

Texas Natural Resource Conservation Commission (commission) adopts amendments to §§344.2, 344.43, 344.56, 344.73, and 344.75, concerning Landscape Irrigators without changes as published in the October 17, 1997 issue of the *Texas Register* (22 TexReg 10245).

EXPLANATION OF ADOPTED RULE

The purpose of the adopted amendments is to implement legislative changes to Texas Water Code, §34.002(a), regarding exemptions from the registration requirement, as enacted by House Bill 328, 75th Legislature (1997). These amendments also eliminate one of the fees for new registration, change by one day the date by which continuing education must be acquired, clarify that a renewal application must be submitted for renewal of registrations, and make conforming changes regarding backflow prevention devices.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The proposed rulemaking does not create a burden on an owner's private real property. The proposed rules add an exemption to licensure requirements for irrigation or yard sprinkler systems on certain types of real property. This rule lessens the burden on real property by adding an exemption to licensure requirements. Likewise, the proposed deletion of the registration fee for irrigators and the changing of the certificate of registration renewal date has no effect on real property. Finally, promulgation and enforcement of the rules related to backflow prevention will not create a burden on the property that would otherwise exist in absence of the rulemaking.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule” as defined in the act. No comments on the proposal were received.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program (CMP). The proposed rule does not govern any of the actions that must be subject to the goals and policies of the CMP, pursuant to 31 TAC, §505.11.

HEARINGS AND COMMENTS

The proposed rule was published in the October 17, 1997 issue of the *Texas Register* (22 TexReg 10245) with a 30-day comment period which closed on November 17, 1997. A public hearing on the proposal was held in Austin on Tuesday, November 4, 1997. No comments were received at the hearing or during the comment period.

LEGAL AUTHORITY

These amended sections are adopted under Texas Water Code, §§5.103, 5.105, 5.120, and 34.006, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

SUBCHAPTER A : GENERAL PROVISIONS

§344.2

§344.2. Exemptions.

(a) The licensure requirements of this chapter do not apply to:

(1) - (7) (No change.)

(8) A portable or solid set or other type of commercial agricultural irrigation system;

(9) Irrigation or yard sprinkler work done by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by himself or herself; or

(10) Irrigation or yard sprinkler work done by a member of a property owners' association as defined by Property Code, §202.001, on real property owned by the association or in common by the members of the association if the irrigation or yard sprinkler system water real property that is less than one-half acre in size and is used for aesthetic purposes or recreational purposes.

(b) (No change.)

This agency hereby certifies that the repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER C : REGISTRATION/LICENSURE OF IRRIGATORS AND INSTALLERS

§344.43, §344.56

These amended sections are adopted under Texas Water Code, §§5.103, 5.105, 5.120 and 34.006 which provide the Texas Natural Resource Conservation Commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

§344.43. Issuance of Certificate.

Once the executive director has determined that an applicant has passed the written examination, and has complied with §344.59 of this title (relating to Seal Required) and §344.60 of this title (relating to Seal and Rubber Stamp Facsimile Design) as applicable, the executive director shall issue a certificate of registration and an identification card to the applicant.

§344.56. Renewal of Certificate; Same Registration Number.

(a) A licensed irrigator may renew an unexpired certificate of registration by complying with the following before September 1 of each year:

(1) completion of a minimum of eight hours of agency approved continuing education credits,

(2) submittal of a renewal application, and

(3) payment of a renewal fee in the amount of \$85. Payment must be made by personal check, money order, or cashier's check made payable to the Texas Natural Resource Conservation Commission.

(b) A licensed installer may renew an unexpired certificate of registration by submitting a renewal application and payment of a renewal fee in the amount of \$50 prior to September 1 of each year. Payment must be made by personal check, money order, or cashier's check made payable to the Texas Natural Resource Conservation Commission.

(c) Renewal of a certificate of registration will be effected by issuance of a current identification card. Each identification card shall show the name of the registrant, the card's expiration date, and the number of the certificate of registration which it renews.

This agency hereby certifies that the repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER D : STANDARDS FOR WATER SUPPLY CONNECTIONS

§344.73, §344.75

These amended sections are adopted under Texas Water Code, §§5.103, 5.105, 5.120 and 34.006 which provide the Texas Natural Resource Conservation Commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

§344.73. Absence of Local Regulation-Backflow Prevention Devices.

Where a licensed irrigator's or a licensed installer's connection of an irrigation system to a public or a private potable water supply is not subject to any inspection requirement, ordinance, or regulation of any city, town, county, special purpose district, other political subdivision of the state, or public water supplier, the licensed irrigator or licensed installer making such connection must install one of the following devices:

(1) (No change.)

(2) Pressure-type vacuum breakers. Pressure-type vacuum breakers are designed to prevent back siphonage and can operate under continuous pressure. Pressure vacuum breakers must be installed at least twelve (12) inches above any downstream piping and the highest downstream opening. Where local topography effectively prohibits such installation, the executive director shall be consulted

for alternative acceptable installation criteria. Such alternative criteria must provide equivalent protection to the potable water supply.

(3) Double check valve assembly backflow preventors. Double check valve assembly backflow preventors are designed to prevent back pressure and back siphonage of water not containing any toxic substance. They may be used where water supply pressure and back pressure on the backflow prevention device may continuously exist. If a double check valve assembly is installed below grade, there must remain adequate space for testing and repair of the device. Test cock plugs must be of non-ferrous material. Test cocks shall not be used as supply connections and must be plugged except when being tested.

(4) Reduced pressure principle backflow prevention assemblies. Reduced pressure principle assemblies are designed for water containing toxic or non-toxic substances and for back pressure and back siphonage. They must be installed 12 inches above grade in a location so as to insure that the device will not be submerged. In addition, adequate provisions must be made for any water which may be discharged through the assembly relief valve.

§344.75. Required Backflow Prevention Devices.

(a) An irrigation system that does not have associated with it any type of injection device and that is connected or capable of being connected only to a single source of water presents a low potential for contamination of the water supply and is, therefore, considered to be a "low hazard" installation.

Such an irrigation system must be connected to the water supply through an industry-approved backflow prevention device, such as a double check valve assembly, air gap separation, reduced pressure principle assembly, pressure type vacuum breaker, or atmospheric vacuum breaker.

(b) An irrigation system with any kind of injection device associated with it has a potential for introducing toxic substances into the water supply and is, therefore, considered to be a "high hazard" installation. Such an irrigation system must not be connected to any water supply except through an industry-approved "high health hazard" backflow prevention device, such as an appropriate pressure-type vacuum breaker backflow preventor or reduced pressure principle backflow prevention assembly. The backflow prevention assembly must be tested upon installation and, at least, annually, thereafter, in accordance §290.44(h)(4) of this title (relating to Water Distribution).

(c) If an irrigation system has more than one water supply source, with one or more supplies being potable water and the other supply or supplies being nonpotable water, the irrigation system must be connected to each water supply only through an industry-approved "high health hazard" backflow prevention device. The device must be tested upon installation and, at least, annually, thereafter, in accordance with §290.44(h)(4) of this title.

This agency hereby certifies that the repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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