that would lead to licensees being poorly qualified. No changes were made to the rules as a result of this comment.

Degreed, Longhorn and two individuals commented that there is a need for irrigation training and testing to be in Spanish as well as English. The commenters feel that the majority of laborers in the irrigation industry are Hispanic and while some speak English their native language is Spanish. This puts them at a disadvantage of not being able to take training courses and the exams in Spanish.

The commission responds that developing training and examinations in specific languages are outside the scope of this rulemaking. No changes were made to the rule as a result of this comment.

East Texas and Mac's commented that the rules for the irrigation industry should not be more restrictive than similar trades such as electrical, plumbing, or the pesticide applicators licenses. East Texas, Mac's and one commenter representing Rio Grande Valley commented that the licensed technician language should be removed from the rules. East Texas, Mac's and TPIA commented that three levels of license are needed in the irrigation program: 1) Installer - responsible to begin learning the irrigation business from the bottom up (similar to an apprentice in the plumber or electrical industry; 2) Technician - individual who has been on the job for two years, has taken training courses, and has passed any applicable exam. Technician would be able to supervise and take on some irrigation responsibilities; and 3) Licensed Irrigator - Individual who has been a licensed Technician for two years, completed training courses and has passed any applicable exam.

The commission responds that the commenter did not provide specific details regarding concerns that how the proposed rules for the irrigation industry are more restrictive than similar trades. Regarding the removal of irrigation technician language from the rules, TWC, Chapter 37 requires the commission to establish requirements and uniform procedures for issuing licenses and registrations. 30 TAC Chapter 344 outlines specific job duties and responsibilities for the irrigation technician. Therefore, to meet the requirements of TWC Chapter 37 and in support of 30 TAC Chapter 344 the requirements for establishing requirements and uniform procedures for issuing irrigation technician licenses are included in the Chapter 30 rules. With regard to the establishment of a multi-tiered license system and revisions for the requirements to obtain an irrigator's license (i.e. requiring irrigation experience to qualify to obtain an irrigator license), these were not part of the original rule revision proposal. Including these changes at this point would be considered increasing the scope of the proposed rules which could have a significant impact on existing and prospective applicants. The Administrative Procedure Act precludes making such changes without adequate public notice and giving parties an opportunity to comment on such issues. No changes were made to the rule as a result of this comment.

One commenter representing Rio Grande Valley suggested leaving the licensed technician language in the rules.

The commission recognizes and appreciates the comment. No changes were made to the rules as a result of this comment.

Turf commented that the rule revisions are needed and welcome the changes, but also commented that a little clarification is needed in a few areas.

The commission appreciates the comment. The commission has attempted to make the rules as clear as possible. However, the commenter did not identify which specific areas of the rules needed clarification. No changes were made to the rules as a result of the comment.

Accord commented that irrigation consultants, designers, installers, repair technicians, system operators, and inspectors must be experienced (journeyman or field experience), licensed (based upon education, testing and experience) and responsible to carry out the requirements of Chapter 344.

The commission agrees that individuals who 1) sell, design, install, maintain, alter, repair, or service an irrigation system; 2) provide consulting services relating to an irrigation system; 3) connect an irrigation system to any water supply; or 4) inspect an irrigation system must comply with the requirement in Chapter 344 and must be licensed according to Chapter 30, Subchapters A & D unless they are exempt under §30.129, Exemptions. Currently the licensed irrigator performs those duties described by items one through three. The inspections of irrigation systems will be performed by the newly created licensed irrigation inspector. Revisions to the requirements for obtaining an irrigator's license were not part of the original rule proposal. Changes to the irrigator licensing requirements such as requiring individuals to have journeyman or field experience to obtain a license would be considered a major change to the scope of the proposed rules which could have a substantial impact on applicants and the regulated community. The Administrative Procedure Act precludes making such changes without adequate public notice and giving affected

parties an opportunity to comments on such issues. With regard to requiring individuals to have journeyman or field experience to obtain an irrigation inspector license, the commission feels that this issue would be best addressed by the hiring entity (municipality, water district, etc), who will have the opportunity to include experience requirements when advertising to fill a position or contract with a licensed irrigation inspector. No changes were made to the rules as a result of the comment.

Accord commented that the required date of the new irrigation inspector and irrigation technician licenses should be no less than two years after the test, study guides and testing systems are available. Study, testing and license issuance would make two years a short time. Field experience should be a requirement to be completed during the two years or during a specific time thereafter for the license to be effective.

The commission responds that phasing in the requirement to have an irrigator or irrigation technician on site beginning January 1, 2010 will give the regulated community 18 months to prepare for the new requirement. The phase-in period allows sufficient time for prospective irrigation technician licensees to successfully complete the required training and the examination. However, in the event of a delay in developing training and exams and to avoid causing any problems to the regulated community, the date that installer applications will no longer be accepted has been extended until June 1, 2009. The commission disagrees with the suggested requirement of two years of field experience before the license can be effective. Successful completion of the training will provide the individual with sufficient knowledge and skills to perform the duties. Along with that and only after the successful completion of the examination, to verify competency, will the license be issued. No changes were made to the rules as a result of the comment.

El Paso, EPIA, Mac's and IA commented that before a license is issued the rules should require each irrigation contractor submit to the TCEQ a bond or proof of insurance.

The commission responds that changes to the irrigator licensing requirements such as requiring individuals to post a bond or document proof of insurance to obtain a license would be considered a major change to the scope of the proposed rules which could have a substantial impact on applicants and the regulated community. The Administrative Procedure Act precludes making such changes without adequate public notice and giving affected parties an opportunity to comments on such issues. The commission believes that this issue would be best addressed at a local level through the municipalities or water districts, who could incorporate such requirements through their permitting procedures, if they felt such requirements were necessary. No changes were made to the rule as a result of this comment.

Dew Drip commented that many of the rules are too extreme and some of the rules need to be combined and made more user friendly.

The commission responds that the commenter did not specifically identify which rules were too extreme, or those that could have been combined and made more user friendly. No changes were made to the rules as a result of the comment.

Stewart commented that the new rules are in the right direction, but could have been stronger.

The commission appreciates the comment. However, the commenter did not specifically identify which rules needed to be strengthened. No changes were made to the rules as a result of the comment.

Comments to Preamble

One individual asked how the specific numbers were generated and calculated for the preamble.

The commission responds that the numbers used in Figure: 30 TAC Chapter 31 - preamble are based on the number of irrigation technician and irrigation inspector licenses projected to be issued over the next five years after the adoption of the proposed rules. These numbers also project the revenues that are expected to be generated during that same time period. These projections are based on discussions with the regulated community and historical trends of other licensing programs. No changes were made to the rules as a result of the comment.

Comments to Fiscal Notes - Costs to State and Local Government

One individual asked what happens to the fees collected for the two new licensing programs (irrigation inspector and irrigation technician). Has there been a determination on how to use these collected fees?

The commission responds that TWC, §37.009, allows the commission to establish and collect fees to cover the cost of administering and enforcing this chapter and the licenses and registrations issued under this chapter. The fees collected are used by the TCEQ to administer the agency's Occupational Licensing Program and enforce the applicable rules and statutes. No changes were made to the rules as a result of the comment.

One individual asked how the salary range of \$29,000 and \$50,000 per year were determined. The individual commented that if most licensed irrigators have an annual salary higher than this amount, what is the benefit or gain for one to stop their irrigation business and pursue an irrigation inspector license. Prince commented that the amount for local governments to hire a licensed irrigation inspector would be much more than the \$29,000 to \$50,000 stated in the preamble.

The commission responds that the salary range of \$29,000 to \$50,000 for irrigation inspectors was derived from discussions with municipalities that currently conduct irrigation inspections. The lower range of the salaries was from smaller municipalities and went up as the size of the municipality and individual qualifying requirements increased. With regard to the comment that this range of salaries is below what most irrigators currently make, the commenter did not provide statistical data to support this statement. The commission is unable to make a determination what benefit or gain there would be for an individual to stop an irrigation business and pursue an irrigation inspector license due to of many variable factors, such as the individual's income from the irrigation business, age, health, etc. The individual would have to consider such factors and make the decision based on individual circumstances. No changes were made to the rules as a result of the comment.

Comments to Fiscal Notes- Small Business and Micro-Business Assessment

One individual commented that with regard to the small business and micro-business assessment contained in the preamble that the rules would have adverse fiscal implications. Small or micro-businesses are expected to cover the cost of training and licenses, which means the cost of irrigation

services will go up according to the direct number of employees an employer pays for in training, Continuing Education Units (CEUs), licenses, renewals etc. Not all companies will have an average cost to perform these services, based on the number of employees the employer pays for. This will cause more pricing confusion for the consumers.

The commission responds that the irrigator license remains the same with no additional training requirements added. The irrigation technician license replaces the installer license and will require completion of a training course. However, the duties of the irrigation technician have been expanded to give them the ability to provide supervision of worksites and crews that would have otherwise required a licensed irrigator. The continuing education requirements for renewal of irrigator technician license has also been limited to 16 hours which reduces cost to small and micro businesses. There is no mandatory requirement to have licensed irrigation technicians, if the licensed irrigator is providing all necessary supervision and oversight. No changes were made to the rules as a result of this comment.

Comments to SubchapterA: Administration of Occupational Licenses and Registrations

GIA commented that with regard to §30.33(c) existing licensed installers that will have to "start over" and become a licensed irrigation technician should receive CEU credits for the first year of their new licensed technician designation. GIA feels that this is a small recognition for those folks that currently hold licensed installer license.

The commission responds that the proposed irrigation technician license is a new license with duties and responsibilities that are much greater than those of the existing installer. Additional CEUs for

renewal of the license must be obtained after the license is issued, but before the expiration of the license. No changes were made to the rule as a result of this comment.

Comments to Subchapter D: Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors

§30.111, Purpose and Applicability

GIA and SAIA commented that clarity needs to be added to §30.111(a)(4) relating to who can hire an inspector. GIA and SAIA suggested modifying the proposed language to read "inspect irrigation systems and perform other enforcement duties as an employee or as a contractor for a water purveyor or municipality."

The commission responds that HB 1656 allows a municipality or water district to employ or contract with a licensed plumbing inspector, licensed irrigation inspector, or district operator for water districts to enforce the adopted ordinances or rules. Adding the suggested language would restrict licensed irrigation inspectors from working for other entities or individuals requesting irrigation inspections. No changes were made to the rules as a result of the comment.

IA suggested the following language be added to §30.111: "In furtherance of the provision of this section, and to prevent improperly installed and maintained irrigation systems, any person or entity that engages and/or performs any of the tasks listed in subsection (a) of this section without the license required in this section is subject to a fine."

The commission responds that §30.111 outlines the purpose and applicability of Chapter 30, Subchapter D, relating to Landscape Irrigators, Installers, Irrigation Technicians and Irrigation Inspectors. That purpose is to establish qualifications for issuing and renewing licenses to individuals who: 1) sell, design, install, maintain, alter, repair, or service an irrigation system; 2) provide consulting services relating to an irrigation system; 3) connect an irrigation system to any water supply; or 4) inspect irrigation systems. Enforcement actions relating to individuals or entities performing these duties without a license and which may include administrative penalties will be addressed through Chapter 344 and Chapter 70, Enforcement. No changes were made to the rules as a result of the comment.

§30.120, Qualifications for Initial License

One individual commented that the proposed date of January 9, 2009 for implementing the irrigation technician license is too aggressive and unrealistic. Given that the proposed rules will not become effective until June of 2008, and considering the time necessary to study, schedule the exam, wait for the results and obtain the license, it would be more realistic to perhaps implement this requirement in June 2009.

The commission responds that the phase-in of the requirement to have an irrigator or irrigation technician on site beginning January 1, 2010 will give the regulated community 18 months to prepare for the new requirement. The phase-in period should allow sufficient time for successful completion of the required training and examination, to meet the demand for on site supervision. However, in the event of a delay in developing training and exams and to avoid causing any

problems to the regulated community, the date that installer applications will no longer be accepted has been extended until June 1, 2009. The rule language has been modified to reflect this change.

El Paso, EPIA, SAIA and SPIA requested that existing installer licenses be grandfathered to irrigation technician licenses or in lieu of grandfathering require existing installers to take only the portion of the irrigation exam needed to upgrade them to obtain an irrigation technician license.

The commission appreciates the comment, but respectfully disagrees with the suggestion to grandfather the existing installer licenses to an irrigation technician licenses. Under the current rules, no training is required to obtain an installer license. The individual is only required to pass an examination. Therefore it is pertinent that individuals wishing to obtain an irrigation technician license complete the required training and pass the applicable examination, so they will know what duties they can perform and what is entailed in the performance those duties. No changes were made to the rules as a result of the comment.

GIA questioned since only 16 hours of CEUs is being required for the renewal of the irrigation technician license is that license only valid for two years.

The commission responds that the irrigation technician license will have a validity period of three years and will require only 16 CEUs for the renewal of the license. No changes were made to the rule as a result of this comment.

DIA and Smart commented that the Irrigation Technician exam will have to be much more comprehensive and more similar to the existing licensed Irrigator exam. However, if the exam is too difficult, there could be an incentive for individuals to skip obtaining an Irrigation Technician license and go directly to applying for the irrigator license.

The commission responds that the creation of exams and the difficulty of the questions to be included in the exams are beyond the scope of this rulemaking. No changes were made to the rules as a result of this comment.

Degreed commented that to ensure better irrigation designs, the TCEQ should require individuals have three to five years of irrigation experience before being able to apply for an irrigator license. If the individual has been working for an irrigation company, a notarized affidavit from the irrigation company verifying the work experience would be acceptable until three to five years after the implementation of the irrigation technician training course and exam. AWU commented that they support some on the job training to obtain an irrigator's license. Additionally, one individual commented that §30.120(c) should be modified to require an individual to have two years on the job training as an irrigation technician under the supervision of a licensed irrigator prior to applying for the irrigator license.

The commission responds that revisions to the requirements for obtaining an irrigator's license were not part of the original rule proposal. Changes to the irrigator licensing requirements would be considered a major change to the scope of the proposed rules which could have a substantial impact on applicants and the regulated community. The Administrative Procedure Act precludes

making such changes without adequate public notice and giving affected parties an opportunity to comments on such issues. No changes were made to the rule as a result of this comment.

TPIA and Water Smart commented that they believe the irrigation inspectors need to be experienced, licensed irrigators with three to five years experience in the irrigation industry in addition to completing the required training and passing any applicable exam. DIA commented that ideally, the irrigation inspector would have multiple years in irrigation experience and have more than the minimum requirements of an entry-level irrigator. El Paso and EPIA also commented that the irrigation inspector should have an experience level that is required and some hands-on experience in order to enforce the rules professionally as required by Chapter 344. Dew Drip and one individual commented that §30.120(e) should be modified to require an individual have two years of practical experience to qualify to obtain a irrigation inspector license.

The commission responds that requiring applicants for the irrigation inspector license to complete basic courses relevant to the irrigation systems, backflow prevention and water conservation or a landscape irrigation inspection course will provide the applicant with the basic knowledge to conduct inspections. The hiring entity (municipality, water district, etc) will have the opportunity to include experience requirements when advertising to fill a position or contract with a licensed irrigation inspector. No change was made to the rule as a result of this comment.

Accord commented that plumbing inspectors or licensed irrigation inspectors must, at a minimum, meet the requirements of a licensed irrigator or technician to carryout effective inspections to ensure life, safety and water conservation. Additionally, Dew Drip commented that the plumbing inspectors have no

education or continuing education requirements and the requirements for the irrigation inspector should be lighter or the requirements for the plumbing inspectors need to be raised. The two should have the same requirements. Additionally, AWU and LCRA commented that they recently conducted an irrigation inspection training program for city plumbing inspectors performing irrigation system inspections and support the following training requirements.

Initial training consisting of a minimum of three four-hour classes including - two hours covering new regulations; four hours to cover system components and the basics of reading an irrigation design; four hours of field demonstration of an irrigation system; and two hours covering irrigation inspection process and procedures

The following specific topics should be covered - controller boxes (and multiple controller boxes); wiring; hydro-zoning; valves; rain shutoffs; overspray; head spacing; common system irregularities; and water budgeting.

The commission responds that HB 1656 allows a municipality and water district to employ or contract with a licensed plumbing inspector to enforce the adopted ordinances or rules. However, TCEQ does not have the authority to require plumbing inspectors to take landscape irrigation training. Municipalities and water districts can establish additional training requirements for plumbing inspectors that they may hire or contract with to perform the related work. No change was made to the rule as a result of this comment.

Sierra Club commented that in order for the new irrigation standards to be implemented properly, any individuals that inspect the systems must be adequately trained in order to evaluate systems fairly and consistently. Sierra Club supports the recommendations of the LCRA and the City of Austin in regards to training inspectors.

The commission recognizes and appreciates the comment. No changes were made to the rules as a result of the comment.

One individual commented that if an individual currently holds in good standing an irrigator license, backflow assembly tester license, and a recognized and accepted irrigation auditing certification, they should be exempted from taking the irrigation inspector exam. At the least the applicant should only be required to either take an enforcement section of the exam or be granted reciprocity.

The commission responds that although the applicable training may have been taken by an individual, the successful completion of the applicable examination is needed to verify competency of the individual to perform the irrigation inspector duties. Furthermore, an individual who holds a backflow prevention assembly tester license or irrigation auditing certification that has not taken any other training may not have the knowledge and skills needed to perform the duties of the irrigation inspector. No changes were made to the rule as a result of this comment.

One individual commented that the requirements contained in §30.120(e)(2) are too stringent and recommends the applicants only need to complete the basic irrigator course. The new requirements for the irrigation inspector are more than what is required of the licensed irrigator. The inspector will not be

testing backflow prevention devices or performing water audits, so should not be required to take the backflow or water audit/conservation training.

The commission responds that §30.120(e) should have contained a provision to allow completion of an approved landscape irrigation inspection course for individuals who had not completed the basic irrigator, backflow prevention assembly testing and water conservation or water audit training courses. Changes have been made to the rules as a result of this comment.

GIA and SAIA commented that the language in §30.120(d)(4) be modified to allow the basic irrigation technician course to be taught by a TCEQ approved training provider to individuals of an irrigation company at their place of business. The irrigation contractor should be allowed to hire an instructor for the purposes of training his employees "in house" should he choose that option. This is necessary to deal with the competitive work force within the industry.

The commission responds that "in house" training is permissible if the training is conducted by a TCEQ approved training provider and is given specifically to that contractor's employees, and is not open to outside individuals. Section 30.28 outlines specifics for conducting training. No changes to the rules have been made as a result of this comment.

GIA, SAIA and one individual commented that §30.120(f) be modified to allow an individual possessing a irrigation inspector license, but also obtaining or currently holding a irrigator license to move that irrigator license to an inactive status while performing inspection duties. Alternatively, the individual

should be allowed to move the irrigation inspector license to an inactive status should he want to resume irrigator duties.

The commission responds that proposed revisions to the rules did not address any requirements for placing a current irrigator's license into an inactive status during the time the same individual holds an irrigation inspectors license. Changes such as this would be considered a major change to the scope of the proposed rules which could have a substantial impact on applicants and other licenses regulated by the commission. The Administrative Procedure Act precludes making such changes without adequate public notice and giving affected parties an opportunity to comment on such issues. No changes were made to the rule as a result of this comment.

§30.122, Qualifications for License Renewal

Degreed and Dew Drip commented that to ensure the irrigation inspectors are up-to-date on rules and changing technology they need to obtain eight CEUs per year to renew their license.

The commission appreciates the comment and that the CEU requirements for renewing an irrigation inspector license is set at 24 hours pursuant to §30.122(f)(2). No changes were made to the rule as a result of this comment.

§30.129, Exemptions

One individual commented that §30.129(b)(4) is a broad exemption for public employees doing work on public property in allowing those individuals to design and install entire systems without demonstrating any knowledge of water conservation whatsoever and this rule package needs to address this issue.

The commission responds that this comment is beyond the scope of this rulemaking. The exemption requirements contained in §30.129(b)(4) are based on statutory requirements contained in Texas Occupations Code, §1903.002. The commission does not have the authority to change statutory requirement by rule revisions. No changes were made to the rule as a result of this comment.

Oral Comments from Public Hearings

Degreed, East Texas and TPIA made oral comments that reiterated those written comments they had previously submitted.

The commission recognizes and appreciates the comments. The commission responded to those comments when addressing these entities' written comments.

One individual made an oral comment regarding technical issues with the irrigation program (i.e. the requirement of final inspections, head spacing, head pressure, use of solvents, etc).

The commission recognizes and appreciates the comment. However, the comments did not address any specific issues related to the actual proposed licensing rules. No changes were made to the rule as a result of this comment.

Several oral comments were taken during the public hearing related to Rule Project Number 2007-027-344-CE which also related to issues contained in Rule Project Number 2007-031-030-CE. The comments are as follows:

DIA, TPIA and IA made oral comments that reiterated those written comments they had previously submitted which addressed both Rule Project Number 2007-027-344-CE and Rule Project Number 2007-031-030-CE.

The commission responded to those comments when addressing these entities' written comments.

Austin Lawn made an oral comment that educational backgrounds and language barriers could be a major focal point with applicants passing the irrigation technician exam.

The commission appreciates the comments and responds that developing training and exams in specific languages is beyond the scope of this rulemaking. No changes were made to the rule as a result of this comment.

One individual made an oral comment that the current irrigation exam is at a third-grade level and tries to deal primarily with the tradesman out in the field. The examination is something that needs to be addressed, as right now a number of the individuals, even able to pass the exam, are not qualified to hold the license.

The commission responds that the creation of exams and the difficulty of the questions to be included in the exams are beyond the scope of this rulemaking. No changes were made to the rules as a result of this comment.

One individual made an oral comment that the irrigation program needs a consultant's license and that no current licensees should be grandfathered in obtaining such a license.

The commission recognizes and appreciates the comment. However, since the creation of a consultant's license was not part of the original rule revision proposal, including the creation of this license would be considered a major change to the scope of the proposed rules. The Administrative Procedure Act precludes making such changes without adequate public notice. No changes were made to the rule as a result of this comment.

One individual made oral comment that more emphasis should be put on the design portion of the irrigators exam.

The commission responds that the creation of exams and the amount of emphasis that will be placed on one section of an exam over another section (i.e. design versus hydraulics) is beyond the scope of this rulemaking. No changes were made to the rules as a result of this comment.

WI, SI and one individual made oral comment that plumbing inspectors should have to have irrigation training before performing inspection on irrigation systems.

The commission responds that HB 1656 allows a municipality or water district to employ or contract with a licensed plumbing inspector to enforce the adopted ordinances or rules. However, TCEQ does not have the authority to require plumbing inspectors to take landscape irrigation training. Municipalities and water districts can establish additional training requirements for

plumbing inspectors that they may hire or contract with to perform the related work. No change was made to the rule as a result of this comment.

SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

§30.3

STATUTORY AUTHORITY

This amendment is adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules.

This amendment is also adopted under TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. This amendment is also adopted under Texas Occupations Code, §1903.053, concerning Standards, Texas Occupations Code, §1903.251, concerning License Required.

This adopted amendment implements TWC, §§5.013, 5.102, 5.103, 37.001-37.015 and Texas Occupations Code, §1903.053 and §1903.251.

§30.3. Purpose and Applicability.

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - L of this chapter

(relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, Installer, Irrigation Technicians and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; and Visible Emissions Evaluator Training Providers) contain the program-specific requirements related to each program.

(b) The requirements of this chapter apply to the following occupational licenses and registrations:

- (1) backflow prevention assembly testers;
- (2) customer service inspectors;
- (3) landscape irrigators, installers, irrigation technicians and irrigation inspectors;
- (4) leaking petroleum storage tank corrective action specialists and project managers;
- (5) municipal solid waste facility supervisors;

(6) on-site sewage facility installers, designated representatives, apprentices, maintenance providers, and site evaluators;

(7) water treatment specialists;

(8) underground storage tank contractors and on-site supervisors;

(9) wastewater operators and operations companies;

(10) public water system operators and operations companies; and

(11) visible emissions evaluators training providers.

(c) Effective January 1, 2010, the installer license will no longer be valid and will be replaced by an irrigation technician license. No new or renewal installer license applications will be accepted after June 1, 2009. Existing installer licenses or those renewed after the effective date of these rules, but prior to June 1, 2009 will remain valid until December 31, 2009 or their expiration date, whichever occurs first.

**SUBCHAPTER D: LANDSCAPE IRRIGATORS, INSTALLERS, IRRIGATION
TECHNICIANS AND IRRIGATION INSPECTORS**

§§30.111, 30.120, 30.122

STATUTORY AUTHORITY

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also adopted under TWC, Chapter 37, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. These amendments are adopted under the Texas Occupations Code, §§1903.001, 1903.002, 1903.053 and 1903.251, concerning Definitions, Exemptions, Standards and License Required.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 37.001 - 37.015; Texas Occupations Code, §§1903.001, 1903.002, 1903.053 and 1903.251.

§30.111. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who:

- (1) sell, design, install, maintain, alter, repair, or service an irrigation system;

(2) provide consulting services relating to an irrigation system;

(3) connect an irrigation system to any water supply; or

(4) inspect irrigation systems and perform other enforcement duties as an employee or as a contractor.

(b) An individual who performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless they are exempt under §30.129 of this title (relating to Exemptions); and must comply with the requirements in Chapter 344 of this title (relating to Landscape Irrigation).

§30.120. Qualifications for Initial License.

(a) To obtain an installer license prior to January 1, 2009, an individual must:

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

(2) pass the applicable examination.

(b) Effective January 1, 2010, the installer license will no longer be valid and will be replaced by an irrigation technician license. No new installer license applications will be accepted after June 1, 2009. New installer licenses issued after the effective date of these rules will remain valid through December 31, 2009. The fee for initial installer licenses issued after the effective date of these rules will be prorated to reflect the validity period.

(c) To obtain an irrigator license, an individual must:

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

(2) complete and pass the basic irrigator training course; and

(3) pass all sections of the applicable examination.

(d) To obtain an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter;

(2) complete the basic irrigation technician course; and

(3) pass the applicable examination.

(e) To obtain an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter.

(2) successfully complete:

(A) the basic irrigator training course;

(B) an approved backflow prevention assembly testing training course; and

(C) an approved water conservation or water audit course; or

(D) an approved landscape irrigation inspection course.

(3) pass the applicable examination.

(f) An individual is ineligible to obtain an irrigation inspector license if the individual engages in or has financial or advisory interest in an entity that:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system; or

(3) connects an irrigation system to any water supply.

§30.122. Qualifications for License Renewal.

(a) To renew an installer license that expires prior to June 1, 2009, an individual must meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(b) Effective January 1, 2010, the installer license will no longer be valid and will be replaced by an irrigation technician license. No installer license renewal applications will be accepted after December 31, 2008.

(c) Installer licenses renewed after the effective date of these rules, but prior to June 1, 2009, will remain valid until December 31, 2009. The fee for installer licenses renewed after the effective date of these rules will be prorated to reflect the validity period.

(d) To renew an irrigator license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 24 hours of approved training credits.

(e) To renew an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 16 hours of approved training credits.

(f) To renew an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 24 hours of approved training credits.