

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

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments would 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, Regular Session.

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. As a result of this legislation, in a separate rulemaking, amendments are being proposed 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. Those 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. Those municipalities may also employ or contract with a licensed plumbing inspector or licensed irrigation inspector to enforce the ordinance. 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 Irrigators and Installers Licensing Program that currently includes licenses for installers and irrigators. The proposed 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 proposed amendments would ensure that the agency's rules are consistent with statutory standards and that the rules are up-to-date and effective. The proposed amendments would also make grammatical and punctuation 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 proposed 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 proposed amendments to §30.3, Purpose and Applicability, would add Irrigation Technicians and Irrigation Inspectors as entities regulated by the commission.

Subchapter D – Landscape Irrigators and Installers

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

The proposed amendments to §30.111, Purpose and Applicability, would add enforcement and inspection duties related to landscape irrigation systems. The proposed amendments would 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 proposed amendments would require that those individuals that perform the tasks listed in proposed §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 proposed amendments to §30.120, Qualifications for Initial License, would detail the requirements for individuals to obtain an initial installer license prior to January 1, 2009 and for obtaining an initial irrigation technician license after December 31, 2008. Additionally, the proposed amendments would detail the requirements to obtain an initial irrigation inspector license.

The proposed amendments to §30.122, Qualifications for License Renewal, would detail the requirements for individuals to renew an installer license which expires prior to January 1, 2009 and to renew irrigation technician and irrigation inspector licenses.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or local governments as a result of administration or enforcement of the proposed rules. However, the agency's licensing revenue will increase as a result of the establishment of two new licenses for an irrigation inspector and for an irrigation technician. The agency has not been given the appropriation authority to utilize the fee revenue expected to be generated by these two new license programs.

The proposed amendments would create two new license classifications to be consistent with changes required by House Bill 1656, 80th Legislature, 2007, Regular Session. HB 1656, §2 and §3, allows municipalities and water districts to employ or contract with a licensed irrigation inspector or a licensed plumbing inspector to enforce ordinances or rules relating to irrigation systems which they have approved. The agency does not currently have a program to obtain and maintain an occupational license to perform inspections of landscape irrigation systems. To meet the statutory requirements of HB 1656, the agency must create a new landscape irrigation license classification. In addition, the requirement to have a licensed individual present during the installation, repair, alteration, or service of an irrigation system requires the agency to create a license for irrigation technicians to meet expected statewide demand for the installation of irrigation systems. The proposed amendments would establish the

requirements for these two types of licenses. This fiscal note does not address the costs to hire a licensed plumbing inspector since this license program is not administered by the agency.

The agency expects to utilize existing appropriation authority to perform the administrative tasks needed to modify existing databases, mail needed notifications to licensees, and print needed forms and materials.

Licensing fees for these new licensing classifications will be collected and deposited into the TCEQ Occupational Licensing Account 0468.

The fee for each license will be \$111 for a three-year period. The number of licenses to be issued or renewed and the amount of revenue to be collected and deposited into Account 0468 during the first five years the proposed rules are in effect can be seen in the table below:

Figure: 30 TAC 31-preamble

Account Number: 0468	1st Year	2nd Year	3rd Year	4th Year	5th Year
Revenue Increase (Decrease) to State for Irrigation Inspector License	\$33,300	\$11,100	\$5,550	\$30,525	\$13,875
Revenue Increase (Decrease) to State for Irrigation Technician License	\$188,700	\$77,700	\$44,400	\$158,175	\$63,825
Estimated Number of Irrigation Inspector Licenses Issued	300	100	50	50	50
Estimated Number of Irrigation Inspector Licenses Renewed	0	0	0	225	75
Estimated Number of Irrigation Technician	1,700	700	400	150	50

Licenses Issued					
Estimated Number of Irrigation Technician Licenses Renewed	0	0	0	1,275	525

There are approximately 117 municipalities that will be required to adopt and enforce a landscape irrigation ordinance, and there are approximately 1,100 water districts that could choose to do so. The proposed rules will have a fiscal impact on local governments but that impact is not expected to be significant. Any staffing costs, licensing costs, or training costs incurred by municipalities and water districts could be recovered by these entities if they choose to increase permitting fees to cover their inspection costs. Staff estimates that the salary for an irrigation inspector could range from \$29,000 to \$50,000 per year depending on the requirements of the local government. Local governments would incur license exam fees and training costs for any employee serving as a licensed irrigation inspector. These costs are estimated to be \$1,300 per applicant in the first year. A license fee of \$111 would also be required in the first year. The license must be renewed every three years, and the employee would be required to earn continuing education credits to qualify for renewal. Training cost for continuing education and the license renewal fee is estimated to range from \$450 to \$560 every three years. If a local government decides to use a third party to inspect landscape irrigation systems, contract costs are estimated to be equivalent to or lower than the costs of hiring, training, and licensing an employee. It is also expected that any contract costs would be recovered by increasing permit fees.

PUBLIC BENEFITS AND COSTS

Nina 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 compliance with state

law, increased consumer protection, and the promotion of water conservation through the adoption and enforcement of landscape irrigation ordinances.

Businesses and individuals who choose to perform landscape irrigation installations or inspections for municipalities and water districts are not expected to experience adverse fiscal impacts as a result of the proposed rules. Staffing, licensing, and training costs are expected to be in the same range as those incurred by local governments, and any such costs are expected to be recovered by the fee charged to do such inspections.

Staff does anticipate that some businesses could conduct training classes and administer license exams.

Training and testing revenues could vary widely depending on how much the entity would charge to recoup its costs and make a profit. The proposed rules require that applicants for the irrigation inspector license take certain courses. Based on the costs of other licensing programs, staff estimates that businesses could charge as much as \$500 for a basic irrigator training course, \$500 for a backflow prevention assembly testing course, and \$300 for an approved water conservation or water audit course.

For an irrigation technician license, only one course, a basic irrigation technician course, estimated to cost \$350, is required. Continuing education courses would be in the same price range as the courses taken to obtain an original license. Businesses administering license exams could charge as much as \$100 per applicant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that might choose to train or test potential licensees, perform irrigation inspections, or provide irrigation technician services. Small or

micro-businesses are expected to cover the costs of training their employees and obtaining the appropriate licenses when they perform irrigation services for their customers.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to implement state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed 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 rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 proposed rules are intended to create a licensing program for individuals that perform installer duties and will in the future perform duties of an irrigation technician. An irrigation technician is defined as an individual that, 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 proposed 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 would be addressed in the proposed rules. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, 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 rules would simply add licensing requirements for irrigation technicians and irrigation inspectors and address training requirements and enforcement for noncompliance. The proposed rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the proposed amended sections 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 amended sections to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. The United States Environmental Protection Agency does not have a federal program for 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 would 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. These 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.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these proposed 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 proposed rules would be neither a statutory nor a constitutional taking of private real property.

Specifically, the subject proposed regulations do not affect a landowner's rights in private real property

because this rulemaking does not burden or 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 proposed rules would only make non-substantive changes to the existing rules and proposed new regulations that do not affect private real property.

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

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.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on February 26, 2008, at 1:30 p.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building C, Room 131. 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. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. 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.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-031-030-CE. The comment period closes March 3, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Terry Thompson, Occupational Licensing Section, at (512) 239-6095.

SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

§30.3

STATUTORY AUTHORITY

This amendment is proposed 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 proposed 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 proposed under Texas Occupations Code, §1903.053, concerning Standards, Texas Occupations Code, §1903.251, concerning License Required.

This proposed 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, [and] Installers, 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, [and] 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 December 31, 2008. Existing installer licenses or those renewed after the effective date of these rules, but prior to January 1, 2009 will remain valid until December 31, 2009 or their expiration date, whichever occurs first.

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

§30.111, §30.120, §30.122

STATUTORY AUTHORITY

These amendments are proposed 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 proposed 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. Additionally, these amendments are also proposed under TWC §49.238, concerning Irrigation Systems. These amendments are also proposed under Local Government Code, §401.006, concerning Irrigation Systems. These amendments are proposed under the Texas Occupations Code, §§1903.001, 1903.002, 1903.053 and 1903.251, concerning Definitions, Exemptions, Standards and License Required.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 37.001 - 37.015; 49.238 and Local Government Code, §401.006; 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; [or]

(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 [have]:

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

(2) pass [passed] 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 December 31, 2008. 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)[(b)] To obtain an irrigator license, an individual must [have]:

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

(2) complete [completed] and pass [passed] the basic irrigator training course; and

(3) pass [passed] 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;

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

(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 January 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 January 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)[(b)] 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.