

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF ~~TRAVIS~~

I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on

LaDonna Castanuela SEP 27 2007

LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality

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

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BEFORE THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

On SEP 21 2007 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Wise, ("Applicant" or "Wise"), for an Order pursuant to §366.031, Texas Health and Safety Code ("Code"), 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 Applicant has satisfied the requirements of §366.031 of the Code and, therefore, the Commission finds that the Wise County Order should be approved.

FINDINGS OF FACT

1. The County of Wise drafted a proposed amendment to the current order which regulates on-site sewage facilities.
2. On August 26, 2007 the County of Wise caused notice to be published, in a newspaper regularly published and of general circulation, in the Applicant's area of jurisdiction, of a public meeting to be held on Wednesday, August 29, 2007.
3. The County of Wise held a public meeting to discuss the proposed amendment on August 29, 2007.
4. Wise County's Order regulating on-site sewage facilities was adopted on August 29, 2007.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the Wise County Order was submitted to the Texas Commission on Environmental Quality.
7. The order is at least equivalent to the standards of the Texas Commission on Environmental Quality.

CONCLUSIONS OF LAW

1. The above facts are conditions sufficient to issue this order pursuant to §366.031 of the Code.
2. Section 5.102 of the Texas Water Code authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of Chapter 366 of the Health and Safety Code and / or within the Commission's jurisdiction and who provides no comment on other statutory authority.
3. Issuance of this order will effectuate the purposes of Chapter 366 of the Code.

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

1. The County of Wise is hereby authorized to implement its Order which regulates on-site sewage facilities.
2. Any amendments to the Wise County Order must be approved by the Texas Commission on Environmental Quality.
3. The Chief Clerk of the Commission is directed to forward a copy of this Order and the Applicant's adopted order, ordinance, or resolution, marked as Exhibit "A", to the Applicant and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: SEP 21 2007



Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

AMENDED ORDER ADOPTING RULES OF WISE 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 368, 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 Wise County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Wise, Texas; and

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

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

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

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

AN AMENDED ORDER ENTITLED WISE COUNTY ON-SITE SEWAGE
FACILITY RULES AND REGULATIONS

SECTION 4. CONFLICTS.

This Order repeals and replaces any other On-site Sewage Facility order for Wise County.

SECTION 5. CHAPTER 366.

The County of Wise, 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.

(A) The Rules shall apply to all the area lying in Wise County, Texas, except for the area regulated under an existing Rule and the areas within incorporated cities.

(B) These Rules shall apply to those incorporated cities or towns that have executed intergovernmental contracts with Wise County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Wise 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, attached hereto, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Wise 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 and 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules. A copy of the current Rules is attached to these Rules as Appendix I.

SECTION 10. AMENDMENTS.

The County of Wise, Texas wishing to adopt more stringent Rules for its On-Site Sewage Facility Order understands that the more stringent conflicting local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Wise County, Texas:

- (A) Subdivisions of single family dwellings platted or created after January 1, 1988, and served by a public water supply but utilizing individual OSSF methods for sewage disposal, shall provide for individual lots having surface areas of at least one (1) acre, or shall have site specific sewage disposal plan submitted by a registered professional engineer or registered sanitarian and approved by the permitting authority. The locations of an OSSF under this paragraph shall be in accordance with §285.91(10). In no instance shall the area available for such systems be less than two times the design area.
- (B) In subdivisions platted or created after January 1, 1988, for single family dwellings where each lot maintains an individual water supply well and an OSSF, the sewage disposal plan shall show the approved well location and a sanitary control easement around the well within a 100-foot radius in which no subsurface sewage system may be constructed. A watertight sewage unit or lined evapotranspiration bed with leak detection capability may be placed closer to the water well than 100 feet, provided the permitting authority has granted a variance. To minimize the possibility of the transmission of waterborne diseases due to the pollution of the water supplied for domestic use, each lot in a subdivision shall contain no less area than two (2) acres, or shall have site-specific planning materials prepared by a registered professional engineer or registered sanitarian and approved by the permitting authority. In no instance shall the area available for such systems be less than two times the design area.
- (C) Persons proposing residential subdivisions, manufactured housing communities, multi-unit residential developments, business parks, or other similar uses and using OSSFs for sewage disposal shall submit planning materials for these developments to the permitting authority. The planning materials shall be prepared by a professional engineer or professional sanitarian and shall include an overall site plan, vicinity map, topographic map, 100-year floodplain map, soil survey, location of water wells, locations of easements as identified in §285.91(10) of this title (relating to Tables), and a complete report detailing the types of OSSFs to be considered and their compatibility with area-wide drainage and groundwater. A comprehensive drainage and 100-year floodplain impact plan shall also be included in these planning materials. Planning materials shall also address potential replacement areas. Wise County will either approve or deny the planning materials, in writing, within 45 days of receipt.
- (D) Wise County 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.
- (E) Effective September 1, 2007, Wise County shall require the maintenance for all OSSF's, identified in 285.91(12), to be performed by a TCEQ registered

maintenance company unless:

- (1) The homeowner/property owner is a TCEQ registered maintenance provider for their aerobic treatment unit; or
- (2) The homeowner/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 homeowner/property owner holds a valid Class D or higher wastewater treatment license, and is certificated by the manufacturer for the brand of OSSF that they own.

(F) Maintenance Inspections and Reports:

- (1) Inspections at a minimum must meet all inspection requirements (no less than once every four months) as set by the Rules, Wise 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, Wise County, as well as, the testing requirements outlined by the manufacturer for the brand being inspected.
- (3) Wise 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.

(G) An on-site sewage facility permit must be obtained for all graywater systems.

SECTION 11. DUTIES AND POWERS.

The OSSF Inspector of Wise 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 Wise County, Texas.

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 Wise County, Texas.

SECTION 14. PENALTIES.

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 and 285.

SECTION 15. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Wise County, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Order are

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. 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 29th DATE OF August, 2007



APPROVED:

Bill McElaney
County Judge
(BME)

ATTEST:

Amanda Knox, deputy for Sherry Perkin-Ten
County Clerk