

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF THE APPLICATION
OF THE COUNTY OF WALKER
FOR A TEXAS HEALTH AND SAFETY
CODE §366.031 ORDER

§ BEFORE THE EXECUTIVE
§ DIRECTOR OF THE TEXAS
§ COMMISSION ON
§ ENVIRONMENTAL
QUALITY

On May 1, 2012 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Walker 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 Walker has satisfied the requirements of §366.031, THSC. The Commission finds that the County of Walker Order should be approved.

FINDINGS OF FACT

1. The County of Walker drafted a proposed Order which regulates on-site sewage facilities.
2. On February 19 & 22, 2012, the County of Walker caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Walker area of jurisdiction, of a public meeting to be held on February 27, 2012.
3. The County of Walker held a public meeting to discuss its proposed Order on February 27, 2012.
4. The County of Walker Order regulating on-site sewage facilities was adopted on February 27, 2012.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the County of Walker 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 Walker's 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 Walker agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Walker's 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 Walker is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Walker 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 Walker's adopted Order, marked as Exhibit "A," to the County of Walker and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: May 1, 2012



Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

COUNTY OF WALKER

§

STATE OF TEXAS

§

AFFIDAVIT

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

My name is Kari A. French, 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 Walker, Texas. Attached hereto are Eight (8) pages of records known as (Order) 2012-20. The records are kept by me as County Clerk, County of Walker, 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.

Kari A. French

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Kari A. French, 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 4th day of April, 2012.



Sonja Tennant
Notary Public, State of Texas
My commission expires: 10/29/15

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

WHEREAS, the Texas Commission on Environmental Quality 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, 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 Walker County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Walker, Texas; and

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

WHEREAS, the Commissioners Court of Walker 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 Walker County, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF WALKER 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 Walker County, Texas is causing or may cause pollution or is injuring or may injure the public health;

SECTION 3. THAT an Order for Walker 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 order for Walker County.

SECTION 5. ON-SITE SEWAGE FACILITY REGULATION AND ENFORCEMENT.

The County of Walker, 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 Texas Health and Safety Code (H&SC) 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.

This Order shall apply to all unincorporated areas lying within Walker County, Texas, except for those 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 Walker 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 285 and Chapter 30, Subchapters A and G, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Walker 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 Chapters 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 Walker, Texas wishing to adopt more stringent Rules for its On-Site Sewage Facility Order understands that the more stringent local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Walker County, Texas:

(A) To ensure all systems meet TAC 30 Chapter 285 Rules, all on-site sewage facilities and on-site sewage planning, regardless of acreage, must meet all county and state standards.

(B) Walker County shall require the maintenance, testing, and reporting for all OSSF's utilizing secondary treatment to be performed by a TCEQ registered maintenance provider unless the OSSF serves a single family dwelling that is the primary residence of the property owner, all portions of the disposal area are a minimum of 50 feet from the property line, and:

- (1) The property owner is a TCEQ registered maintenance provider for their aerobic treatment unit; or
- (2) The property owner was trained by an installer or manufacturer according to the requirements of HB 2510 [79(R)] prior to adoption of HB 2482 [80(R)]; or
- (3) The property owner holds a valid Class D or higher wastewater treatment license; or
- (4) The property owner has satisfactorily completed a TCEQ approved Basic Maintenance Provider Course; or
- (5) The property owner has satisfactorily completed the OSSF – Aerobic/Surface Application System Operation and Maintenance Course offered by the Texas Engineering Extension Service; or
- (6) The property owner has satisfactorily completed the OSSF – Aerobic/Surface Application System Operation and Maintenance Course entitled – General Guidance for Monitoring Aerobic Treatment Units, Disinfection Units, and Spray Fields in Texas (B-6235) offered by the AgriLife Extension, Texas A& M System.

(C) Maintenance Inspections and Reports:

- (1) Any homeowner/property owner who is not contracted with a TCEQ registered maintenance provider to perform testing, reporting, and maintenance on an OSSF shall still be required to submit all required reports and testing required of a TCEQ registered maintenance provider to Walker County along with any required fees or charges (fees required for property owners may be different than those required of registered maintenance providers).
- (2) Inspections at a minimum must meet all inspection requirements as set by the TAC 30 Chapter 285 and Walker County, Texas.

- (3) Inspection reports shall address all inspection and testing required by Walker County policies and procedures or the State of Texas, including TAC 30 Chapter 285.
- (4) In addition to the information required by TAC 30 Chapter 285 all maintenance/inspection reports shall include:
 - a. the reporting of any unauthorized alterations to the system
 - b. the condition of the spray area (if applicable)
 - c. the permit number
 - d. OSSF or wastewater operator license identification
 - e. the printed name and signature of the maintenance provider representative or homeowner/property owner if he or she is submitting the report
 - f. the physical address of the OSSF location
 - g. the physical address, business address, business phone number and emergency phone number of the maintenance provider
- (5) In addition to the information required by TAC 30 Chapter 285 all maintenance/inspection contracts shall include:
 - a. the permit number
 - b. OSSF or wastewater operator license identification
 - c. the printed name and signature of the maintenance provider representative and the homeowner/property owner.
 - d. the physical address of the OSSF location
 - e. the physical address, business address, business phone number and emergency phone number of the maintenance provider.

(D) Permitting Procedures and Additional Requirements.

The Walker County Commissioners Court may from time to time adopt local procedural requirements for applications, permitting, and inspection procedures for On-Site Sewage Facilities.

(E) All On-site Wastewater planning materials are required to be sealed by a Professional Engineer or Professional Sanitarian authorized to practice in the State of Texas.

(F) Revocation or Suspension of License to Operate. Neither the revocation of a license nor any other provision of these Regulations shall impede the designated representative or any other governmental entity from taking the proper steps to prevent or curtail pollution, to abate a nuisance, or to protect public health. The designated representative may revoke or suspend a license for any of the following causes:

- 1. A change in volume of wastewater being treated by the on-site sewage facility.
- 2. Failure of the holder of the license to properly maintain the on-site sewage facility.
- 3. Malfunction of the on-site sewage facility.
- 4. Evidence that the on-site sewage facility is causing or will cause pollution.
- 5. Failure to comply with the terms or conditions of the license or any part of these regulations.

(G) Any single family dwelling, commercial or institutional facility, multi-unit residential development or recreational vehicle park occupied any part of the day or night shall be connected to an on-site sewage facility or other approved method of wastewater treatment and/or disposal.

(H) When a visual and audible alarm is required for an on-site sewage facility connected to a "Food Establishment", an additional visual and audible alarm shall be located or installed inside the facility, located in an area conspicuous to view by employees or management. (For the purpose of this Order, a "Food Establishment" is an operation that stores, prepares, packages, serves, or otherwise provides food for human consumption, such as: a food establishment; retail food store; satellite or catered feeding location; catering operation; if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery services such as home delivery of restaurant takeout orders, or delivery service that is provided by common carriers.)

(I) All "Food Establishments" as defined above which are receiving secondary treatment of the effluent shall be checked and maintained monthly by a contracted registered maintenance provider. A chlorine residual or fecal coli form test shall be made at each site visit where disinfection is required. One BOD₅ and TSS Grab Sample test shall be conducted per year. The minimum acceptable test results shall be those outlined by the applicable State rules. All test results and maintenance reports shall be sent to the permitting authority within 14 days after the test is performed. Additional testing and reporting may be required on a case by case basis.

(J) The authorized agent may periodically inspect any permitted or un-permitted on-site sewage facility at a frequency deemed appropriate by the authorized agent.

(K) All OSSF that require a minimum license level of Installer II for professional installation may only be installed by a licensed installer.

(L) All OSSF installations for commercial, institutional, or multi-family residential use must be installed by a licensed installer.

(M) The authorized agent and it's designated representatives shall have the authority to allow for subdivisions of property for which all tracts exceed ten (10) acres to subdivide such property without requiring planning materials be submitted for review as required by TAC 285.4 (c), this allowance will be made on a case by case basis following a preliminary review of the proposed development. The County reserves the right to require the planning materials be submitted on any development containing any size tract when it determines that there are items or circumstances in need of more detailed study, including but not limited to: adjacent bodies of water, structures and/or existing OSSF located near a proposed property line, unusual topography, and/or large percentages of special flood hazard area within the development, etc.

SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC § 285.2(17)) of Walker County, Texas, must be certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities.

SECTION 12. COLLECTION OF FEES.

All fees collected for processing fees, late fees, penalty fees, permit renewal fees, permits, inspections, and/or re-inspections shall be made payable to Walker County, Texas. A fee of \$10 will also be collected for each on-site sewage facility permit to be paid to the TCEQ Water Resources Management Account as required by the Texas Health and Safety Code, 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 Walker County, Texas.

SECTION 14. ENFORCEMENT PLAN.

The County of Walker, 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 penalty provisions related to on-site sewage facilities, which includes, but is not limited to, those found in Chapters 341 and 366 of the Texas Health and Safety Code, Chapters 7, 26, and 37 of the Texas Water Code and 30 TAC Chapters 30, Subchapters A and G, and Chapter 285.

SECTION 15. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Walker 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, clause, sentence, paragraph, or section.

SECTION 16. RELINQUISHMENT OF ORDER

If the Commissioners Court of Walker 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 Texas Commission on Environmental Quality.

AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 27th DATE OF February,
2012.

APPROVED:

(SEAL)

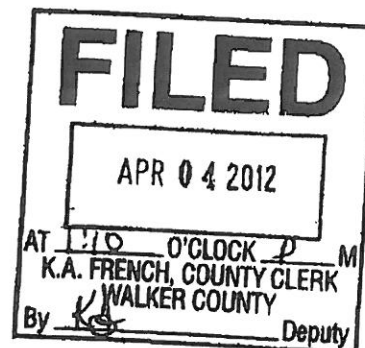


County Judge

ATTEST:



County Clerk



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