

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.231, 30.240, 30.242, 30.245, and 30.247.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules implement requirements in House Bill (HB) 2482, 80th Legislature, 2007, relating to persons who service or maintain on-site sewage disposal systems using aerobic treatment. HB 2482 impacts two chapters within 30 TAC: Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This proposal addresses the revisions to Chapter 30.

The commission administers the On-Site Sewage Facility (OSSF) Program that currently includes executive director delegation of OSSF authority to Counties, Municipalities, and River Authorities. The commission administers the Occupational Licensing and Registration Program for issuances of licenses and registrations required to perform OSSF-related work.

The proposed rules revise existing requirements for the general public, installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents and designated representatives.

The proposed rules further define the commission's regulations regarding licensing and registration of individuals who service or maintain OSSFs using aerobic treatment under Texas Health and Safety Code (THSC), Chapter 366. One purpose in the statute is to allow the commission to develop and implement a new program to register maintenance providers.

The proposed rules specify requirements for maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment.

Additionally, significant revisions in these rules include the license creation for maintenance providers and creating a new category of registration for maintenance technicians.

#### SECTION BY SECTION DISCUSSION

The proposed amendment to Subchapter G, On-site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators, would revise the current title to include maintenance technicians.

The proposed amendment to §30.231, Purpose and Applicability, would create a licensing requirement for maintenance providers and registration requirements for maintenance technicians under the section.

The proposed amendment would eliminate the September 1, 2008 transitional deadline for becoming a registered maintenance provider under a Wastewater D license because a Wastewater D license would no longer qualify for licensing under the proposed maintenance provider requirements. This proposed amendment would provide for a one-year period for maintenance providers to transition to a new license or registration and allow time for other individuals to obtain a maintenance provider license or maintenance technician registration.

The proposed amendment to §30.240, Qualifications for Initial License, would allow a certified professional soil scientist to obtain a site evaluator license. This amendment would also add new licensing requirements for a maintenance provider.

The proposed amendment to §30.242, Qualifications for License Renewal, would add requirements for renewing a maintenance provider's license and exempts any Installer II or designated representative from maintaining those licenses in order to renew a site evaluator's license.

The proposed amendment to §30.245, Registration of Apprentices, would be re-titled as "Registration of Apprentices and Maintenance Technicians" and would provide requirements for registration as a maintenance technician. It would also hold the apprentice responsible for the three-year registration renewal.

The proposed amendment to §30.247 would revise requirements for registering maintenance providers effective until May 1, 2009.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Strategic Planning and Assessment Section Analyst, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency, and no fiscal implications are expected for other units of state government as a result of administration or enforcement of the proposed rules. Fiscal implications are not anticipated for units of local government such as counties, municipalities, or river authorities who have been delegated regulatory authority for OSSF as a result of the administration or enforcement of the proposed rules in Chapter 30.

The proposed rules implement HB 2482, 80th Legislature, 2007, and affect persons who service or maintain on-site sewage disposal systems using aerobic treatment. The implementation of HB 2482

impacts two chapters within Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This fiscal note addresses the revisions to Chapter 30.

The proposed rules allow the commission to develop and implement a new program requiring maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. In addition, the proposed rules create a new occupational license category for maintenance technicians who would have to register with the commission.

The proposed licensing and registration requirements are not expected to result in a significant increase in costs for the commission as any costs would be offset by an increase in agency revenue. The proposed new licensing requirements are anticipated to affect approximately 1,750 maintenance companies and maintenance providers. Under current agency rules, maintenance companies and maintenance providers must register with the agency and pay \$111 for a three-year period. Under the proposed rules, effective September 1, 2009, individuals who are currently registered as maintenance providers will be re-classified as maintenance technicians. Those individuals who wish to obtain a maintenance provider license would have to meet the newly proposed requirements and pay \$111 for a three-year license. Individuals classified as maintenance technicians under the proposed rules would be required to re-register and continue to pay a fee of \$111 for a three-year period.

It is not known how many of the estimated 1,750 maintenance companies and maintenance providers will choose either the license or registration once their current registration expires. This fiscal note assumes that there will be 425 maintenance companies who will obtain the new maintenance provider license in

fiscal year 2009, and that the agency could see additional revenue in the estimated amount of \$47,175.

This fiscal note also assumes that there will be 1,325 maintenance providers who meet the proposed maintenance technician requirements and will register with the agency during the next year. This revenue would be deposited into the Occupational Licensing Account 468.

The proposed rules are anticipated to affect approximately 335 counties, cities, districts, and river authorities who have been delegated OSSF regulatory authority by the commission. In general, no fiscal implications are anticipated resulting from the changes proposed in Chapter 30 for these local governments unless they pay for licenses or registrations for OSSF maintenance providers or technicians.

#### PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and additional flexibility for OSSF owners in maintaining their aerobic systems.

In general, the proposed rules are not expected to result in significant fiscal implications for OSSF aerobic system owners, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents or designated representatives.

The proposed new licensing requirements are anticipated to affect approximately 1,750 maintenance companies and maintenance providers. The proposed licensing and registration requirements are not expected to result in a significant increase in costs for the maintenance providers and technicians and any additional costs are expected to be offset by an increase in fees to consumers. Maintenance providers

must register with the agency and pay \$111 for a three-year period. There is also expected to be license training costs of approximately \$1,200 to take commission approved training for new maintenance providers and \$600 for maintenance technicians applying for a maintenance provider license.

Maintenance technicians who were formerly maintenance providers would be required to register and continue to pay a fee of \$111 for a three-year period. There is also expected to be additional one-time registration training costs of approximately \$600 to take a commission approved basic training course for new maintenance technicians.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. It is estimated that there may be as many as 425 small or micro-businesses affected by the proposed rules. OSSF maintenance providers and technicians would realize an increase in costs due to the new licensing and registration requirements. Maintenance providers would see an increase in fees of \$30 every three years and an estimated one time cost of \$600 per person for a commission approved training course. Maintenance technicians would see an estimated one time cost of \$600 per person for a commission approved training course. It is assumed that any increase in license and training costs will be passed on to consumers.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to that statute.

Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the proposed rules is to revise existing licensing and registration requirements for persons who service or maintain on-site sewage disposal systems using aerobic treatment: installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents and designated representatives.

Protection of human health and the environment may be a by-product of these proposed rules, but it is not the specific intent of the rules. Further, these proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These proposed rules are not expected to result in significant fiscal implications for OSSF aerobic system owners, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents or designated representatives. Similarly, these proposed rules are intended to be protective of the environment and public health and safety and are not expected to affect the environment and public health and safety in any material, adverse way. Thus, these proposed rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and do not require a full regulatory impact analysis.

Furthermore, these proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules do not exceed a federal standard because there are no federal standards regulating on-site sewage facilities. The proposed rules do not exceed state law requirements because these rules are required by HB 2482. Also, the proposed rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding on-site sewage facilities. And finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency. Therefore, Texas Government Code, §2001.0225 is not applicable to these proposed rules. The commission invites public comment regarding this draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The intent of these proposed rules is to revise existing licensing and registration requirements for persons who service or maintain on-site sewage disposal systems using aerobic treatment: installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents, and designated representatives.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations would not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules do not affect private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 29, 2008 at 10:00 am in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>.

File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-033-285-CE. The comment period closes May 5, 2008.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

[http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Joseph L. Strouse, P.E., Compliance Support Division, at (512) 239-6003.

**SUBCHAPTER G: ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES,  
DESIGNATED REPRESENTATIVES, MAINTENANCE PROVIDERS, MAINTENANCE  
TECHNICIANS, AND SITE EVALUATORS**

**§§30.231, 30.240, 30.242, 30.245, 30.247**

**STATUTORY AUTHORITY**

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. Finally, these amendments are proposed under Texas Health and Safety Code (THSC), §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; and THSC, §366.071, concerning Occupational Licensing and Registration.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 37.001 - 37.015; and THSC, §§366.011, 366.012, and 366.071.

**§30.231. Purpose and Applicability.**

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that:

(1) constructs any part of an on-site sewage facility;

(2) performs the duties of a designated representative;

(3) performs the duties of a site evaluator;

(4) performs the duties of an apprentice; [or]

(5) performs the duties of a maintenance provider; or [.]

(6) performs the duties of a maintenance technician.

(b) A person that performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) A person that holds a current maintenance provider registration that performs maintenance to on-site sewage disposal systems using aerobic treatment shall be allowed to continue to perform maintenance provider duties until August 31, 2009. Effective September 1, 2009, those individuals shall either hold a:

(1) maintenance provider license; or

(2) maintenance technician registration.

[(c) A person that holds a Class "D" wastewater operator's license issued on or before August 31, 2006, and that performs maintenance to on-site sewage disposal systems using aerobic treatment shall be allowed to continue to perform maintenance-provider duties until August 31, 2008. To continue performing those duties after September 1, 2008, those individuals shall obtain an on-site sewage facility (OSSF) Installer II license or be employed by a maintenance company that employs at least one OSSF Installer II. An individual who performs maintenance to on-site sewage disposal systems using aerobic treatment shall register as required by Subchapter A of this chapter.]

(d) Effective September 1, 2009, all current maintenance provider registrations will be converted to maintenance technician registrations.

(e) Individuals renewing their maintenance provider registration after April 30, 2009 will be issued a maintenance technician registration or may apply for a maintenance provider license, provided they meet the qualifications for the initial license of a maintenance provider.

(f) No applications for maintenance provider registrations will be accepted after April 30, 2009.

**§30.240. Qualifications for Initial License.**

(a) To obtain an Installer I license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) completed the Installer I basic training course; and

(3) passed the Installer I examination.

(b) To obtain an Installer II license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) met one of the following requirements:

(A) held an Installer I license for at least one year;

(B) held an apprentice registration for at least two years; or

(C) previously possessed an Installer II license;

(3) completed the Installer II basic training course;

(4) passed the Installer II examination; and

(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the applicant's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the applicant and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:

(A) to document experience as an Installer I, the applicant shall submit either:

(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related by blood or marriage to the applicant or applicant's spouse;

(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the applicant; or

(iii) other documentation of the applicant's work experience, approved by the executive director;

(B) to document experience as an apprentice, the applicant shall submit either:

(i) a sworn statement from the installer for whom the applicant performed construction services;

(ii) a sworn statement from a designated representative who witnessed the applicant working on at least six OSSF installations; or

(iii) other documentation of the applicant's work experience, approved by the executive director.

(c) To obtain a designated representative license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) completed the designated representative basic training course; and

(3) passed the designated representative examination.

(d) To obtain a site evaluator license, an individual must have:

(1) met the requirements of Subchapter A of this chapter; and

(2) met the following requirements:

(A) complete the site evaluator basic training course;

(B) pass the site evaluator examination; and

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, certified professional soil scientist, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice).

(e) Effective September 1, 2009, a maintenance provider must be licensed with the executive director. To obtain a maintenance provider license, a person must:

(1) meet the requirements of Subchapter A of this chapter;

(2) submit a completed application and a \$111 fee to the executive director on a form approved by the executive director;

(3) submit verification that the applicant holds a current Installer II, Class C (or higher) Wastewater license or acceptable documentation of three years experience as a maintenance technician.

Registered maintenance provider experience obtained prior to the effective date of these rules may be applied towards the three years of experience as a maintenance technician; and

(4) successfully complete commission-approved courses in basic maintenance and advanced aerobic wastewater treatment related to residential proprietary aerobic treatment units.

Advanced aerobic wastewater treatment courses must have been approved after September 1, 2007;

(5) pass the maintenance provider examination; and

(6) any additional information required by the executive director.

**§30.242. Qualifications for License Renewal.**

(a) To renew an Installer I, Installer II, designated representative, maintenance provider, or site evaluator license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 24 hours of approved training credits.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of a current license specified in §30.240(d)(2)(C)

of this title (relating to Qualifications for Initial License) except for individuals who were granted a site evaluator license on the basis of holding either an Installer II or designated representative license.

(c) For the renewal of a maintenance provider license, the individual is not required to hold a current Installer II license, but must meet all the requirements in subsection (a) of this section.

**§30.245. Registration of Apprentices and Maintenance Technicians.**

(a) Apprentice [General]. An individual who enters into an apprenticeship under the supervision of a licensed on-site sewage facility (OSSF) installer shall be registered with the executive director.

(1)[(b)] Application. An application [Applications] for registration [registrations] shall be made on a standard form provided by the executive director. The completed application and a \$111 [an \$81] fee must be submitted to the executive director [by a licensed OSSF installer for each individual that is registered as an apprentice under that installer's supervision].

(2)[(c)] Notification. After verifying that the requirements for registration have been met, the executive director shall mail the registration certificate no later than 45 days after the effective date of the registration. An individual's application may be denied according to §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation).

(3)[(d)] Expiration [or termination]. The apprentice registration will expire three years after the issuance date of the registration. [on the same expiration date as the supervising OSSF installer's license. Either the supervising OSSF installer or the apprentice may terminate the apprenticeship by

providing written notice to the executive director. No reason for the termination is required. Upon receipt of written notification requesting that the apprenticeship be terminated, the executive director shall expire the apprentice's registration under the supervising OSSF installer.]

~~(4)~~[(e)] An apprentice's registration may not be renewed if:

[~~(1)~~ the supervising OSSF installer's license is not current;]

~~(A)~~[(2)] the registration has been expired for more than 30 days;

~~(B)~~[(3)] the registration has been revoked; or

~~(C)~~[(4)] the apprentice has obtained an installer license. [registration has been replaced by a higher class of license.]

~~(5)~~[(f)] An apprentice whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the registration expiration date of the current registration, must submit a new application with the appropriate fee. The apprentice will be assigned a new registration number and date, but will not lose any experience gained under the previous registration.

(b) Maintenance technician. An individual who maintains OSSFs for compensation and is not a licensed maintenance provider shall be registered with the executive director. A maintenance technician shall have successfully completed a commission-approved course in basic maintenance provider training.

(1) Application. An application for registration shall be made on a standard form provided by the executive director. The completed application and a \$111 fee must be submitted to the executive director.

(2) Notification. After verifying that the requirements for registration have been met, the executive director shall mail the registration certificate no later than 45 days after the effective date of the registration. An individual's application may be denied according to §30.33 of this title.

(3) Expiration or termination. The maintenance technician's registration will expire three years after the issuance date of the registration.

(4) A maintenance technician's registration may not be renewed if:

(A) the registration has been expired for more than 30 days;

(B) the registration has been revoked; or

(C) the registration has been replaced by a higher class of license.

(5) A maintenance technician whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the registration expiration date of the current registration, must submit a new application with the appropriate fee. The maintenance technician

will be assigned a new registration number and date, but will not lose any experience gained under the previous registration.

**§30.247. Registration of Maintenance Providers.**

The following provisions shall be effective only through April 30, 2009. No new maintenance provider registration applications will be accepted after April 30, 2009.

(1)[a] A maintenance provider must be registered with the executive director.

(2)[b] To register as required by Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), a person must:

(A)[1] meet the requirements of Subchapter A of this chapter;

(B)[2] submit a completed application and a \$111 fee to the executive director on a form approved by the executive director; and,

[(3) submit documentation by the manufacturer of an on-site sewage disposal system using aerobic treatment that the applicant is certified to maintain the on-site sewage facility systems under a maintenance contract; and]

(C)[(4)] any additional information required by the executive director.

(3)[c] To renew a maintenance-provider registration, a maintenance provider must [every three years]:

(A)[1] meet the requirements in Subchapter A of this chapter; and

(B)[2] submit a completed renewal application and a \$111 fee to the executive director on a form approved by the executive director.