

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF THE APPLICATION	§	BEFORE THE EXECUTIVE
OF THE COUNTY OF ELLIS	§	DIRECTOR OF THE TEXAS
FOR A TEXAS HEALTH AND SAFETY	§	COMMISSION ON
CODE §366.031 ORDER	§	ENVIRONMENTAL
		QUALITY

On June 16, 2011 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Ellis for an Order pursuant to §366.031, Texas Health and Safety Code (THSC), and 30 Texas Administrative Code (TAC) §285.10 of the rules of the Commission.

No person has requested a public hearing on the application, therefore the Executive Director, on behalf of the Commission, is satisfied that the County of Ellis has satisfied the requirements of §366.031, THSC. The Commission finds that the County of Ellis Order should be approved.

FINDINGS OF FACT

1. The County of Ellis drafted a proposed Order which regulates on-site sewage facilities.
2. On April 20, 2011, the County of Ellis caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Ellis area of jurisdiction, of a public meeting to be held on April 25, 2011.
3. The County of Ellis held a public meeting to discuss its proposed Order on April 25, 2011.
4. The County of Ellis Order regulating on-site sewage facilities was adopted on April 25, 2011.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the County of Ellis Order was submitted to the Commission.
7. The Order is at least equivalent to the standards of the Commission.

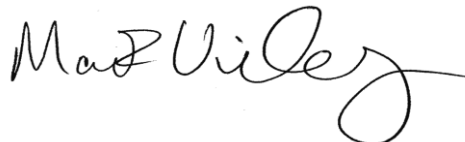
CONCLUSIONS OF LAW

1. The Commission has jurisdiction to issue Orders designating local governmental entities as authorized agents. TEXAS WATER CODE ch. 5 and TEXAS HEALTH & SAFETY CODE ch. 366.
2. The Commission may delegate uncontested matters to the Executive Director provided the required notice was given, the applicant agrees to the action and the application is uncontested. TEXAS WATER CODE § 5.122.
3. Notice of the County of Ellis' intent to adopt a new County Order was properly provided. TEXAS HEALTH & SAFETY CODE § 366.031 and TEXAS ADMINISTRATIVE CODE § 285.10.
4. The County of Ellis agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Ellis' proposed Order incorporates the Commission's rules on abatement or prevention of pollution and prevention of injury to the public health; meets the Commission's minimum requirements for on-site sewage disposal systems. TEXAS HEALTH & SAFETY CODE § 366.032.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The County of Ellis is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Ellis Order must be approved by the Commission.
3. The Office of Chief Clerk of the Commission is directed to forward a copy of this Order and the County of Ellis' adopted Order, marked as Exhibit "A," to the County of Ellis and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: June 16, 2011



Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

COUNTY OF ELLIS

§

STATE OF TEXAS

§

AFFIDAVIT

Before me, the undersigned authority, personally appeared who, being by me duly sworn, deposed as follows:

My name is Cindy Polley, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

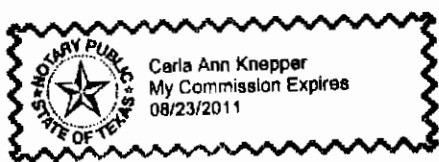
I am the custodian of the records of the County Clerks Office for the County of Ellis, Texas. Attached hereto are SIX (6) pages of records known as (Order) 182.11. The records are kept by me as County Clerk, County of Ellis, in the regular course of business with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The record attached hereto is the original or exact duplicate of the official record.

Cindy Polley

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Cindy Polley, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of April, 2011.

(SEAL)



Carla Ann Knepper
Notary/Public, State of Texas
My commission expires:

(REV 02/11)

CERTIFIED COPY - Cindy Polley, County Clerk/Ellis County, Texas

Cindy Polley Page 1 of 7
May 24, 2011

FILED FOR RECORD - ELLIS COUNTY, TEXAS
INST NO. 110825 FILING DATE/TIME: May 02, 2011 at 02:28:00 PM

ORDER ADOPTING RULES OF ELLIS COUNTY, TEXAS
FOR ON-SITE SEWAGE FACILITIES
PREAMBLE

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) has established Rules for on-site sewage facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Legislature has enacted legislation, codified as Texas Health and Safety Code (THSC), Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of on-site sewage facilities; and

WHEREAS, due notice was given of a public meeting to determine whether the Commissioners Court of Ellis County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Ellis, Texas; and

WHEREAS, the Commissioners Court of Ellis County, Texas finds that the use of on-site sewage facilities in Ellis County, Texas is causing or may cause pollution, and is injuring or may injure the public health; and

WHEREAS, the Commissioners Court of Ellis County, Texas has considered the matter and deems it appropriate to enact an Order adopting Rules regulating on-site sewage facilities to abate or prevent pollution, or injury to public health in Ellis County, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF ELLIS COUNTY, TEXAS:

SECTION 1. THAT the matters and facts recited in the preamble hereof are hereby found and determined to be true and correct;

SECTION 2. THAT the use of on-site sewage facilities in Ellis County, Texas is causing or may cause pollution or is injuring or may injure the public health;

SECTION 3. THAT an Order for Ellis County, Texas be adopted entitled "On-Site Sewage Facilities", which shall read as follows:

AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

SECTION 4. CONFLICTS.

This Order repeals and replaces any other On-site Sewage Facility (OSSF) Order for Ellis County.

SECTION 5. ON-SITE SEWAGE FACILITY REGULATION AND ENFORCEMENT

The County of Ellis, Texas clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the THSC and Chapters 7 and 37 of the Texas Water Code (TWC), and associated rules referenced in Section 8 of this Order.

SECTION 6. AREA OF JURISDICTION.

These Rules shall apply to all the areas lying within Ellis County, Texas, except for the areas regulated under an existing Order, Ordinance or Resolution.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Ellis County, Texas must comply with the Rules adopted in Section 8 of this Order.

SECTION 8. ON-SITE SEWAGE FACILITY RULES ADOPTED.

The Rules, Title 30 Texas Administrative Code (TAC) Chapter 30, Subchapters A and G, and Chapter 285, promulgated by the TCEQ for on-site sewage facilities are hereby adopted, and all officials and employees of Ellis County, Texas having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

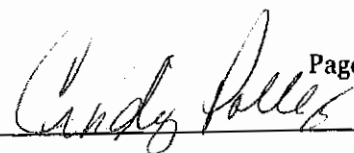
SECTION 9. INCORPORATION BY REFERENCE.

The Rules, 30 TAC Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

SECTION 10. AMENDMENTS.

The County of Ellis, Texas wishing to adopt more stringent Rules for its OSSF Order understands that the more stringent local Rule shall take precedence over the corresponding TCEQ requirement. Listed below are the more stringent Rules adopted by Ellis County, Texas:

- (A) Ellis County to provide greater public health and safety protection, shall require an application, permit and inspection for construction, alteration, extension or repair to a residential or commercial on-site sewage facility, regardless of the size of the tract of land.
- (B) In order to provide greater public health and safety protection, Ellis County shall require the maintenance for all OSSF's identified in 285.91(12) to be performed by a TCEQ registered maintenance provider unless:
 - (1) The homeowner/property owner is a TCEQ registered/licensed maintenance provider, or
 - (2) The homeowner/property owner was trained by an installer or takes a basic homeowner maintenance course approved by Ellis County, or
 - (3) The homeowner/property owner holds a valid Class C or higher wastewater treatment license, and is certificated by the manufacturer for the brand of OSSF that they own.
- (C) Maintenance Inspections and Reports:
 - (1) Inspections at a minimum must meet all inspection requirements as set by the Rules, Ellis County, as well as, the inspection requirements outlined by the manufacturer for the brand being inspected.
 - (2) Inspection reports shall address all inspection and testing requirements as set by the Rules, Ellis County, as well as, the testing requirements outlined by the manufacturer for the brand being inspected.
 - (3) A homeowner of a single family residence conducting his/her own maintenance must comply with all inspection, testing and reporting requirements identified in 285.91(12).
 - (4) Failure to provide and submit to Ellis County inspection and testing reports for at least eight consecutive months shall result in forfeiting homeowner maintenance and shall require a maintenance contract with a registered maintenance provider.
 - (5) Ellis County shall require the reporting of the sludge levels in the pump tank and the condition of the spray area to be included on each required testing report specified by the Rules.
- (D) All construction, alteration, extension or repair to any type of on-site sewage facility shall be by a licensed Installer. There shall be no property owner/homeowner installations unless the property owner/homeowner is also a licensed Installer.



- (E) Planning materials for all OSSFs in Ellis County shall be submitted by a professional sanitarian or a professional engineer to the Ellis County Department of Development for its review and approval.
- (F) All platted or created subdivisions of single family dwellings using individual on-site sewage facilities for sewage disposal shall have lots of at least one (1) acre.
- (G) All habitable structures, upon their completion, must be connected to either a central wastewater treatment sanitary sewer system or an approved sewage disposal system.
- (H) A permit shall be obtained from Ellis County Department of Development for all structures using on-site sewage facilities for sewage disposal prior to its construction.
- (I) Site evaluations shall only be performed by a registered professional engineer or registered professional sanitarian holding a valid TCEQ site evaluator license.
- (J) Any building/structure other than single family dwelling using an on-site sewage facility and receiving secondary treatment of the effluent with water usage of no more than 500 G.P.D. and/or a B.O.D. level of no more than 65 shall be required to have a maintenance contract performed by a TCEQ licensed maintenance provider. Testing and reporting frequency shall be once every four months. One BOD and TSS Grab sample will be required once each year. Test results of each testing shall be sent to the Ellis County Department of Development within 14 days after the test is performed. Annual water bill shall be provided upon request. The OSSF system does not require any additional treatment components.
- (K) Any building/structure other than single family dwelling using an on-site sewage facility and receiving secondary treatment of the effluent with water usage of 501 G.P.D. or more and/or a B.O.D. level of 66 or more shall be checked and maintained monthly by a contracted TCEQ licensed maintenance provider. A chlorine residual or fecal coliform test shall be made at each site visit where disinfection is required. One BOD and TSS Grab Sample test shall be conducted per year. The test results shall be sent to the Department of Development within 14 days after the test is performed.
- (L) All surface spray systems shall have timers to be set to go off between 1:00 a.m. and 4:00 a.m.

SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC § 285.2(17)) of Ellis County, Texas, must be certified by the TCEQ before assuming the duties and responsibilities.

SECTION 12. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to Ellis County, Texas. A fee of \$10 will also be collected for each on-site sewage facility permit to be paid to the On-Site Wastewater Treatment Research Council as required by the THSC, Chapter 367.

SECTION 13. APPEALS.

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Commissioners Court of Ellis County, Texas.

SECTION 14. ENFORCEMENT PLAN

The County of Ellis, Texas clearly understands that, at a minimum, it must follow the requirements in 30 TAC § 285.71 Authorized Agent Enforcement of OSSFs.

This Order adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to, those found in Chapters 341 and 366 of the THSC, Chapters 7, 26, and 37 of the TWC and 30 TAC Chapter 30, Subchapters A and G, and Chapter 285.

SECTION 15. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Ellis County, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Order are severable, and if any phrase, clause, sentence, paragraph, or section of this Order should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Order, since the same would have been enacted by the Commissioners Court without incorporation in this Order of such unconstitutional phrases, clauses, sentences, paragraphs, or sections.

SECTION 16. RELINQUISHMENT OF ORDER

If the Commissioners Court of Ellis County, Texas decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the Commissioners Court, as the authorized agent, and the TCEQ shall follow the procedures outlined in 30 TAC § 285.10 (d) (1) through (4).

After relinquishing its OSSF authority, the authorized agent understands that it may be subject to charge-back fees in accordance with 30 TAC § 285.10 (d) (5) and §285.14 after the date that delegation has been relinquished.

SECTION 17. EFFECTIVE DATE.


This Order shall be in full force and effect from and after its date of approval as required by law and upon the approval of the TCEQ.

AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 25th DATE OF April,
2011.

APPROVED:

(SEAL)



County Judge

ATTEST:



County Clerk