TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for a Petition for Rulemaking

AGENDA REQUESTED: November 20, 2024

DATE OF REQUEST: November 1, 2024

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Candice Slater, Agenda Coordinator, (512) 239-6087

CAPTION: Docket No. 2024-1593-PET. Consideration of a petition for rulemaking under Section 20.15 of 30 TAC Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality (commission) on September 25, 2024, by the Texas Section of the American Water Works Association and the Water Environment Association of Texas. The petitioners requested that the commission amend 30 Texas Administrative Code Chapter 30 to require individuals that hold any level of water or wastewater operator license to complete at least four hours of ethics continuing education prior to renewal of a license. (Rebecca Morigan, Alicia Ramirez; Project No. 2025-005-PET-NR)

BScaton

Director

Jaya Zeman, PE

Division Deputy Director

Candice Slater

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date: November 1, 2024**

Thru: **Laurie Gharis, Chief Clerk**
Kelly Keel, Executive Director

From: **Beth Seaton, Director**
Office of Waste

Subject: **Consideration of a Petition for Rulemaking**

Docket No.: 2024-1593-PET

Project No.: 2025-005-PET-NR

Who Submitted the Petition:
On September 25, 2024, the Texas Commission on Environmental Quality (TCEQ or commission) received a petition from the Water Environment Association of Texas and the Texas Section of the American Water Works Association (petitioners).

What the Petitioner Requests:
The petitioners requested that the commission revise 30 Texas Administrative Code (TAC) Chapter 30, Occupational Licenses and Registrations, particularly Sections 30.392 and 30.342 to require continuing education (CE) ethics training for renewal of all levels of public water system and wastewater operator licenses. The petitioners requested that four (4) hours of ethics training be required in each renewal cycle, which is every three years. The proposed ethics training would count towards the 30 CE credits already required to renew a license.

Recommended Action and Justification:
The commission has authority to establish occupational licenses and registrations and establish classes and terms of occupational licenses under Texas Water Code § 37.002.

The executive director recommends initiating a rulemaking proceeding with stakeholder engagement to: 1) evaluate stakeholder support for this proposed requirement; 2) determine how many hours of ethics training would be appropriate in each renewal cycle; 3) assess if there is enough interest from training providers to develop ethics training; and 4) evaluate if the ethics requirements should also be extended to other licensees beyond water and wastewater operators.

The executive director believes that continuing education in ethics may be beneficial, as these licensees play a critical role in ensuring clean drinking water and proper wastewater treatment and discharge. Other occupational licensing agencies, such as the Texas Board of Professional Engineers and Land Surveyors and the Texas Board of Professional Geoscientists, already require ethics training each renewal cycle.

Regarding timing for this petition, 30 TAC Chapter 30 is currently open for a rulemaking, which is anticipated to be finalized in February 2025. The executive director recommends initiating stakeholder involvement and, if warranted, reopening the rule after the legislative session is over, so staff can also incorporate any additional changes that may result from legislative action. An additional consideration is that the executive director

would need to provide sufficient implementation time for the development of TCEQ-approved ethics training courses by multiple training providers. This would be to ensure multiple training options are available to licensed individuals before implementing any ethics requirement.

Applicable Law:

- Texas Government Code, § 2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule.
- 30 TAC § 20.15, which governs rulemaking petitions submitted to the commission;
- Texas Water Code § 37.002, which provides the TCEQ with the authority to establish occupational licenses and registrations; and establish classes and terms of occupational licenses and registrations.
- Texas Water Code § 37.004, which provides the TCEQ with the authority to establish qualifications for each license and registration issued under Texas Water Code Chapter 37.
- Texas Water Code § 26.0301, which requires a person who operates a wastewater treatment plant to have a wastewater operator license.
- Texas Health and Safety Code § 341.034, which requires a person who operates a public water supply to have a water operator license.

Agency Contacts:
Rebecca Morigan, Occupational Licensing & Registration Division, (512) 239-2463
Alicia Ramirez, Staff Attorney, Environmental Law Division, (512) 239-0133
Candice Slater, Agenda Coordinator, General Law Division, (512) 239-2678

Attachment:
Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Krista Kyle
Jessie Powell
Office of General Counsel
Rebecca Morigan
Candice Slater

Lloyd Gosselink
ATTORNEYS AT LAW
1984 ❖ Celebrating 40 Years ❖ 2024
Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

816 Congress Avenue, Suite 1900
Austin, Texas 78701
512.322.5800 p
512.472.0532 f
lglawfirm.com

September 25, 2024

Kelly Keel
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA HAND-DELIVERY

Re: Petitions for Rulemaking to Require Ethics Continuing Education to Renew Water/Wastewater Operator Licenses

Dear Ms. Keel:

Enclosed, please find one original and six copies of two Petitions for Rulemaking filed on behalf of the Texas Section of the American Water Works Association ("TAWWA") and the Water Environment Association of Texas ("WEAT"). The Petitions request amendments to administrative rules to require individuals holding a water or wastewater operator license to complete at least four hours of ethics continuing education prior to renewal of the license. These proposed amendments are important to protect public health and the environment, and to foster public trust in the integrity of water resource management and treatment operations. As the potential for adverse public health consequences from water/wastewater noncompliance has become more publicly known, the need for operators who can perform their duties both correctly and ethically has become increasingly critical. Required continuing education in ethics would advance the goals of protecting public health and the environment by equipping water/wastewater operators with the tools and information necessary to navigate ethical dilemmas.

Please date stamp one of the enclosed copies and return it to us via our courier. We respectfully request that the Petitions be set for consideration and Commission action and look forward to working with all concerned on this matter. If you have any questions regarding the Petitions, please feel free to call either Ms. Mary Martha Murphy (512-322-5880) or me at your convenience.

Sincerely,

Nathan E. Vassar

NEV/yw

Enclosures
Petition 1: To Amend 30 Texas Administrative Code § 30.392 **(Tab 1)**
Petition 2: To Amend 30 Texas Administrative Code § 30.342 **(Tab 2)**

Lloyd Gosselink
ATTORNEYS AT LAW
1984 ♦ Celebrating 30 Years ♦ 2014

816 Congress Avenue, Suite 1900
Austin, Texas 78701
512.322.5800 p
512.472.0532 f
lglawfirm.com

cc: Ms. Mary Smith, General Counsel, TCEQ
Ms. Morgan Johnson, Chief of Staff, Office of the Executive Director, TCEQ
Ms. Gwen Ricco, Texas Register/Agenda Supervisor, TCEQ
Ms. Jaya Zyman, Deputy Director, Occupational Licensing and Registration, TCEQ
Ms. Tamara Calhoun, Manager, Occupation Licensing Section, TCEQ
Ms. Mary Martha Murphy, Lloyd Gosselink Rochelle & Townsend, P.C.

Tab 1

PETITION FOR RULEMAKING BY THE TEXAS SECTION OF THE AMERICAN WATER WORKS ASSOCIATION AND BY THE WATER ENVIRONMENT ASSOCIATION OF TEXAS **TO AMEND THE RULE GOVERNING QUALIFICATIONS FOR LICENSE RENEWAL OF PUBLIC WATER SUPPLY SYSTEM OPERATORS**	§ § § § § § § § § § §	**BEFORE THE** **TEXAS COMMISSION** **ON ENVIRONMENTAL QUALITY**

ORIGINAL PETITION FOR RULEMAKING TO AMEND 30 TEXAS ADMINISTRATIVE CODE § 30.392

TO THE HONORABLE COMMISSIONERS:

Pursuant to the provisions of 30 Texas Administrative Code § 20.15, the Texas Section of the American Water Works Association ("TAWWA") and the Water Environment Association of Texas ("WEAT") jointly file this Petition for Rulemaking to the Texas Commission on Environmental Quality (the "Commission") requesting that the Commission adopt changes to the rule governing the continuing education required prior to renewal of all water operator licenses. TAWWA and WEAT respectfully request that the Commission consider this petition and adopt the attached proposed changes to 30 Texas Administrative Code § 30.392.

I. Public Policy Benefits

Amendments to the rule are important to protect public health and the environment, and to foster public trust in the integrity of water resource management and treatment operations. As the potential for adverse public health consequences from water/wastewater noncompliance has become more publicly known, it is critical to be able to rely on competent operators who can not only be counted on to perform their work correctly utilizing their knowledge and skill, but also to perform those tasks in an ethical and virtuous manner.

One does not have to look far to find water industry incidents that resulted in, at a minimum, the loss of public trust and, at a maximum, the loss of life. The lead contamination incident in Flint, Michigan, for example, stemmed from a failure of oversight and ethical lapses that were entirely preventable.[1] The *e.coli* outbreak in Walkerton, Ontario that killed seven water customers was due in part to falsified reports and poor system operation.[2] The drinking water crisis in Jackson, Mississippi was precipitated by years of neglect to its drinking water system.[3] Texas is not immune from similar events and risks, and these examples highlight the importance of providing operators access to the information and practical tools needed to successfully navigate ethical dilemmas. Requiring continuing education that includes an ethics component will ultimately advance the goals of protecting human health and the environment.

II. Petitioners' Names and Addresses

The TAWWA was formed as the Texas section of the American Water Works Association and is an incorporated non-profit association located in Texas, and is therefore an "interested person" under 30 Texas Administrative Code § 20.15(a). Its 4,500+ members have a common interest in the water works industry, with the mission to provide solutions to protect health and the environment, and to effectively manage water—Texas' most vital resource. The water that TAWWA members manage, treat and distribute goes to approximately 94% of the population of Texas (27,758,200) Texans. The authorized representative for TAWWA in this proceeding is

[1] Merrit Kennedy, *Lead-Laced Water in Flint: A Step-By-Step Look at the Makings of a Crisis* (Apr. 20, 2016, 6:39 PM), Flint Water Crisis: A Step-By-Step Look At What Happened : The Two-Way : NPR.
[2] CBC News, *Walkerton Water Tests Regularly Faked: Koebel* (Dec. 20, 2000, 2:33 PM), https://www.cbc.ca/news/canada/walkerton-water-tests-regularly-faked-koebel-1.247902; CBC News, *Inside Walkerton: Canada's Worst-Ever E.coli Contamination* (May 10, 2010, 12:23 PM), https://www.cbc.ca/news/canada/inside-walkerton-canada-s-worst-ever-e-coli-contamination-1.887200.
[3] Jason Breslow, *The Water Crisis in Jackson Follows Years of Failure to Fix an Aging System* (Aug. 31, 2022, 5:00 AM), https://www.npr.org/2022/08/31/1120166328/jackson-mississippi-water-crisis; United States Environmental Protection Agency, *Jackson, MS Drinking Water*, https://www.epa.gov/ms/jackson-ms-drinking-water.

Daniel Nix, TAWWA Executive Director. TAWWA's mailing address is P.O. Box 4067, Wichita Falls, Texas 76308.

WEAT is a member association formed under the international Water Environment Federation and is an incorporated non-profit educational organization located in Texas, and is therefore an "interested person" under 30 Texas Administrative Code § 20.15(a). WEAT was founded by professionals in the field of water quality, and its 4,200+ members represent diverse specialties and backgrounds with the common goal of protecting and enhancing Texas' precious water resources by leading the way toward existing state and national clean water programs. The authorized representative for WEAT is Julie Nahrgang, WEAT Executive Director. WEAT's mailing address is 4908 Menchaca Road, Austin, Texas 78745.

III. Brief Explanation of the Amendment

Currently, there are no requirements for water operators in Texas to acquire continuing education in ethics prior to renewal of a license. The proposed amendment would establish a requirement for licensed water operators in Texas to successfully complete continuing education in ethics before the Commission approves any application for renewal. Developed coursework should cover ethical considerations relating to the responsibilities of water/wastewater operators in the performance of their duties, including an overview of what it means to be ethical, the specific challenges facing the water/wastewater industry giving rise to ethical dilemmas, and practical tools for making professional and ethical decisions.

Texas would not be the only state to consider an ethics training requirement for licensed water operators. Petitioners were informed that both the Kentucky Department for Environmental Protection and the Tennessee Department of Environment & Conservation are considering operator ethics training. In addition, other state agencies engaged in occupational licensing have

already incorporated ethics continuing education into their renewal rules. The Texas Board of Professional Engineers and Land Surveyors requires at least one hour of the continuing education required for the yearly renewal of an engineer license be on the topic of ethics, roles and responsibilities, or a review of applicable law.[4]

TAWWA and WEAT will work with the Commission and interested stakeholders to ensure that the final rule language and other aspects of this rule amendment meet the intended purpose of requiring continuing education in ethics for all water operator licenses in Texas.

IV. Text of the Amendment

The text of the Amendment is provided as Appendix A of this petition.

V. Statement of Legal Authority for the Amendment

The text of the amendment is proposed to be adopted pursuant to the following authority:

a. Texas Water Code § 5.013(a)(3) and (12), which grants the Commission general jurisdiction over the state's water quality program and any areas assigned to it by the Texas Water Code or other laws of the state.

b. Texas Water Code §§ 5.102 and 5.103, which grants the Commission authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code or other laws of the state.

c. Texas Water Code Chapter 37 governing the Commissions' exclusive authority over the occupational licenses and registrations within its purview.

    i. Texas Water Code § 37.002 directing that the Commission shall adopt "any rules necessary to" establish occupational licenses and registrations

[4] 22 Tex. Admin Code §§ 137.17(d). Similarly, the New Jersey State Board of Professional Engineers and Land Surveyors requires at least two credits of continuing education in professional practice ethics for renewal of an engineer license. 40 N.J. Admin Code § 13:40-13.1.

prescribed by enumerated statutory sections, including Texas Health and Safety Code §§ 341.033 and 341.034 requiring occupational licenses for public water supply system operators.

ii. Texas Water Code §§ 37.004 and 37.005, which grant the Commission authority to grant the Commission authority to establish the qualifications for each license and registration issued under Chapter 37.

iii. Texas Water Code § 37.006 directs the Commission to establish requirements and uniform procedures for renewal of licenses and registrations.

VI. Injury or Inequity Resulting from Failure to Adopt the Amendment

Under the existing "status quo," there are no requirements for licensed water operators in Texas to complete continuing education in ethics. Moreover, as the protection of public health and the environment continues to evolve both at a regulatory and treatment process level, water operators will more frequently face dilemmas and situations where ethics will need to play a part in their proper functioning as licensed professionals in Texas. Required continuing education in ethics will equip operators with the information and practical tools necessary to address the unethical behaviors affecting and potentially affecting the water/wastewater industries in Texas. Such potential lapses that the continuing education is intended to address include but are not limited to:

1. **Quality and Safety Risks:** Without proper continuing education in ethics, operators may not fully understand the importance of adhering to strict quality and safety standards. This can lead to inadequate treatment practices, which may result in compromised water quality and safety.
2. **Regulatory Non-Compliance:** Lack of continuing education in ethics may lead to non-compliance with local, state, and federal regulations governing water treatment. This can

result in enforcement consequences, including fines, sanctions, or even the suspension or revocation of the water treatment facility's operating license.

3. **Public Health Concerns:** Insufficient ethical guidance can lead to actions that put public health at risk. For example, neglecting proper treatment procedures or failing to report water quality issues promptly can lead to outbreaks of waterborne illnesses.

4. **Environmental Impact:** Without ethical considerations, operators may not prioritize environmental stewardship. This could lead to practices that harm local ecosystems, water bodies, and wildlife, potentially causing long-term environmental damage.

5. **Loss of Public Trust:** The public relies on water treatment operators to provide safe and clean drinking water. If unethical behavior is evident, it can erode public trust, leading to concerns about the safety and reliability of the water supply.

6. **Corruption and Fraud:** In the absence of continuing education in ethics, there may be a higher risk of corruption, fraud, or other forms of financial and reporting misconduct within water/wastewater systems. This could include the potential for bribery, embezzlement, or favoritism in procurement and contracting.

7. **Fraud and Deceit in Obtaining/Maintaining a License:** Without continuing education in ethics, operators may not fully grasp the need for integrity in obtaining and maintaining a license. This could lead to fraud, deceit, and misrepresentation in the form of compromising or cheating on examinations, falsifying applications, and overstating qualifications and experience.

8. **Workplace Conflicts and Low Morale:** Without a foundation of ethical conduct, workplace conflicts may arise. Lack of trust and integrity can lead to a toxic work environment, which can negatively impact employee morale and productivity.

9. **Negative Reputation for the Organization:** Water treatment facilities that do not prioritize ethics may develop a negative reputation within the industry and the broader community. This can affect their ability to attract and retain skilled operators and to collaborate effectively with other stakeholders.

10. **Lack of Accountability:** In the absence of continuing education in ethics, operators may not understand the importance of personal accountability for their actions. This can lead to a culture of blame-shifting and an unwillingness to take responsibility for mistakes or shortcomings.

11. **Inefficiency and Ineffectiveness:** Without a focus on ethical behavior, there may be a lack of emphasis on continuous improvement and best practices in water treatment operations. This can result in inefficient processes and an overall less effective water treatment system.

12. **Increased Liability and Risk Management Issues:** Water systems that do not prioritize ethics may face increased liability for accidents, incidents, or other problems. Inadequate

ethics continuing education can lead to poor decision-making and increased risk management challenges.

In short, adoption of the proposed rule would establish a foundation of ethical conduct that benefits both operators and the communities they serve and is in the public's best interest.

VII. Prayer

WHEREFORE, premises considered, Petitioners respectfully request that the Commission consider this Petition, and the Amendment as proposed herein, and initiate proceedings necessary to adopt the Amendment. Petitioners further pray for any and all other relief to which they may be entitled.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532

NATHAN E. VASSAR
State Bar No. 24079508
MARY MARTHA MURPHY
State Bar No. 24098158
nvassar@lglawfirm.com

Appendix A

Text of Proposed Amendment to Rule

30 Texas Administrative Code § 30.392—Qualifications for License Renewal

(a) To renew a license, an individual must have:
(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations) and completed a total amount of approved continuing education equal to that of ten hours per year the license is valid; or
(2) met the requirements of Subchapter A of this chapter and passed the examination for the license.

(b) The basic water training course shall not be used to renew a Class B or A license.

(c) Class D licenses are not renewable for licensed operators:
(1) at groundwater treatment systems of 250 connections or more;
(2) at groundwater treatment systems serving a population of 750 or more;
(3) at surface water treatment systems;
(4) at groundwater systems under the influence of surface water;
(5) who are supervisors, crew chiefs, or foremen of distribution systems that have over 250 connections; or
(6) who operate multiple groundwater systems and the cumulative number of connections exceeds 250.

(d) To renew an active converted perpetual license, an individual must have met the requirements of this section, with the exception of the renewal fee.

(e) Individuals with a license are required to complete at least four hours of continuing education in ethics as part of the continuing education requirement to renew a license.

Tab 2

PETITION FOR RULEMAKING BY THE TEXAS SECTION OF THE AMERICAN WATER WORKS ASSOCIATION AND BY THE WATER ENVIRONMENT ASSOCIATION OF TEXAS **TO AMEND THE RULE GOVERNING QUALIFICATIONS FOR LICENSE RENEWAL OF WASTEWATER OPERATORS**	§ § § § § § § § § §	**BEFORE THE** **TEXAS COMMISSION** **ON ENVIRONMENTAL QUALITY**

ORIGINAL PETITION FOR RULEMAKING TO AMEND 30 TEXAS ADMINISTRATIVE CODE § 30.342

TO THE HONORABLE COMMISSIONERS:

Pursuant to the provisions of 30 Texas Administrative Code § 20.15, the Texas Section of the American Water Works Association ("TAWWA") and the Water Environment Association of Texas ("WEAT") jointly file this Petition for Rulemaking to the Texas Commission on Environmental Quality (the "Commission") requesting that the Commission adopt changes to the rule governing the continuing education required prior to renewal of all wastewater operator licenses. TAWWA and WEAT respectfully request that the Commission consider this petition and adopt the attached proposed changes to 30 Texas Administrative Code § 30.342.

I. Public Policy Benefits

Amendments to the rule are important to protect public health and the environment, and to foster public trust in the integrity of water resource management and treatment operations. As the potential for adverse public health consequences from water/wastewater noncompliance has become more publicly known, it is critical to be able to rely on competent operators who can not only be counted on to perform their work correctly utilizing their knowledge and skill, but also to perform those tasks in an ethical and virtuous manner.

One does not have to look far to find water industry incidents that resulted in, at a minimum, the loss of public trust and, at a maximum, the loss of life. The lead contamination incident in Flint, Michigan, for example, stemmed from a failure of oversight and ethical lapses that were entirely preventable.[1] The *e.coli* outbreak in Walkerton, Ontario that killed seven water customers was due in part to falsified reports and poor system operation.[2] The drinking water crisis in Jackson, Mississippi was precipitated by years of neglect to its drinking water system.[3] Texas is not immune from similar events and risks, and these examples highlight the importance of providing operators access to the information and practical tools needed to successfully navigate ethical dilemmas. Requiring continuing education that includes an ethics component will ultimately advance the goals of protecting human health and the environment.

II. Petitioners' Names and Addresses

The TAWWA was formed as the Texas section of the American Water Works Association and is an incorporated non-profit association located in Texas, and is therefore an "interested person" under 30 Texas Administrative Code § 20.15(a). Its 4,500+ members have a common interest in the water works industry, with the mission to provide solutions to protect health and the environment, and to effectively manage water—Texas' most vital resource. The water that TAWWA members manage, treat and distribute goes to approximately 94% of the population of Texas (27,758,200 Texans). The authorized representative for TAWWA in this proceeding is

[1] Merrit Kennedy, *Lead-Laced Water in Flint: A Step-By-Step Look at the Makings of a Crisis* (Apr. 20, 2016, 6:39 PM), Flint Water Crisis: A Step-By-Step Look At What Happened : The Two-Way : NPR.

[2] CBC News, *Walkerton Water Tests Regularly Faked: Koebel* (Dec. 20, 2000, 2:33 PM), https://www.cbc.ca/news/canada/walkerton-water-tests-regularly-faked-koebel-1.247902; CBC News, *Inside Walkerton: Canada's Worst-Ever E.coli Contamination* (May 10, 2010, 12:23 PM), https://www.cbc.ca/news/canada/inside-walkerton-canada-s-worst-ever-e-coli-contamination-1.887200.

[3] Jason Breslow, *The Water Crisis in Jackson Follows Years of Failure to Fix an Aging System* (Aug. 31, 2022, 5:00 AM), https://www.npr.org/2022/08/31/1120166328/jackson-mississippi-water-crisis; United States Environmental Protection Agency, *Jackson, MS Drinking Water*, https://www.epa.gov/ms/jackson-ms-drinking-water.

Daniel Nix, TAWWA Executive Director. TAWWA's mailing address is P.O. Box 4067, Wichita Falls, Texas 76308.

WEAT is a member association formed under the international Water Environment Federation and is an incorporated non-profit educational organization located in Texas, and is therefore an "interested person" under 30 Texas Administrative Code § 20.15(a). WEAT was founded by professionals in the field of water quality, and its 4,200+ members represent diverse specialties and backgrounds with the common goal of protecting and enhancing Texas' precious water resources by leading the way toward existing state and national clean water programs. The authorized representative for WEAT is Julie Nahrgang, WEAT Executive Director. WEAT's mailing address is 4908 Menchaca Road, Austin, Texas 78745.

III. Brief Explanation of the Amendment

Currently, there are no requirements for licensed wastewater operators in Texas to acquire continuing education in ethics prior to renewal of a license. The proposed amendment would establish a requirement for licensed wastewater operators in Texas to successfully complete continuing education in ethics before the Commission approves any application for renewal. Developed coursework should cover ethical considerations relating to the responsibilities of water/wastewater operators in the performance of their duties, including an overview of what it means to be ethical, the specific challenges facing the water/wastewater industry giving rise to ethical dilemmas, and practical tools for making professional and ethical decisions.

Texas would not be the only state to consider an ethics training requirement for licensed water operators. Petitioners were informed that both the Kentucky Department for Environmental Protection and the Tennessee Department of Environment & Conservation are considering operator ethics training. In addition, other state agencies engaged in occupational licensing have

already incorporated ethics continuing education into their renewal rules. The Texas Board of Professional Engineers and Land Surveyors requires at least one hour of the continuing education required for the yearly renewal of an engineer license be on the topic of ethics, roles and responsibilities, or a review of applicable law.[4]

TAWWA and WEAT will work with the Commission and interested stakeholders to ensure that the final rule language and other aspects of this rule amendment meet the intended purpose of requiring continuing education in ethics for high-level licensed wastewater operators in Texas.

IV. Text of the Amendment

The text of the Amendment is provided as Appendix A of this petition.

V. Statement of Legal Authority for the Amendment

The text of the amendment is proposed to be adopted pursuant to the following authority:

a. Texas Water Code § 5.013(a)(3) and (12), which grants the Commission general jurisdiction over the state's water quality program and any areas assigned to it by the Texas Water Code or other laws of the state.

b. Texas Water Code §§ 5.102 and 5.103, which grants the Commission authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code or other laws of the state.

c. Texas Water Code Chapter 37 governing the Commissions' exclusive authority over the occupational licenses and registrations within its purview.

   i. Texas Water Code § 37.002 directing that the Commission shall adopt "any rules necessary to" establish occupational licenses and registrations

[4] 22 Tex. Admin Code §§ 137.17(d). Similarly, the New Jersey State Board of Professional Engineers and Land Surveyors requires at least two credits of continuing education in professional practice ethics for renewal of an engineer license40 N.J. Admin Code § 13:40-13.1.

prescribed by enumerated statutory sections, including Texas Water Code § 26.0301 of the requiring occupational licenses for wastewater operators.

ii. Texas Water Code §§ 37.004 and 37.005, which grant the Commission authority to establish the qualifications for each license and registration issued under Chapter 37.

iii. Texas Water Code § 37.006 directs the Commission to establish requirements and uniform procedures for renewal of licenses and registrations.

VI. Injury or Inequity Resulting from Failure to Adopt the Amendment

Under the existing "status quo," there are no requirements for licensed wastewater operators in Texas to complete continuing education in ethics. Moreover, as the protection of public health and the environment continues to evolve both at a regulatory and treatment process level, wastewater operators will more frequently face dilemmas and situations where ethics will need to play a part in their proper functioning as licensed professionals in Texas. Required continuing education in ethics will equip operators with the information and practical tools necessary to address the unethical behaviors affecting and potentially affecting the water/wastewater industries in Texas. Such potential lapses that the continuing education is intended to address include but are not limited to:

1. **Quality and Safety Risks:** Without proper continuing education in ethics, operators may not fully understand the importance of adhering to strict quality and safety standards. This can lead to inadequate treatment practices, which may result in compromised water quality and safety.
2. **Regulatory Non-Compliance:** Lack of continuing education in ethics may lead to non-compliance with local, state, and federal regulations governing water treatment. This can result in enforcement consequences, including fines, sanctions, or even the suspension or revocation of the water treatment facility's operating license.

3. **Public Health Concerns:** Insufficient ethical guidance can lead to actions that put public health at risk. For example, neglecting proper treatment procedures or failing to report water quality issues promptly can lead to outbreaks of waterborne illnesses.

4. **Environmental Impact:** Without ethical considerations, operators may not prioritize environmental stewardship. This could lead to practices that harm local ecosystems, water bodies, and wildlife, potentially causing long-term environmental damage.

5. **Loss of Public Trust:** The public relies on water treatment operators to provide safe and clean drinking water. If unethical behavior is evident, it can erode public trust, leading to concerns about the safety and reliability of the water supply.

6. **Corruption and Fraud:** In the absence of continuing education in ethics, there may be a higher risk of corruption, fraud, or other forms of financial and reporting misconduct within water/wastewater systems. This could include the potential for bribery, embezzlement, or favoritism in procurement and contracting.

7. **Fraud and Deceit in Obtaining/Maintaining a License:** Without continuing education in ethics, operators may not fully grasp the need for integrity in obtaining and maintaining a license. This could lead to fraud, deceit, and misrepresentation in the form of compromising or cheating on examinations, falsifying applications, and overstating qualifications and experience.

8. **Workplace Conflicts and Low Morale:** Without a foundation of ethical conduct, workplace conflicts may arise. Lack of trust and integrity can lead to a toxic work environment, which can negatively impact employee morale and productivity.

9. **Negative Reputation for the Organization:** Water treatment facilities that do not prioritize ethics may develop a negative reputation within the industry and the broader community. This can affect their ability to attract and retain skilled operators and to collaborate effectively with other stakeholders.

10. **Lack of Accountability:** In the absence of continuing education in ethics, operators may not understand the importance of personal accountability for their actions. This can lead to a culture of blame-shifting and an unwillingness to take responsibility for mistakes or shortcomings.

11. **Inefficiency and Ineffectiveness:** Without a focus on ethical behavior, there may be a lack of emphasis on continuous improvement and best practices in water treatment operations. This can result in inefficient processes and an overall less effective water treatment system.

12. **Increased Liability and Risk Management Issues:** Water systems that do not prioritize ethics may face increased liability for accidents, incidents, or other problems. Inadequate continuing education in ethics can lead to poor decision-making and increased risk management challenges.

In short, adoption of the proposed rule would establish a foundation of ethical conduct that benefits both operators and the communities they serve and is in the public's best interest.

VII. Prayer

WHEREFORE, premises considered, Petitioners respectfully request that the Commission consider this Petition, and the Amendment as proposed herein, and initiate proceedings necessary to adopt the Amendment. Petitioners further pray for any and all other relief to which they may be entitled.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532

NATHAN E. VASSAR
State Bar No. 24079508
MARY MARTHA MURPHY
State Bar No. 24098158
nvassar@lglawfirm.com

Appendix A

Text of Proposed Amendment to Rule

30 Texas Administrative Code § 30.342—Qualifications for License Renewal

(a) To renew a license, an individual must have:
(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations) and completed a total amount of approved continuing education equal to that of ten hours per year the license is valid; or
(2) met the requirements of Subchapter A of this chapter and passed the examination for the license.

(b) The basic wastewater operation course may not be used to renew a Class B or A license.

(c) Class D licenses are not renewable for operators of:
(1) any activated sludge type facilities;
(2) any trickling filter or rotating biological contractor (RBC) facilities with a permitted daily average flow of 100,000 gallons per day or greater. A trickling filter or RBC facility is a facility that uses secondary aerobic biological processes for treatment of sewage;
(3) any facility that uses a subsurface area drip dispersal system as defined in §222.5 of this title (relating to Definitions) for disposal of its effluent.

(d) To renew an active converted perpetual license, an individual must have met the requirements of this section, with the exception of the renewal fee.

(e) Individuals with a license are required to complete at least four hours of continuing education in ethics as part of the continuing education requirement to renew a license.

Texas Commission on Environmental Quality

DECISION OF THE COMMISSION
REGARDING THE PETITION FOR RULEMAKING
FILED BY TAWWA and WEAT

Docket No. 2024-1593-PET
Rule Project No. 2025-005-PET-NR

On November 20, 2024, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by the Texas Section of the American Water Works Association and the Water Environment Association of Texas. The petitioners filed the request on September 24, 2024, and requested that the commission amend 30 Texas Administrative Code Chapter 30 to require individuals that hold a water or wastewater operator license to complete at least four hours of ethics continuing education prior to renewal of a license.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102, § 5.103, and § 37.002 to initiate rulemaking concerning the issues raised in the petition.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

_____

Jon Niermann, Chairman

_____

Date Signed

DRAFT