

The Texas Commission on Environmental Quality (commission, TCEQ, or agency) adopts the amendments to §§30.201, 30.207, 30.210, and 30.212 - 30.214 and adopts new §30.211.

Sections 30.210 and 30.211 are adopted *with changes* to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6932). Sections 30.201, 30.207, and 30.212 - 30.214 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Section 30.201(b) requires that at least one individual who supervises or manages the operation of a municipal solid waste (MSW) facility be licensed according to Chapter 30, Subchapter A, Administration of Occupational Licenses and Registrations.

Before September 27, 2007, any MSW supervisor licensee could operate any type of facility, unless that facility's permit specified the level of license required. However, in September 2007, the commission changed §30.213(a) to require that effective September 1, 2009, all MSW facilities would have to be operated by a supervisor who held the appropriate level of license necessary to operate the facility.

Additionally, Chapter 30 rules effective September 27, 2007, stated that MSW provisional or solid waste facility supervisor in training letters that were issued before the effective date of the rules shall remain in effect until their expiration date, and that no applications for provisional or solid waste facility supervisor in training letters would be accepted after September 1, 2008.

The regulated community contacted the agency and voiced concerns that the current rules limit the types of facilities that a class 'A' MSW supervisor can oversee. Individuals who obtained their class 'A' license prior to September 27, 2007, had to complete the training and pass the examination for the lower levels of licenses (progression method) prior to being issued a class 'A' license. Therefore, these licensees would be qualified to supervise any level or type of MSW facility. The regulated community feels that the current rules are creating a hardship by requiring individuals who have a class 'A' license to spend resources to obtain another license, when the class 'A' should be sufficient.

Furthermore, the regulated community has concerns that the elimination of the provisional licenses from the current rules hampers its ability to fill vacated positions. The provisional license allowed individuals who did not meet all of the licensing qualifications (i.e. educational, work experience) to supervise an MSW facility while completing the necessary requirements for obtaining the standard license.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout the rulemaking to reflect the agency's current practices and to conform to Texas Register and agency guidelines. Changes include updating agency references, updating cross-references, and correcting typographical, spelling, and grammatical errors. These changes are non-substantive and generally are not specifically discussed in this preamble.

§30.201, Purpose and Applicability

The adopted amendment to §30.201 removes existing subsections (c) and (d). This change was necessary because the dates referenced in the current rule provisions are outdated and are no longer applicable. The adopted amendment to §30.201 adds new subsection (c), which authorizes individuals who obtained a class 'A' MSW Facility Supervisor license prior to September 27, 2007, to supervise any level or type of MSW facility. This change was necessary because individuals who obtained their class 'A' license prior to September 27, 2007, had to complete the training and pass the examination for the lower levels of licenses (progression method) prior to being issued a class 'A' license. Therefore, these licensees would be qualified to supervise any level or type of MSW facility. Additionally, the adopted amendment to §30.201 adds new subsection (d), which limits those individuals that obtained a class 'A' license after September 27, 2007, by completing only the class 'A' MSW facility supervisor course and passing the applicable examination, to supervising only those facilities requiring a class 'A' licensed supervisor until the individual completes the class 'B' MSW facility supervisor course. After completion of this course, the individual will be allowed to supervise facilities requiring either a class 'A' or 'B' license. This change was necessary because individuals who obtained their class 'A' license after September 27, 2007, would have only taken the class 'A' MSW facility supervisor course and would not have been required to complete the training and pass the examination for the lower levels of licenses (progression method) prior to being issued a class 'A' license. Therefore, these licensees would not be qualified to supervise any level or type of MSW facility.

§30.207, Definitions

The adopted amendment to §30.207 adds §30.207(1)(A)(i) and (ii), which defines the substitution of college credit hours for the experience requirements for the class 'A' and 'B' licenses. Additionally, the adopted amendment to §30.207 adds §30.207(1)(B), which defines the college credit hour disciplines that qualify for substitution of the experience requirements for the class 'A' and 'B' licenses. The adopted amendment to §30.207 also adds §30.207(3), which defines 'Manager of Landfill Operations' (MOLO) certification. These changes were necessary to add clarity and improve the readability of the rules.

§30.210, Qualifications for Initial License

The adopted amendment to §30.210 modifies the table that contains the education, work experience, and training requirements for each license class. The adopted amendment to §30.210 removes the class 'C' license and the associated requirements to obtain that license. These changes were necessary because under this rulemaking, the class 'C' license was eliminated. The adopted amendment to §30.210 also adds the examination requirement to the table to be consistent with Chapter 30, Subchapter A. This change was necessary to add clarity and conciseness to the rules. Further, the adopted amendment to §30.210 removes the requirement of having to complete the class 'C' MSW facility supervisor course in order to obtain the class 'A' and 'B' licenses. This change was necessary because under this rulemaking, the class 'C' license is being eliminated, and this course is no longer applicable. Additionally, the adopted amendment to §30.210 adds provisions to allow individuals who currently hold a MOLO certification issued by the Solid Waste Association of North America (SWANA) and who have completed a TCEQ approved MSW training course pertaining to Texas MSW regulations to obtain a class 'A' MSW Facility Supervisor license without having to complete the class 'A' MSW

facility supervisor courses and pass the applicable examination. This change was necessary to assist the regulated community's abilities to fill vacated positions quickly by allowing individuals who have a current SWANA issued MSW facility supervision certification to obtain a TCEQ issued license without having to complete the class 'A' MSW facility supervisor courses and pass the applicable examination. In response to public comment, the adopted amendment to §30.210 further modifies the table to require individuals who plan to supervise specialized MSW processing facilities (i.e. medical waste, composting) to complete a specialized training course that is applicable to that type of facility before being issued a standard class 'B' license.

§30.211, Provisional Licenses

Adopted new §30.211 allows individuals who complete the required training, pass the applicable examination, and meet the minimum education requirements, but who lack the required experience; or individuals who pass the applicable examination, meet the education and experience requirements, but lack the required training to be issued a provisional license. This change was necessary to assist the regulated community's abilities to fill vacated positions by allowing individuals who did not meet all of the licensing qualifications (i.e. educational, work experience) to supervise an MSW facility while completing the necessary requirements for obtaining the standard license. Adopted new §30.211 also creates a validity period of two years and an application fee of \$74.00 for the provisional licenses. This change was necessary to establish the validity period and the cost of the license.

§30.212, Qualifications for License Renewal

The adopted amendment to §30.212 changes the continuing education requirements contained in §30.212(2)(A) from 20 hours to 16 hours. This change was necessary to provide consistency with the other licensing programs administered by the agency whose continuing education requirements are the same among all the levels of licenses. The adopted amendment to §30.212 also removes §30.212(2)(C), continuing education requirements for a class 'C' license. This change was necessary because under this rulemaking, the class 'C' license was eliminated and renewal of the license is no longer applicable.

§30.213, Classification of Municipal Solid Waste Facilities and Level of License Required

The adopted amendment to §30.213 outlines the level of licenses required to supervise specific types of MSW facilities. Specifically, the amendment allows those MSW facilities that require a class 'B' licensed supervisor to also be supervised by individuals that hold a class 'A' license. This change was necessary because individuals who obtained their class 'A' license had to complete the training and pass the examination for the lower levels of licenses (progression method) prior to being issued a class 'A' license. Therefore, these licensees would be qualified to supervise any level or type of MSW facility. The adopted amendment to §30.213 also combines the Type I, Type IAE, and Type IV MSW facilities into the general category for landfills. This change was necessary to add clarity, provide consistency, and enhance enforceability of the rules. This adopted amendment also adds Type IVAE MSW facilities that were not previously included in the classification table in §30.213 to the general category of landfills. This change was necessary to add clarity, provide consistency, and enhance enforceability of the rules. The adopted amendment also requires that Type IV facilities (landfills), that currently require a class 'B' supervisor to be supervised by a class 'A' licensed supervisor. This change was necessary to

ensure consistency with licensing requirements between the different types of landfills. The adopted amendment also requires Type VI (demonstration facilities), which currently requires a class 'C' supervisor to be supervised by either a class 'A' or 'B' licensed supervisor. This change was necessary because under this rulemaking the class 'C' license was eliminated. Additionally, the adopted amendment to §30.213(a) reclassifies Type VII (land application) and Type VIII (used or scrap tire facilities) so that they do not have to be supervised by an individual who holds an MSW facility supervisor license. This change was necessary because individuals who operate these types of facilities perform relatively low-risk MSW management activities which are outlined in detail by the facility's permit or registration. The adopted amendment to §30.213 also deleted §30.213(c). The deletion of §30.213(c) was necessary because the dates referenced in §30.213(c) are outdated and no longer applicable. The adopted amendments to §30.213 also repealed §30.213(d). The repeal of §30.213(c) was necessary because the dates referenced in §30.213(d) are outdated and no longer applicable.

§30.214, Exemptions

The adopted amendment to §30.214 exempts individuals who perform relatively low-risk MSW management activities that are related to Type VII land application and Type VIII used or scrap tire facilities from the applicable licensing requirements. This change was appropriate because individuals who operate these types of facilities perform relatively low-risk MSW management activities and adequate controls are included in the rules and provisions of the facility's permit or registration.

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to that statute. Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the adopted rules is to provide consistency for MSW facility supervisor licensing requirements, improve readability and enhance enforceability of the rules, and make grammatical and punctuation corrections. 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 rules.

Furthermore, the adopted rules implement new and amend existing regulations for the agency's MSW facility supervisor licensing program that are necessary to ensure more consistent operation and enforcement, and would not 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. Thus, the adopted rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis.

Furthermore, the adopted rules do not meet any of the four applicability requirements listed in Texas Government, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) is adopted solely under the general powers of the

agency instead of under a specific state law. There are no federal standards regulating occupational licensing. These rules do not exceed state law requirements, and state law requires their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. And finally, these rules are adopted under specific state laws, in addition to the general powers of the agency.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding 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, to make grammatical and punctuation corrections, and to modify or add language to improve the readability of Chapter 30 and enhance its enforceability. 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 nor 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 and the adopted revisions do not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the coastal management program. The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission held a public hearing on September 7, 2010. The comment period closed on September 13, 2010. The commission received comments from Republic Services, Stericycle, Inc. (Stericycle), Texas Environmental Training & Compliance, LLC (TETC), and The Lone Star Chapter of the Solid Waste Association of North America (TXSWANA). Republic Services supported adoption of the rules as proposed. Stericycle requested that Type V, Medical Waste Processing Facilities be exempted from the requirement to be supervised by an individual holding an MSW facility supervisor license. TETC was supportive of the agency correcting and updating references, however, asked the agency to reconsider some of the language used in the proposed rules. TXSWANA was supportive of the proposed rules, however, requested that certain additional provisions be included in the rules.

RESPONSE TO COMMENTS

Comments to Subchapter F: Municipal Solid Waste Facility Supervisors

In regards to the proposed revisions to Subchapter F, Republic Services commented that it supported the commission's full adoption of the rules as published in the *Texas Register* on August 13, 2010.

The commission acknowledges support of the rules by Republic Services. The commission made no changes to the rules in response to this comment.

In regards to the proposed revisions to Subchapter F, Stericycle requested that Type V, Medical Waste Processing Facilities be exempted from the requirement to be supervised by an individual that holds an MSW facility supervisor license.

The commission acknowledges Stericycle's request that Type V, Medical Waste Processing Facilities be exempted from the requirement to be supervised by an individual that holds an MSW facility supervisor license. The commission believes that the requirements to have licensed supervisors for Type V Medical Waste Processing facilities are pertinent for the operation medical waste processing and will protect the environment and public health. Therefore, the commission respectfully does not support the exemption of these types of facilities from the supervisor licensing requirements. The commission made no changes to the rules in response to this comment.

In regards to the proposed revisions to Subchapter F, TXSWANA commented that it appreciates

the changes which have already been incorporated into the rules as a result of stakeholder input and is especially supportive of the provisions in the proposed rules that re-establish the provisional license and the concept of the progressive method to obtain a license. TXSWANA commented that it was not requesting any language in the proposed rules be changed, but asked that certain additional provisions be included in the rules, that it appreciated the open mindedness and cooperation of the TCEQ staff with whom they have dealt during this rulemaking process, and that it trusted that TXSWANA's comments will be similarly well received and considered.

The commission acknowledges TXSWANA's comments and support of the rules.

The commission made no changes to the rules in response to this comment.

In regards to the proposed revisions to Subchapter F, TETC commented that in the SECTION BY SECTION DISCUSSION in the preamble relating to used and scrap tires (Type VIII) MSW facilities, the term "low-risk MSW management activities" is not defined or explained. TETC commented that the Type VIII facilities are complex and are considered to be a solid waste facility as defined by the Texas Health and Safety Code (THSC). Therefore, the individuals operating these facilities should be required to be licensed.

The commission agrees with TETC that used and scrap tires are a solid waste and that the facilities that store or process this waste are MSW facilities. 30 TAC Chapters 328 and 330 establish procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire

pieces and many of which are contained in the facility's permit, registration, and site operating plan. Therefore, the commission believes that individuals who operate Type VIII facilities perform relatively low-risk MSW management activities and that adding the requirement of having the individual who operates the facility be licensed would not add to the protection being provided by the permit, registration, and site operating plan requirements. The commission made no changes in response to this comment.

In regards to the revisions to Subchapter F, TETC and TXSWANA suggested that the TCEQ consider establishing special courses or a section of courses specifically to address specialized MSW facilities, such as medical waste, compost, and material recovery facilities among others. TETC and TXSWANA recommended that in order to operate these specialized facilities, individuals should be required to obtain and maintain specialized certifications.

The commission acknowledges the comments and agrees that individuals who manage or supervise specialized MSW facilities, such as medical waste, compost, and material recovery facilities among others, should be required to complete specialized training that would be applicable to that facility. The individual would need to complete the training prior to the issuance of a standard class 'B' MSW Facility Supervisor license. The individual would be issued a provisional class 'B' license until completion of the specialized training. The commission has revised §30.210 to reflect the requirements for specialized training.

TETC commented in regards to the amendments to Subchapter F, that if a class 'A' licensee will be supervising storage or processing facilities that requires a class 'B' license, that the class 'A' licensee obtain the proper endorsement prior to supervising those facilities.

The commission responds that the amendment to §30.201 adds new §30.201(d), which limits those individuals who obtained a class 'A' license after September 27, 2007, by completing only the class 'A' MSW facility supervisor course and passing the applicable examination, to supervising only those facilities that require a class 'A' licensed supervisor until the individual completes the class 'B' MSW facility supervisor course and specialized training courses if applicable. Currently, the class 'B' MSW facility supervisor course is a prerequisite for obtaining a class 'A' license. The commission made no changes to the rules in response to this comment.

TETC commented in regards to the amendments to Subchapter F, that the current rule proposal is diluting the requirements, especially for individuals who have the "boots on the ground" experience. TETC also commented that the cost to the solid waste industry is not prohibitive to provide good continuing education. TETC also commented that the TCEQ and the solid waste industry should view training as a proactive rather than a reactive approach to maintaining environmental compliance. Additionally, TETC commented that training courses ensure that the agency is doing its due diligence in meeting its mission statement of protecting the environment, welfare, health, and safety of the public.

The commission responds that the purpose of Chapter 30, Subchapter F is to establish qualifications for issuing and renewing licenses to individuals who supervise or manage the operation of municipal solid waste facilities. These requirements help ensure the protection of the environment, the welfare and health and safety of the public. This rulemaking does not relax any standard, or make the rules less stringent. By requiring specific training to obtain a license, and by updating the rules to conform to current industry standards and practices, the commission is taking a proactive approach to maintaining environmental compliance. The commission has no information to indicate that the cost for continuing education would or would not be cost prohibitive to the solid waste industry. The commission made no changes to the rules in response to this comment.

TXSWANA commented in regards to the amendments to Subchapter F, that TCEQ should accept the MOLO course completion as a basis for transitioning an individual from out of state, provided that the individual further couples his or her MOLO training with a the Texas short course which is yet to be developed. TXSWANA suggested the Texas short course be designed to address unique aspects of Texas Solid Waste Management, such as Type I AE and Type IV landfills. TXSWANA also suggested that the MOLO course be accepted for continuing education units (CEUs).

The commission responds that the amendment to §30.210 adds provisions to allow individuals who currently hold a MOLO certification, and who have completed a

TCEQ approved MSW training course pertaining to Texas MSW regulations, to obtain a class 'A' MSW Facility Supervisor license without having to complete the class 'A' MSW facility supervisor courses and pass the applicable examination. Additionally, the commission responds that the MOLO course is and will continue to be accepted by the agency for MSW facility supervisor license renewal CEUs. The commission made no changes to the rules in response to this comment.

TXSWANA commented in regards to the amendments to Subchapter F, that TCEQ should consider the use of webinars as a method of providing continuing education. TXSWANA commented that webinars are used in a multitude of other industries and professions very effectively.

The commission agrees that webinars are an effective training tool used in a multitude of industries and professions. The TCEQ's occupational licensing section currently has a process for reviewing and approving webinar training. The commission made no changes to the rules in response to this comment.

TETC commented in regards to §30.201(b), that due to the vagueness and various interpretations from TCEQ central and regional offices this provision needs to clarify the amount of time a supervisor must be present or be on-site during the facility's operating hours. TETC suggested at least one licensed or certified individual needs to be on-site during operating hours. TETC suggested that this would ensure that there are individuals on-site daily who have had TCEQ approved training in the operation of an MSW facility.

The commission responds that the comment is beyond the scope of this rulemaking. However, the commission agrees that there should be consistency within the agency regarding information being disseminated to the regulated community. The comment has been forwarded to the MSW program area and field operation support division to formulate a uniformed response to be communicated to the regulated community regarding this issue. The commission made no changes to the rules in response to this comment.

TETC commented in regards to §30.201(b), that in addition to requiring those individuals who obtained their 'A' license after September 2007, to attend and pass the 'B' course and examination, the TCEQ should require those that obtained their 'A' license prior to 2007 to take the TCEQ approved 'B' course and examination. TETC commented that this addition is needed because the rules and training material pre-2007 are different from the rules and training material taught after the 2007 rule adoption.

The commission acknowledges the comment, however, it respectfully does not support the suggestion that individuals who obtained their 'A' license prior to September 2007, be required to attend the 'B' course and pass the examination. The commission agrees that the regulations and training material may have changed from that prior to 2007. However, the basic training for operations of an MSW facility has not changed dramatically. Additionally, individuals that were issued licenses prior to September 27, 2007, (under the progression method)

would have had to renew their license by now and should have taken continuing education courses that cover the new training material and new regulations. Individuals that supervise MSW facilities are required to adhere to the TCEQ rules and regulations pertaining to MSW facilities. Failure to do so could result in an enforcement action against the facility and possibly the supervisor. Therefore, if a supervisor has not taken training to stay abreast of the rules, it would be dependent on the licensee or their employer to ensure that the individual took the applicable training that includes the updated training material that contains the current regulations. The commission made no changes to the rules in response to this comment.

TETC commented in regards to §30.207, that adding §30.207(4) would define solid waste technician as defined in the THSC, §361.003(37). TETC commented that this addition would provide consistency with the language found in THSC and the language contained in the TCEQ rules.

The commission responds that the comment is beyond the scope of this rulemaking because neither Chapter 330, nor Chapter 30, Subchapter F, reference solid waste technicians. Therefore, the definition is not necessary in Subchapter F. The commission made no changes to the rules in response to this comment.

TETC commented in regards to §30.210, the elimination of the class 'C' license was made without explanation except that the 'C' license would not be applicable under the proposed rules.

TETC commented that the agency's elimination of the 'C' license gives the appearance that the 'C' license is unnecessary. TETC commented that allowing facilities to have a means of getting their employees licensed through the 'C' program increases employees awareness, which in turn increases a facility's ability to remain compliant with the MSW regulations. TETC commented that the 'C' license or certification should remain in effect.

The commission responds that during the rulemaking process, it was determined that MSW facilities be separated into two categories (landfills and processing/transfer stations); thus, requiring only two classes of licenses ('A' and 'B'). Based on this, the 'C' license was eliminated because there are no types of MSW facilities that require a 'C' license. The commission maintains that requiring individuals to obtain and maintain a license or certification that is no longer applicable, would result in additional expenses for the employer and/or the holder of the license or certification, and it would not provide any authorization for the individual to supervise a MSW facility. The commission would recommend that individuals who currently hold a 'C' license be encouraged to upgrade their license to the class of license that would qualify them to supervise the facility at which they are employed. The commission made no changes to the rules in response to this comment.

TETC commented in regards to §30.210 that a course be developed to act as an introductory to Texas MSW regulations that would be required for the solid waste technicians as suggested in §30.207.

TCEQ's MSW facility rules in Chapter 330 make no reference to solid waste technicians, therefore, it is unnecessary to develop a training course specifically for solid waste technicians. However, the commission would encourage a course to be developed to act as an introductory to Texas MSW regulations. The commission made no changes to the rules in response to this comment.

TXSWANA commented in regards §30.210, that if the class 'C' license is discontinued, the 'C' training course should continue. TXSWANA commented that a 'C' course provides valuable basic introductory training for new employees and provides important refreshers for those employees who perform non-supervisory roles. TXSWANA commented that even if there is no 'C' license, those individuals that take the 'C' training course receive a certification for having done so.

The commission agrees that the 'C' course should be replaced with a course developed to act as an introductory course to Texas MSW regulations. However, the course should not be referred to as the 'C' course, as this would give the perception that a 'C' license exists. The course would count towards CEU renewal requirements for individuals holding a class 'A' or 'B' MSW Facility Supervisor license. The commission agrees that such a course would provide valuable basic introductory training for new employees performing non-supervisory roles and would provide refreshers for those employees holding licenses. However, completion of the course would not provide any authorization for those unlicensed

employees performing non-supervisory roles to supervise an MSW facility. All MSW facility employees would not be required to take the training, because the commission only has the authority to require specific training for individuals who have or who are trying to obtain a license. It cannot require unlicensed individuals that are not in the process of obtaining a license to complete such training. It would be dependent on the employer to have the employee complete such training as a condition of their employment. The commission made no changes to the rules in response to this comment.

TETC commented in regards to §30.210, that the training developed for the 'C' license or certification could also provide an avenue for those individuals with the MOLO certification to meet the requirements found in §30.201.

The commission responds that the amendment to §30.210 adds provisions to allow individuals that currently hold a MOLO certification, and who have completed a TCEQ approved MSW training course pertaining to Texas MSW regulations, to obtain a class 'A' MSW Facility Supervisor license without having to complete the class 'A' MSW facility supervisor course and pass the applicable examination. The commission made no changes to the rules in response to this comment.

TETC commented in regards to §30.210, that prior to the Chapter 30 rule revisions made in 2007, individuals had to obtain 120 hours of classroom training to obtain a class 'A' license. Under the proposed rules, at the most 60 hours is required. TETC commented that the class 'C'

certification or license be retained and that the additional training for that license would qualify individuals wanting to obtain a class 'A' or 'B' license not to have to meet the experience or education requirements as proposed in §30.207.

The commission responds that prior to rules adopted in 2007, the core training courses required for obtaining each level of MSW facility supervisor license were 40 hours. Concerns were voiced during that rulemaking process that the courses were too lengthy and contained information that was not applicable to the duties being performed. The rules adopted in 2007 addressed those concerns by removing the number of hours required for those training courses. The 2007 adopted rules also required different types of MSW facilities to be supervised by individuals licensed at different levels. Because of those changes, revisions to the applicable training courses were made. Training courses were amended to remove unrelated information and to focus on specific requirements needed to operate specific types of facilities. By removing the requirements that the courses be 40 hours and requiring more focused training, the training course hours were decreased, but the courses still provided the necessary training needed to protect the environment and public health.

The commission respectfully does not support TETC's suggestion that the class 'C' certification or license be retained because it has been determined that MSW facilities be separated into two categories, those being landfills and processing/transfer stations. This being the case, only two classes of licenses ('A'

and 'B') would be required; thus, the 'C' license will no longer be applicable. Requiring individuals to obtain and maintain a license or certification that is not applicable would result in additional expenses for both the employer and the holder of the license or certification and it would not provide any authorization for an individual to supervise an MSW facility. The commission made no changes to the rules in response to this comment.

In regards to §30.211, TETC suggested the addition of the 'C' license or certification in the proposed §30.211 to address those individuals meeting the 'C' license or certification requirements as TETC has suggested in its comments regarding §30.207 and §30.210.

The commission responds that during the rulemaking process it was determined that MSW facilities could be separated into two categories, those being landfills and processing/transfer stations; thus requiring only two classes of licenses ('A' and 'B'). Based on this determination, there are no types of MSW facilities that require a 'C' license. Therefore, the 'C' license was eliminated. Requiring individuals to obtain and maintain a 'C' license or certification would result in additional expenses for both the employer and the holder of the license or certification and it would not provide any authorization for an individual to supervise an MSW facility. The commission made no changes to the rules in response to this comment.

In regards to §30.211, TETC suggested adding §30.211(a)(3) to include language that additional

training hours may be substituted for required experience. TETC suggested that this would allow individuals who do not hold a high school diploma or equivalent the ability to obtain an 'A' license without the currently required six years of experience. TETC also suggested that allowing the substitution would provide an incentive for individuals to obtain continuing education.

The commission acknowledges the suggestion that individuals not only be allowed to substitute additional training to meet the educational requirements (i.e. high school diploma or equivalent), but also be allowed to substitute additional training for experience requirements. By allowing the substitution for both the educational and experience requirements, an individual could obtain a license with little or no actual experience in the MSW field. Actual hands-on experience is essential for obtaining a license to supervise or manage MSW facilities, especially at a class 'A' level. Therefore, the commission respectfully does not support the commenter's suggestion. The commission made no changes to the rules in response to this comment.

In regards to §30.212, TETC suggested that if the 'C' license is eliminated from the rules, that it be replaced with a 'C' certification. TETC suggested that the 'C' certification should be maintained and renewed every three years by obtaining continuing education hours. TETC suggested that the continuing education hours needed for the renewal of the 'C' certification be 16 hours.

The commission responds that during the rulemaking process it was determined that MSW facilities could be separated into two categories, those being landfills and processing/transfer stations; thus requiring only two classes of licenses ('A' and 'B'). Based on this determination, there are no types of MSW facilities that require a 'C' license. Therefore, the 'C' license was eliminated. Requiring individuals to obtain and maintain a 'C' license or certification would result in additional expenses for both the employer and the holder of the license or certification and it would not provide any authorization for an individual to supervise an MSW facility. The commission made no changes to the rules in response to this comment.

In regards to §30.213, TETC commented by supporting the proposed change to require that all landfill facilities (Type I, Type I AE, Type IV and Type IV AE) be required to be supervised by an individual who holds a class 'A' license.

The commission acknowledges TETC's support of the rules. The commission made no changes to the rules in response to this comment.

In regards to §30.214, TETC commented that Type VIII (used and scrap tire) MSW facility supervisors or managers should be required to be licensed and not be exempted as in the proposed rules. TETC commented that mismanagement at these types of facilities can result in vector issues as well as tire fires. Additionally, TETC suggested that individuals that manage or supervise composting operations, used oil processing, recycling operations (materials recycling

facilities and exempted operations) and fuel blenders be required to be licensed and not be exempted as in the proposed rules.

The commission agrees with TETC that used and scrap tires are a solid waste or a recyclable material and that the facilities that store or process tires are MSW facilities. Procedures and requirements for the safe storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces are included in Chapters 328 and 330 and in the facility's permit, registration, or site operating plan. The commission decided not to require licenses because individuals who operate these types of facilities perform relatively low-risk MSW management activities and adequate controls are included in the rules and provisions of the facility's permit or registration or site operating plan. The commission made no changes to the rules in response to this comment.

SUBCHAPTER F: MUNICIPAL SOLID WASTE FACILITY SUPERVISORS

§§30.201, 30.207, 30.210, 30.211, 30.212 - 30.214

STATUTORY AUTHORITY

These amendments and new section are adopted under Texas Water Code (TWC), §5.013, relating to the general jurisdiction of the commission; TWC, §5.102, relating to the general powers of the commission; and TWC, §5.103, relating to the commission's authority to adopt rules to carry out its powers and duties under the TWC and other laws of the State. These amendments and new section are also adopted under TWC, §§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 and new section are also adopted under Texas Health and Safety Code (THSC), §361.002, relating to the commission's policy to safeguard the health, welfare, and physical property of the people and to protect the environment; THSC, §361.011, relating to the commission's jurisdiction to manage solid waste; THSC, §361.022, relating to the commission's policy to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent possible for the protection of public health and the environment; THSC, §361.024, relating to the commission's authority to adopt rules and establish minimum standards for the management and control of solid waste; and THSC, §361.027, relating to the commission's authority to license individuals who supervise the operation and maintenance of solid waste facilities. These amendments and new section are also adopted under THSC,

§363.002, relating to the commission's policy to protect public health and the environment by encouraging proper management and reduction of solid waste; §363.021, relating to the commission's authority to adopt rules to implement the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act; and THSC, §363.022, relating to the commission's powers and duties to implement the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act.

These adopted amendments and new section implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §§361.002, 361.011, 361.022, 361.024, 361.027, 363.002, 363.021 and 363.022.

§30.201. Purpose and Applicability.

(a) The purpose of this section is to establish qualifications for issuing and renewing licenses to an individual who supervises or manages the operation of municipal solid waste (MSW) facilities.

(b) At least one individual who supervises or manages the operation of an MSW facility 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).

(c) Individuals who obtained a class 'A' license prior to September 27, 2007 are authorized to supervise any level or type of MSW facility.

(d) Individuals who obtained a class 'A' license after September 27, 2007 by completing only the 'A' MSW Facility Supervisor course and passing the applicable exam, will need to complete the 'B' MSW Facility Supervisor course before being eligible to supervise those facilities requiring a class 'B' MSW facility supervisor.

§30.207. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Experience**--Actual experience gained from participating as a principal operator, foreman, supervisor, or manager of a solid waste facility appropriate to the respective class of license or other solid waste management experience approved by the executive director.

(A) College credit hours obtained from an accredited institution may be substituted for experience on the basis of:

(i) 32 college credit hours for one year of experience, up to a maximum of two years for a class 'A' license; or

(ii) 32 college credit hours for one year of experience, up to a maximum of one year for a class 'B' license.

(B) Individuals who apply for a class 'A' or 'B' license, and rely on college credit hours as a substitute for meeting the experience requirements, must have those hours in chemistry, biology, engineering, soil science, geosciences, environmental science, or other similar discipline approved by the executive director.

(2) **Solid waste facility supervisor**--An individual who is trained in the practical aspects of the design, operation, maintenance, or supervision of a solid waste facility according to standards, rules, or orders established by the commission.

(3) **Manager of Landfill Operations (MOLO) certification**--Certification issued by the Solid Waste Association of North America (SWANA) to individuals who have completed SWANA's MOLO course and passed the applicable certification examination.

§30.210. Qualifications for Initial License.

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

Figure: 30 TAC §30.210

License Type	Education Requirements	Experience as defined in 30 TAC §30.207(1)	Exam Required	Training Requirements
Class B	With High School Diploma (HSD) or equivalent *	2 years	Class 'B' municipal solid waste (MSW) Facility Supervisor Licensing Exam	Class 'B' MSW Facility Supervisor Course; and if applicable, specialized training. **
	Without HSD or equivalent	4 years		
Class A	With HSD or equivalent *	4 years	Class 'A' MSW Facility Supervisor Exam	Class 'A' MSW Facility Supervisor Course; and Class 'B' MSW Facility Supervisor Course; and if applicable, specialized training. **
	Without HSD or equivalent	6 years		
Class A	Applicants that hold a current "Manager of Landfill Operations" (MOLO) certification issued by Solid Waste Association of North America (SWANA); and complete the Class 'B' MSW Facility Supervisor Course and a TCEQ recognized Texas MSW regulation training course will not be required to complete the Class 'A' MSW Facility Supervisor course or take and pass the Class 'A' MSW Facility Supervisor licensing exam. However, the applicants must meet the required education and experience requirements outlined above.			
* HSD or equivalent may be substituted by completing an additional 20 hours of MSW training.				
** Individuals managing or supervising medical waste or compost facilities requiring an MSW registration or permit, shall complete a TCEQ recognized or approved specialized training course that is applicable to that facility before being issued a standard class 'B' MSW Facility Supervisor license. Individuals completing the class 'B' MSW facility supervisor course, passing the examination, but not completing the specialized course will be issued a provisional class 'B' license. The completion of the specialized course must be before the expiration date of the provisional license.				

§30.211. Provisional Licenses.

(a) A provisional license may be issued to an individual applying for a class 'A' or 'B' license who:

(1) has completed the required training, passed the applicable examination and met the minimum education requirements, but lacks the required experience; or

(2) has passed the applicable examination, met the education and experience requirements, but lacks the required training.

(b) A provisional license shall have:

(1) a validity period of two years; and

(2) an application fee of \$74.00.

(c) Provisional licenses are not renewable.

(d) To continue to supervise a municipal solid waste (MSW) facility after the expiration date of a provisional license, the provisional license holder must:

(1) complete any missing requirements pertaining to the corresponding license originally applied for before the expiration date of the provisional license; and

(2) have been issued the class of license that is required for the type of MSW facility being supervised.

§30.212. Qualifications License Renewal.

To renew a license, an individual must have:

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

(2) completed the following hours of continuing education:

(A) Class A--16 hours; or

(B) Class B--16 hours.

§30.213. Classification of Municipal Solid Waste Facilities and Level of License Required.

(a) Each classification of a municipal solid waste (MSW) facility shall employ at least one licensed individual who supervises or manages the operations of a MSW facility. The level of license required for the different classifications of facilities is as follows:

Figure: 30 TAC §30.213(a)

Type of MSW Facility	Level of License Required
Landfill facilities *	Class A
Type IX landfill mining facilities	Class A
Type V storage and processing facilities not otherwise specified	Class A or Class B
Type IX energy or material recovery facilities (other)	Class A or Class B
Permitted compost facilities	Class A or Class B
Type VI demonstration facilities	Class A or Class B
Registered compost facilities	Class A or Class B
* Landfill facilities include: <ul style="list-style-type: none"> • Type I landfills; • Type IAE landfills; • Type IV landfills; and • Type IVAE landfills 	

(b) The level of license required for the different classifications of facilities described in subsection (a) of this section are applicable unless the facility's permit specifies that the facility be supervised by a level of supervisor different from that required in subsection (a) of this section. The facility's permit supersedes the requirement in subsection (a) of this section.

§30.214. Exemptions.

The following municipal solid waste (MSW) facilities do not require a licensed supervisor:

- (1) Type VII land application facilities;
- (2) Type VIII used or scrap tire facilities;
- (3) Type IX beneficial landfill gas recovery;
- (4) animal crematories, dual chamber incinerators, and air curtain incinerators operating in accordance with an MSW permit by rule; and
- (5) MSW facilities exempt from permitting or registration, unless otherwise described in §30.210 of this title (relating to Qualifications for Initial License).