

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

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

On JAN 08 2009 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of DeWitt, ("Applicant"), 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 DeWitt County Order should be approved.

FINDINGS OF FACT

1. The County of DeWitt drafted a proposed order which regulates on-site sewage facilities.
2. On October 3, 2007, the County of DeWitt 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 October 8, 2007.
3. The County of DeWitt held a public meeting to discuss its proposed order on October 8, 2007.
4. DeWitt County's Order regulating on-site sewage facilities was adopted on October 8, 2007.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the DeWitt 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 DeWitt is hereby authorized to implement its Order which regulates on-site sewage facilities.
2. Any amendments to the DeWitt 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: **JAN 08 2009**



Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

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

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

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

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

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

AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

SECTION 4. CONFLICTS

All orders or part of the Orders of DeWitt 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 DeWitt, 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 DeWitt 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 DeWitt County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES

Any structure discharging sewage into an on-site sewage facility within the jurisdictional area of DeWitt 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 DeWitt 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 apart of these Rules.

SECTION 10. AMENDMENTS.

The County of DeWitt, Texas does not wish to adopt more stringent rules than the Texas Commission on Environmental Quality Rules for its "On-Site Sewage Facilities" Order.

SECTION 11. DUTIES AND POWERS.

The appointee of the Commissioners Court of DeWitt 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 DeWitt 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 DeWitt 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 DeWitt 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 DeWitt 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.
- (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 8 DAY OF October, 2007.

APPROVED:

Tom E. V. [Signature]
County Judge

ATTEST:

Elna Petersen
County Clerk

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 13, 2009

The Honorable Judge Prause
DeWitt County Courthouse
307 North Gonzales Street
Cuero, Texas 77954

RECEIVED
2009 JAN 14 AM 7:50
COMPLIANCE SUPPORT
DIVISION

Re: On-Site Sewage Facilities Order for DeWitt County

Dear Judge Prause:

Enclosed is a certified copy of an order issued by the Commission regarding the referenced matter.

Should you have any questions, please contact Mr. James McCaine, of the Texas Commission on Environmental Quality On-Site Sewage Facilities Program, MC-178 at 512-239-4777.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Gardner", written over a horizontal line.

Andrew Gardner, Manager
Regulatory Compliance Section, MC-178
Compliance Support Division

Enclosures: Certified Order
Recipient Mail List

APPLICATION BY DEWITT COUNTY
TO AMEND THEIR ON-SITE SEWAGE FACILITY ORDER

The Honorable Judge Prause
DeWitt County Courthouse
307 North Gonzales Street
Cuero, Texas 77954

Bain C. Cate, M.D.
Director, Victoria City-County Health Department
2805 North Navarro Street
Victoria, Texas 77901

Texas Commission on Environmental Quality
Susan Clewis, Regional Director
Region 14 – Corpus Christi
NRC Bldg., Ste. 1200
6300 Ocean Dr., Unit 5839
Corpus Christi, Texas 78412-5839

Texas Commission on Environmental Quality
Region 14 – Corpus Christi
Milisa Roitsch
NRC Bldg., Ste. 1200
6300 Ocean Dr., Unit 5839
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Andy Gardner, OSSF Program, Regulatory Compliance Section, MC-178