


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 Calhoun'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 Calhoun agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Calhoun'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 Calhoun is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Calhoun 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 Calhoun's adopted Order, marked as Exhibit "A," to the County of Calhoun and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: **OCT 05 2009**



Executive Director
Texas Commission on Environmental Quality

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

PREAMBLE

WHEREAS, the Texas Commission on Environmental Quality has established Design Criteria 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 disposal 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 meeting and public hearing to determine whether the Commissioners of Calhoun County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Calhoun, Texas; and

WHEREAS, said meeting and public hearing were held in accordance with the notice thereof, and the evidence and arguments there presented were considered by the Commissioners Court of Calhoun County, Texas; and

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

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

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

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

I, Anita Fricke, County Clerk, Calhoun County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 8/13/09



Anita Fricke, County Clerk
By Deputy
Wendy Marvin
Wendy Marvin

AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

SECTION 4. CONFLICTS

All orders or part of the Orders of Calhoun County, Texas not consistent with or in conflict with the provisions of this Order are hereby repealed.

SECTION 5. ADOPTING CHAPTER 366.

The County of Calhoun, Texas clearly understanding the technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, does adopt and will fully enforce Chapter 366 of the Texas Health and Safety Code.

SECTION 6. AREA OF JURISDICTION

(a) The Rules shall apply to all the area lying in Calhoun 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 Calhoun County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES

Any structure discharging sewage into an on-site sewage facility within the jurisdictional area of Calhoun County, Texas must comply with the Rules adopted in Section 8 of this Order.

SECTION 8. ON-SITE SEWAGE FACILITY RULES ADOPTED.

The Rules ("Design Criteria For On-site Sewage Facilities" and Administrative Rules 30 TAC 285.1- 285.91, attached hereto, promulgated by the Texas Commission on Environmental Quality for on-site sewage systems are hereby adopted, and all officials and employees of Calhoun 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 Design Criteria and all future amendments and revisions thereto are incorporated by reference and are thus a part of these Rules.

SECTION 10. AMENDMENTS.

The County of Calhoun, 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 Calhoun County, Texas:

- (a) A permit will be required for all On-Site Sewage Facilities, regardless of the size of the lot or acreage onto which they are installed.

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Anita Fricke, County Clerk
By Deputy
Wendymarin
Wendy Marvin

SECTION 11. DUTIES AND POWERS.

The appointee of the Commissioners Court of Calhoun County, Texas is herewith declared the designated representative for the enforcement of these Rules within its jurisdictional area. The appointed individual (s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of the Designated Representative.

SECTION 12. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to Calhoun County, Texas. Fees for permits and inspections shall be set by Commissioners Court from time to time as deemed necessary.

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 Calhoun 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, Chapter 26 of the Texas Water Code and 30 TAC Chapter 285.

SECTION 15. SEVERABILITY.

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

SECTION 16. RELINQUISHMENT OF ORDER.

If the Commissioners Court of Calhoun County, Texas decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the Commissioners Court shall follow the procedures outlined below:

- (a) The Commissioners Court shall inform the Texas Commission on Environmental Quality by certified mail at least 30 days before the published date of the public hearing notice that it wishes to relinquish its "On-site Sewage Facilities" Order.

I, Anita Fricke, County Clerk, Calhoun County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 8/13/09



Anita Fricke, County Clerk
By Deputy
Wendy Marie
Harvey

- (b) The authorized agent shall post the required public notice in a newspaper regularly published or circulated in the area of jurisdiction at least 30 days prior to the anticipated date of action by the authorized agent.
- (c) The authorized agent shall send a copy of the public notice, a publisher's affidavit of public notice, and a certified copy of the minutes to the Texas Commission on Environmental Quality.
- (d) The executive director shall process the request for relinquishment and may issue an order relinquishing the authority to regulate OSSFs within the authorized agent's jurisdiction or may refer the request to relinquish to the commission.
- (e) Prior to issuance of a relinquishment order, the local governmental entity and executive director shall determine the exact date the authorized agent would surrender its authorized agent designation to the executive director.

SECTION 17. EFFECTIVE DATE.

The 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 23rd DAY OF JULY, 2009.

APPROVED:



COUNTY JUDGE

ATTEST:
ANITA FRICKE



COUNTY CLERK, deputy

I, Anita Fricke, County Clerk, Calhoun County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 8/13/09



Anita Fricke, County Clerk
By 
Wendy Marin