


Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 9, 2024

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

From: Beth Seaton, Director 
Office of Waste

Docket No.: 2024-0923-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 30, Occupational Licenses and Registrations
Implementation of Occupational Licensing Legislative Updates and Staff
Recommended Updates
Rule Project No. 2024-004-030-WS

Background and reason(s) for the rulemaking:

The Occupational Licensing & Registration Division (OLRD) proposes to amend 30 Texas Administrative Code (TAC) Chapter 30, Occupational Licensing and Registration, to implement changes to statute made during the 88th Legislative Session and to incorporate additional recommended changes, as discussed in more detail below.

Legislative Changes

House Bill (HB) 1845 added §37.0045 to Texas Water Code (TWC) Chapter 37. It requires the agency to establish, by rule, a provisional occupational license for Class D wastewater operators and public water system operators for persons without a high school diploma or equivalent.

HB 2453 added Chapter 60 to the Texas Occupations Code (TOC). It allows licensing agencies to issue a digital license or certificate of registration in lieu of a physical paper license.

Senate Bill 422 amended TOC Chapter 55 to allow military service members to engage in a business or occupation for which a license is required, without a Texas license, provided the military service member holds a current license in good standing from another jurisdiction. TCEQ already has a reciprocity process for military service members relocated to Texas; however, rulemaking is necessary to implement the requirement that TCEQ process applications and issue the license for qualified military service members, veterans, or spouses, within 30 days of receipt.

Other Recommended Changes

This rulemaking would codify in rule the new requirements for public water system operators to comply with the resiliency training requirements for new and renewal of public water system operator licenses, as recommended by the Winter Storm Uri After-Action review.

OLRD proposes to require all applicants for new and renewal licenses to subscribe to the FBI fingerprinting for the criminal history review, unless a waiver is granted. This change will give TCEQ access to national criminal history information rather than just the Texas Department of Public Safety information. This will allow TCEQ to timely meet the statutory requirement to automatically revoke a license or registration upon an individual's imprisonment following a criminal conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as stated in 30 TAC §53.021(b). Currently, TCEQ does not have a way to timely know when a licensee is imprisoned due to a felony conviction until they submit a renewal application, which could potentially be three years after the conviction. Through the FBI fingerprint subscription, the agency will receive notification, through the Criminal Justice Rap

Re: Docket No. 2024-0923-RUL

Back Program of Texas, when a person who has fingerprints on file with the FBI is arrested or has criminal activity associated with those fingerprints. Additionally, this would allow TCEQ to verify out-of-state offenses to ensure an applicant's self-attestations are complete and accurate to protect public safety.

OLRD also proposes to reduce the number of continuing education (CE) credits required to renew the Leaking Petroleum Storage Tank Project Manager license from 32 hours to 20 hours. Currently, individuals are required to complete 32 hours of CE every three years to be eligible to renew their license. The regulated community has expressed difficulty in meeting this requirement based on the available TCEQ-approved training (note TCEQ does not develop or offer training for this license). Staff believes that reducing the required CEs from 32 to 20 will address the lack of available TCEQ-approved training without any detrimental effects on the environment or to public health.

OLRD also proposes to update training terminology to be consistent with current training technology and policies.

Other minor updates to 30 TAC Chapter 30 will be made, as necessary, to provide consistency with other licensing requirements and rules.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The rulemaking will implement changes to statute made during the 88th Legislative Session and incorporate additional recommended changes, as described above.

B.) Scope required by federal regulations or state statutes:

- Establish the minimum requirements for provisional level D licenses for water and wastewater licenses. An individual without a high school diploma or equivalent that has completed the required training, passed the applicable exam, acts under the direct supervision of a licensed operator, and passes the criminal history review, would be eligible for a non-renewable Provisional Water D or Provisional Wastewater D license that is valid for two years. This provisional license would provide the individual time to obtain their high school diploma or equivalent to be eligible for a renewable Water D or Wastewater D license or higher.
- State that TCEQ may issue a digital license in lieu of physical paper license.
- Memorialize the requirement that TCEQ process applications and issue the license for qualified military service members, veterans, or spouses, within 30 days.

C.) Additional staff recommendations that are not required by federal rule or state statute:

- Require all licensed public water system operators to take resiliency training for new and renewal licenses to equip water system personnel with additional knowledge and skills in preparation for and in response to emergency events.
- Require all applicants for new and renewal licenses to subscribe to the FBI fingerprinting for the required criminal history review, unless a waiver to submit criminal history information in an alternate method is approved.
- Reduce the number of CE credits required to renew the Leaking Petroleum Storage Tank Project Manager (LPST) license from 32 hours to 20 hours.
- Update training terminology to be training terminology to be consistent with current training technology and policies.

Re: Docket No. 2024-0923-RUL

Statutory authority:

These amendments are proposed under the authority granted to the commission in TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; and §5.103 and §5.105, which establish the commission's general authority to adopt rules.

These amendments are also proposed under TWC §37.002, which provide the commission's specific authority to adopt rules governing occupational licenses and registrations; §§26.0301, 37.003, 37.005, and 37.006 of TWC; §§341.033, 341.034, 361.027, and 366.071, Health and Safety Code, and §1903.251, TOC.

The adopted rules implement TWC, §37.045 as added by HB 1845; 30 TOC §60.002 as added by HB 2453; and 30 TOC §55.0041 and §55.005(a) as amended by SB 422.

Effect on the:

A.) Regulated community:

Individuals without a high school degree or equivalent will now be able to enter water and wastewater treatment occupations. Applicants for these provisional licenses will undergo the same application and criminal history review process as any other license. When digital licenses are issued, licensed individuals will no longer be required to carry paper pocket-cards and instead would be able to view their digital license on their phones or other devices. Additionally, military service members, veterans, and spouses who are qualified for a license will have their applications processed and licenses issued within 30 days, as long as their applications are not deficient.

Licensed individuals will be required to take resiliency training as part of the requirement to obtain or renew a public water system operator occupational license. Unless a waiver is granted, applicants for an occupational license would also need to subscribe once to FBI fingerprinting, which has a one-time fee of \$40, and go to a fingerprinting location nearby to get fingerprinted. Fingerprinting locations are widely available throughout this state. Once subscribed to the FBI fingerprinting, applicants will not need to provide any additional criminal history information in subsequent applications for other new TCEQ licenses or renewals, unless requested by TCEQ. LPST licensed individuals will have less difficulty finding and taking the required amount of continuing education credits.

B.) Public:

The public will benefit from additional water and wastewater operators entering the field and be able to view licenses digitally. Applicants for new and renewal licenses may see a slight increase in the application approval processing times during periods when a high volume of applications from veterans are received, as they would be required to be prioritized.

The public will also benefit from licensed water operators that are better equipped and qualified to respond to emergency events and from the additional public safety protection that would result from further verification of the self-attestations of out-of-state criminal history of licensed individuals that may have access to property and persons, and work in their communities.

C.) Agency programs:

The agency may see an increase in the overall number of license applications received, as more provisional license applications are submitted. The Occupational Licensing Section will have restrictions on the processing time for certain applications from military service members,

Re: Docket No. 2024-0923-RUL

veterans, and spouses and will have to prioritize those licenses over others. Staff will also need to verify that the resiliency requirements have been met for new and renewal applications for Water Operator licenses as part of the application review process but will likely issue fewer deficiencies to individuals applying to renew their LPST Project Manager license, as they're more likely to meet the training requirements. The Section will also need to review and approve additional resiliency training courses, providers, and instructors.

Issuing digital licenses, instead of physical paper, would save the agency capital and maintenance costs associated with the license tabber machine, printer, ink, and paper.

Additionally, once fingerprinting is required, there will be cost savings from running fewer DPS records. OLRD currently runs a DPS report on each applicant for new and renewal of licenses, which equates to approximately \$25,000 annually for the first three years. Once fingerprinting is required, most applicants will be fingerprinted, except those with a waiver. For those with a fingerprinting subscription, DPS waives the fee for DPS reports that are reviewed within 30 days of the date the applicant initially subscribes to fingerprinting. Because the majority of licensees do not currently have a fingerprinting subscription, the more substantial savings would occur within the first three years, when most current and new applicants are newly subscribing to the fingerprinting option, as the agency would not be charged the \$1 DPS fee. OLRD estimates a savings of \$25,000 for the first three years. After that, most applicants would have already been subscribed to fingerprinting, so the DPS fee would then apply for the majority of licensees moving forward. Only those applying for a new license, that do not have an active license with TCEQ, would get the fee waived. OLRD estimates a savings of \$6,000 per year, after the first license cycle.

Stakeholder meetings:

The commission held a virtual stakeholder meeting on March 7, 2024. The stakeholder meeting was announced in the Texas Register and the meeting information was sent out to individuals with active licenses. Leading up to the meeting, OLRD received one comment raising concerns about the proposed fingerprinting requirements, stating that some people might have difficulty getting fingerprinted. Due to those concerns, OLRD added language to the draft rules to allow an individual, who cannot get fingerprinted, the ability to request a waiver from the fingerprinting requirement and submit the criminal history information via another method. Those with waivers must either attest that they have no criminal history or submit a DPS report or court documents in lieu of fingerprinting. The waiver option was included in the presentation at the stakeholder meeting.

Public Involvement Plan

A public involvement plan is required for this rulemaking.

Alternative Language Requirements

Spanish language documents will be required for this rulemaking.

Potential controversial concerns and legislative interest:

TCEQ depends on other states, countries, or territories to provide the information TCEQ needs to verify if a military service member, veteran, or spouse is eligible for a license through reciprocity, which may take more than 30 days.

Would this rulemaking affect any current policies or require development of new policies?

The rulemaking codifies changes to statute and Occupational Licensing policies and will not require the development of new policies.

Re: Docket No. 2024-0923-RUL

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

While the TCEQ has developed a resiliency policy, the rulemaking will codify the policy and establish its implementation, and enforceability.

If the FBI fingerprinting subscription were not required, TCEQ would continue to have difficulty complying with the statutory requirement to automatically and timely revoke a license, incorporated in Texas Occupations Code §53.021(b), and verify self-attestations for out-of-state offenses.

Staff have worked to approve additional training for the Leaking Petroleum Storage Tank Project Manager license type; however, the regulated community continues to communicate that finding sufficient training to meet the current number of required CEs is difficult. An alternative would be leaving the current required 32 CEs unchanged, however, an unintended consequence might be fewer individuals qualifying for renewal of their license without an added benefit to public health and the environment.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: August 28, 2024

Anticipated *Texas Register* publication date: September 13, 2024

Anticipated public hearing date: October 10, 2024

Anticipated public comment period: September 13, 2024 to October 14, 2024

Anticipated adoption date: February 2025

Agency contacts:

Rebecca Morigan, Rule Project Manager, Occupational Licensing & Registration Division, (512) 239-2463

Aubrey Pawelka, Staff Attorney, Environmental Law Division, (512) 239-0622

Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:

HB 1845

HB 2453

SB 422

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Jessie Powell
Krista Kyle
Office of General Counsel
Rebecca Morigan
Aubrey Pawelka
Gwen Ricco