

Texas Natural Resource Conservation Commission (commission) proposes amendments to §§344.2, 344.43, 344.56, 344.73, and 344.75, concerning Landscape Irrigators.

EXPLANATION OF PROPOSED RULE

The purpose of the proposed 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 will 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.

Section 344.2, as amended, provides for an exemption from licensing for work done by a member of a property owners' association on real property owned by the association or in common by the members of the association if the irrigation system waters a portion of the real property less than one-half acre in size and that is used for aesthetic or recreational purposes.

The proposed amendment to §344.43, as amended, would eliminate the registration fee as a requirement for registration. Section 344.26, relating to the payment of an application and examination fee, is unchanged.

Section 344.56, as amended, would change the date by which continuing education must be completed from August 31 to September 1 of each year and specify that a renewal application must be submitted.

Section 344.73(3), as amended, specifies that test cock plugs, not the test cocks themselves, must be made of non-ferrous material. The word “plugs” was inadvertently omitted from the rule. It also stipulates that test cocks can not be used as supply connections. Section 344.74(4), as amended, changes the word “devices” to the term “backflow prevention assemblies,” to conform to accepted industry standards, and adds clarification that these reduced pressure principle assemblies must be installed at least 12 inches above grade rather than just “above ground.”

Section 344.75(a), as amended, describes the types of backflow prevention devices that can be used in a low hazard installation to clarify that not only double check assemblies may be used. Section 344.75(b), as amended, changes terminology for the types of assemblies that can be used in high health hazard installations and specifies that they, too, must be installed and tested as required under §290.44(h)(4) of this title (relating to Water Distribution). Section 344.75(c), as amended, similarly specifies that the backflow device must be tested upon installation and annually if more than one water supply source is used and one of the sources is nonpotable.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these sections as proposed are in effect there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be a loss of revenue to the commission. This decrease is not anticipated to exceed \$15,000 per year and will not materially affect the operations or funding of the program for licensing and regulation of landscape irrigators. Other state agencies conducting activities subject to these rules will realize the effects of changes to fee schedules similar to those for any other affected party. These effects are not anticipated to be significant for any individual agency or represent substantial costs. Similar fiscal implications are also anticipated for units of local government that are conducting regulated development activities.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be more cost-effective regulation and certification of licensed landscape irrigators, improved protection of the quality of public drinking water supplies, and the reduction in costs of operation and maintenance for certain properties held in common by members of homeowners associations. Generally, the effect of the proposed rules will be to decrease the costs of licensing of landscape irrigators and any related costs of projects required to be performed by licensed irrigators. The proposed requirements related to the installation of backflow prevention devices are consistent with other existing rules of the agency and do not represent a significant additional economic cost. Many of the companies employing landscape

irrigators subject to these rules are small businesses. The actual affect of the proposed amendments to any one business will not vary directly with the size of the affected firm, but with the number of licensed irrigators employed or used. There are no additional direct economic costs to persons required to comply with these sections except as identified above for affected property owners or developers required to install 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.

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.

PUBLIC HEARING

A public hearing on the proposal will be held in Austin on Tuesday, November 4, 1997 at 2:00 p.m. at the Texas Natural Resource Conservation Commission Office Complex, Building F, Room 2210, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion among members of the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend a hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log No. 97145-344-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640; or faxed to (512) 239-5687. All comments sent by fax must be followed by an original, signed hard copy

for the agency's records. Written comments must be received by 5:00 p.m., _____. For further information concerning this proposal, please contact Robert Tinstman, Program Development Team Leader in the Occupational Certification Section at (512) 239-0178.

LEGAL AUTHORITY

These amended sections are proposed 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.

There are no other codes or statutes that will be affected by this proposal.

SUBCHAPTER A : GENERAL PROVISIONS

§344.2. Exemptions.

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

(1) Any person licensed by the Texas State Board of Plumbing Examiners;

(2) A registered professional engineer or architect or landscape architect if his or her acts are incidental to the pursuit of his or her profession;

(3) Irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him or her as his or her home;

(4) Irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system, done by a maintenance person incidental to and on premises owned by the business in which he or she is regularly employed or engaged and who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(5) Irrigation or yard sprinkler work done on the premises or equipment of a railroad by a regular employee of the railroad who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(6) Irrigation and yard sprinkler work done by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state on public property;

(7) A garden hose, hose sprinkler, hose-end product, soaker hose, or agricultural irrigation system;

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

(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) A person who is exempt from the licensure requirements of this rule shall comply with the standards established by this rule. Irrigation system does not include a system used on or by an agricultural operation as defined in §251.002, Texas Agriculture Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on

SUBCHAPTER C : REGISTRATION/LICENSURE OF IRRIGATORS AND INSTALLERS

§344.43. Issuance of Certificate [; Registration Fee].

[(a)] Once the executive director has determined that an applicant has passed the written examination, [and the applicant has paid the registration fee in accordance with subsection (b) of this section] 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.

[(b)] The registration fee must be the applicable amount specified in §344.56 of this title (relating to Renewal of Certificate; Same Registration Number) prorated on a monthly basis beginning with the month during which the executive director informed the applicant that the examination was passed through the following August 31st. Payment of the fee must be made within 60 days after the date of the letter sent by the executive director to the applicant, indicating the amount of the fee. Payment must be made by personal check, money order, or cashier's check made payable to the Texas Natural Resource Conservation Commission.]

§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: [payment of a renewal fee in the amount of \$85 and submittal of documentation of having completed a minimum of 8 hours of agency approved continuing education credits prior to August 31. Payment must be made by personal check, money order, or cashier's check made payable to the Texas Natural Resource Conservation Commission.]

(1) completion of a minimum of 8 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. [August 31.] 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.

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SUBCHAPTER D : STANDARDS FOR WATER SUPPLY CONNECTIONS

§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) Atmospheric vacuum breakers. Atmospheric vacuum breakers are designed to prevent only back-siphonage. Therefore, atmospheric vacuum breakers must not be used in any irrigation systems where back-pressure may occur. There cannot be any shutoff valves downstream from an atmospheric vacuum breaker. Where atmospheric vacuum breakers may be used, they must be installed at least six (6) 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. In addition, continuous pressure on the supply side of an atmospheric vacuum breaker is prohibited. A separate atmospheric vacuum breaker must be installed on the discharge side of each water control valve, between the valve and all of the sprinkler heads which the valve controls.

(2) Pressure-type vacuum breakers. Pressure-type vacuum breakers are designed to prevent back siphonage and can operate under continuous pressure. [Where] Pressure vacuum breakers [may be used, they] 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 [cocks] 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 [devices]. Reduced pressure principle assemblies [devices] 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 [ground] in a location so as to insure that the device will not be submerged [during operation]. In addition, adequate provisions must be made for any water which may be discharged through the assembly [device's] 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 [a double check assembly backflow preventor, an appropriate type of vacuum breaker, or other] industry-approved ["low hazard"] 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 [device] 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on