

IRRIGATOR ADVISORY COUNCIL MEETING

MINUTES

Date: April 10, 2014, 9:30 a.m. to 2:30 p.m.

Place: Texas Commission on Environmental Quality (TCEQ)

12100 Park 35 Circle, Building B, Conference Room 201A

Austin, Texas 78753

Chairperson Karen Guz calls the meeting to order at 9:30 a.m.

Irrigator Advisory Council (IAC or Council) Members Marsha Carson, Mark Froehlich, and Toni Fox were present by telephone.

Chairperson Karen Guz and Council Members Rusty Tucker, Paul Ward, Nora Mullarkey, and David Kania were present in person.

Agenda Topic: Consider approval of the November 7, 2013 minutes

Decision: The Council approved the minutes.

Agenda Topic: Hear from individuals wishing to address the Council

Subtopic: The Council recognized Avner Zachary, who is retiring as a Landscape Irrigator (License Number LI3396), with an honorary license due to his many years working in the industry since being licensed in 1987.

Agenda Topic: Enforcement and Legislative Committees Reports and Updates

Discussion: Council Member Rusty Tucker did not have any updates for this topic.

Agenda Topic: Field Operations Program Support Section (FOPSS), Office of Compliance and Enforcement, TCEQ Update

Subtopic: Introduction

Discussion: Tracy Chandler (FOPSS) introduced FOPSS Staff.

Subtopic: Announcement regarding nominations

Discussion: Ms. Chandler discussed the nomination process for the IAC. The positions that will be vacant in February 2015 are for two licensed irrigators and one member of the public. Nominations will be accepted on or before June 13, 2014.

Subtopic: Enforcement Report

Discussion: Ms. Chandler discussed the enforcement report and stated since September 1, 2013, 27 incidents had been received, 19 investigations had been approved, and 13 Notices of Violation (NOVs) and 3 Notices of Enforcement (NOEs) had been issued. There are 35 ongoing investigations. Ms. Chandler stated that many of the alleged violations are for advertising without a license or for failing to list a license number on the advertisement, for failing to have a licensed irrigator on-site, and for engaging in activities requiring a license, without a license. Ms. Chandler discussed needing documentation to substantiate the complaints, including complaint forms and affidavits from complainants stating what they observed and evidence such as photographs, e-mails, witness statements and invoices. Complainants must follow TCEQ protocol for citizen collected evidence as provided on the TCEQ website and there must be sufficient evidence to substantiate the violation.

Chairperson Guz asked who would receive an NOV in the case of an unlicensed person doing work and how is evidence provided to show that the person was not volunteering. She added that it can be difficult to find proof if the homeowners' association (HOA) or homeowner is uncooperative. Ms. Chandler stated it may depend on the facts of each case, but the HOA or homeowner does not have to come forward to proceed. Photos and affidavits can still be presented as evidence by the complainant.

Decision: Chairperson Guz stated the Council must do more to help local municipalities gain an understanding of rules regarding licensed irrigators to assist with enforcement. More information about the rules should be provided to licensed irrigators, homeowners and local authorities.

Council Member Nora Mullarkey stated the Council should encourage local enforcement of the rules for more timely enforcement.

Chairperson Guz stated the Council should also engage professional associations across the state.

Subtopic: Backflow prevention device – enforcement issues

Discussion: Frank Burleson (FOPSS) presented on backflow prevention and discussed the correlations and differences between the landscape irrigation rules (30 Texas Administrative Code (TAC) Chapter 344) and the Public Water System (PWS) rules (30 TAC Chapter 290) and asked the Council for input on ensuring that all appropriate parties were made aware of the backflow prevention requirements for landscape irrigation systems. Mr. Burleson stated that FOPSS was looking for opportunities to provide outreach to on-site sewage facilities (OSSF). Installers and designated representatives since the Chapter 344 rules establish backflow prevention requirements for properties served by landscape irrigation systems and OSSF. Mr. Burleson further stated that FOPSS is looking to coordinate outreach with public water supplies since the Chapter 290 rules require public water supplies to address existing or potential cross connections. Council Member Rusty Tucker asked if there are municipalities that would have a penalty and stated that the plumbing code is more stringent, requiring annual testing according to manufacturer recommendations. He is finding that cities are adopting different codes, such as the International Plumbing Code (IPC), and different testing standards in municipalities around the Dallas Area.

Council Member Paul Ward stated that as a solution the plumbing code should be adopted as state code and city officials should not decipher the code. The Council needs to communicate how the code should be followed and the Council should send a clear statement to help with the local enforcement process.

Linda Saladino (Permitting and Registration Support Section, Office of Waste, TCEQ) asked how the situation would be handled when a municipal utility district (MUD) or an entity that is not required to have an ordinance is involved.

Council Member Ward stated the Customer Service Inspection (CSI) form should be revised to provide clarification on backflow testing and the order that inspectors sign the form. Jerry Lewis, member of the audience, stated the sequence for signing the CSI form is critical.

Decision: Mr. Burleson offered to contact the municipality allegedly instructed by TCEQ to require annual certification of residences if Council Member Tucker would provide the appropriate contact information. Mr. Burleson also agreed to coordinate research of the questions regarding the CSI form.

Subtopic: Enforcement Initiation Criteria

Discussion: Ms. Chandler discussed the EIC and the revision process. She asked the Council for comments and suggested revisions to the EIC. The Council discussed complaints and Ms. Chandler stated that complaints could be tracked online through the TCEQ's website or by calling the TCEQ.

Decision: Ms. Chandler stated she would look into adding a link to the complaint tracking system on the TCEQ's Landscape Irrigation Webpage.

Subtopic: Local Landscape Irrigation Programs

Mr. Burleson stated TCEQ is working to enhance relationships with local authorities and the Council discussed ways to engage local programs. Mr. Burleson stated he would look at data on complaints to see what municipalities have a population of 20,000 or more to reach out to them.

Chairperson Guz stated that overall local irrigation programs were not as effective outside of the city limits as counties are limited to conducting inspections. The statutory enforcement authority provided to the justices of the peace was discussed. Chairperson Guz stated that in communicating with cities and water purveyors the Council should stress the drought to maximize the authority of the Landscape Irrigation Program.

Chairperson Guz also stated that builders agreeing to operational programs and utility service agreements are an opportunity for discussion. She further stated that conservation plans and goals should be added to the Chapter 288 rules for best management practices and the annual report should include what water irrigators conserve.

Chairperson Guz stated that case studies of good programs (large and small) should be added to the TCEQ and Save Texas Water Websites. Case studies should discuss water conservation issues and have language to demonstrate the relevance to the drought.

Council Member Mullarkey stated that considering the current drought situation TCEQ staff should engage the TCEQ Office of Water regarding the 30 TAC Chapter 288 rules regarding water conservation. She commented that cities need to develop a water conservation plan. She added that the 5 year annual report should contain how many irrigation systems have been done, including the number of violations. She further stated that case studies should include the following: MUDs, water control and improvement districts (WCIDs), Association of Water Board Members (in Austin) and the Capital Area Suburban Exchange. Chairperson Guz commented that there may be an opportunity to coordinate with the Texas Water Development Board.

Council Member Ward stated he wondered if residents knew about House Bill 2507.

Decision: Mr. Burleson proposed that TCEQ use a survey to gather information regarding local landscape irrigation programs from municipalities.

Mr. Burleson stated TCEQ would collect comments and contact information from the IAC through e-mail of potential case studies.

Mr. Burleson stated TCEQ would collect comments on the survey from IAC. The Council agreed that Mr. Burleson should sign the cover letter for the survey.

Agenda Topic: Education, Training, and Licensing Committee Reports and Updates and Continuing Education Update (CEU)

Subtopic: TCEQ Permitting & Registration Support Division Training Specialist, Linda Saladino, provided an update on continuing education sources, training topics, and the process for new courses (Approval of Training for Occupational Licenses RG 373).

Decision/discussion: The Council Members stated the training providers should be provided links on: 1) the TCEQ training handout and 2) the nomination notice.

The Council Members discussed course content and noted there were no expiration dates on approved training courses. The Council Members also agreed they should review water conservation courses and popular course content. It was suggested that if the Council found common errors or omission, that a Best Management Practices (BMP) document or list of rules and regulations be created and shared with the training providers. The Council also discussed the possibility of collecting comments on each course at its' conclusion. Ms. Saladino asked how the surveys would logistically work. Council Member Mullarkey commented that the survey would not be able to address course content. Ms. Saladino stated course participants can call TCEQ to report issues/problems with course content. The Council also discussed improving communication with providers regarding licensing and program requirements to assist licensees obtain and renew licenses and remain in compliance. Ms. Saladino provided the Council an overview of RG-373: *Approval of Training for Occupational Licensing* which is the regulatory guidance TCEQ uses to review training applications.

Agenda Topic: Permitting and Registration Support, Office of Waste, TCEQ

Subtopic: Ivan Messer Introduced TCEQ Occupational and Licensing Team Lead, Ismael Parra

Subtopic: Licensing Report

Mr. Messer discussed the Irrigation Program Results handout. He discussed the need to turn in the background check with the application and fee. TCEQ is taking 45 or more days to review renewal application materials. The earliest licensees can apply for renewal is 90 days prior to their expiration date. CE hours can be earned any time during the 3-year license term and he further stated that CE hours earned in one renewal period do not carry over into the new license term. TCEQ should include information on the website to help licensees understand the renewal process requirements.

Agenda Topic: Litigation Division, Office of Legal Services, TCEQ and Enforcement Division, Office of Compliance and Enforcement, TCEQ - Enforcement Overview, including discussion of technical requirements

Jess Robinson, TCEQ Office of Legal Services, Litigation Division Staff Attorney, gave an enforcement overview.

Discussion: Mr. Robinson stated the process can begin with a complaint from a consumer, irrigator, or local government and the TCEQ has 60 days to complete a report. He stated compliance may be enforced by the TCEQ or by the justices of the peace. He discussed that Category A violations result in NOEs with automatic enforcement and Category B violations result in NOVs where the respondent has an opportunity to correct the violation. He stated if a violation is not resolved then a NOE could be issued. Mr. Robinson further discussed evidence protocol and record review investigations. He then discussed enforcement actions, including penalties, corrective actions and cease and desist. Mr. Robinson stated that penalties can be increased by compliance history, criminal offenses, and falsification and can include up to license suspension and revocation.

Decision: Local enforcement processes would help streamline enforcement.

Agenda Topic: Introduce Building Officials Association of Texas (BOAT) Representative and give an overview of BOAT and Presentation: BOAT History and Mission Statement

Council Member Ward introduced Trevor Brown, BOAT Member. An overview of BOAT was provided. BOAT is an affiliate organization of the Texas Municipal League (TML), which represents 98% of Texas' urban population through over 1,090 member cities and towns. BOAT is focused on public policy issues, public health, public relations, building codes, building standards, efficiency, technology and education.

Mr. Brown stated that BOAT helps with communication between cities and can help with staff exchange by communicating between BOAT chapters in different cities. He stated it would be beneficial for City of Austin inspectors to take irrigator training.

Chairperson Guz asked if the City of Austin and San Antonio shared staff and that if that would be beneficial to the City of San Antonio. Mr. Boyce stated that BOAT was able to facilitate those types of discussions.

Council Member Mullarkey recommended that the IAC obtain time on the BOAT Agenda and give a presentation on landscape inspectors, irrigation rules, and water conservation.

Council Member Ward asked Jerry Lewis, audience member, what he thought the most common issue was in local regulation. Mr. Lewis said it was inconsistencies and that sometimes those inconsistencies occur within the same cities.

Decision/discussion: Council Member Ward will take the lead for the IAC to begin an association with BOAT and request to be on the next BOAT Agenda at the BOAT Officers meeting in May 2014 to present on landscape inspectors, irrigation rules, and water conservation. Council Member Ward stated he may ask Jerry Lewis to also attend the next North Texas BOAT Meeting. Mr. Lewis indicated a willingness to assist.

Agenda Topic: Structure and Planning

Subtopic: Current officers, terms, and elections, if necessary

Decision: The Council Members voted, unanimously, to elect Paul Ward as the Chair and David Kania as the Vice Chair of the IAC and for them to serve in those capacities until November 15, 2015.

Subtopic: Discussion of committees and committee structure

Decision: The Council Members voted, unanimously, that all current chairs would step down. The Council voted, unanimously, that the new committee member structure would be:

- 1) Council Members Marsha Carson and Toni Fox will be Education Committee Members and Council Member Carson will be the Education Committees Chair.
- 2) Council Members Rusty Tucker and David Kania will be the Legislative and Enforcement Committee Members and Council Member Kania will be the Legislative and Enforcement Committee Chair.

- 3) Newly elected Council Chairperson Ward can direct any further reorganization at a later time.

Subtopic: Selection of next meeting date

Decision: The next meeting was scheduled for June 26, 2014, 9:30 a.m. to 2:30 p.m. The meeting will be at the TCEQ Austin campus. The following meeting was set for November 13, 2014, 9:30 a.m. to 2:30 p.m. The meeting will be at the TCEQ Austin campus.

Subtopic: Discussion of items for inclusion in the next agenda

Decision: Newly elected Chairperson Ward stated he would like to invite the Austin Lawn Sprinklers Association to give an introduction/presentation.

Follow ups:

- TCEQ will research whether a public water system was told to certify residences annually in regard to backflow prevention devices.
- TCEQ will research the process for making updates to the CSI form, including addressing whether all inspectors have to sign the form and whether the order they sign is important.
- TCEQ will look into providing a link to the complaint tracking system on the TCEQ's Landscape Irrigation Webpage.
- Mr. Burleson stated he would determine the level of effort needed to reach out to and collect data on municipalities / cities (with populations over 20,000) regarding landscape irrigation complaints and investigations.
- TCEQ will collect comments and contact information from the IAC Members via e-mail in order to identify case studies.
- TCEQ will collect comments on the survey and cover letter from the IAC Members and add the comments to the survey and cover letter.
- The following links should be provided to training providers 1) the TCEQ training handout and 2) IAC nomination notice.
- The Council will review water conservation courses and popular course content.

- The Council will research collecting comments after each CEU course.
- The Council will begin an association with BOAT and request time on the agenda for the next BOAT officers meeting in May 2014 to present on landscape inspectors, irrigation rules and water conservation.