

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 FEB 05 2009

LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality

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

BEFORE THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

On JAN 26 2009 the Executive Director of the Texas Commission on Environmental Quality ("Commission"), considered the application of the County of Fannin, ("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 Fannin County Order should be approved.

FINDINGS OF FACT

1. The County of Fannin drafted a proposed order which regulates on-site sewage facilities.
2. On November 4, 2008 the County of Fannin 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 November 10, 2008.
3. The County of Fannin held a public meeting to discuss its proposed order on November 10, 2008.
4. Fannin County's Order regulating on-site sewage facilities was adopted on November 10, 2008.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the Fannin 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.

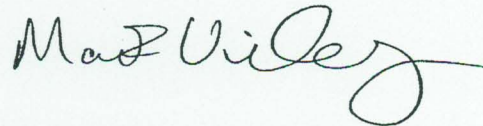
CONCLUSIONS OF LAW

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 Fannin is hereby authorized to implement its Order which regulates on-site sewage facilities.
2. Any amendments to the Fannin 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 26 2009**



Executive Director
Texas Commission on Environmental Quality

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
February 5, 2009

The Honorable Judge Eileen Cox
Fannin County Courthouse
101 East Rayburn Drive, Suite 101
Bonham, Texas 75418

RE: County of Fannin
OSSF No. 620074

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director (ED) has issued final approval of the above-named application. According to 30 Texas Administrative Code (TAC) Section 50.135 the approval became effective on the date the ED signed the permit or other approval. A copy of the final approval is enclosed and cites the effective date.


You may file a **motion to overturn** with the chief clerk. A motion to overturn is a request for the commission to review the TCEQ executive director's approval of the application. Any motion must explain why the commission should review the TCEQ executive director's action. According to 30 TAC Section 50.139 an action by the ED is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

A motion to overturn must be received by the chief clerk within 23 days after the date of this letter. An original and 11 copies of a motion must be filed with the chief clerk in person or by mail. The Chief Clerk's mailing address is Office of the Chief Clerk (MC 105), TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. On the same day the motion is transmitted to the chief clerk, please provide copies to Robert Martinez, Environmental Law Division Director (MC 173), and Blas Coy, Public Interest Counsel (MC 103), both at the same TCEQ address listed above. If a motion is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

You may also request **judicial review** of the ED's approval. According to Texas Water Code Section 5.351 a person affected by the ED's approval must file a petition appealing the ED's approval in Travis County district court within 30 days after the effective date of the approval. Even if you request judicial review, you still must exhaust your administrative remedies, which includes filing a motion to overturn in accordance with the previous paragraphs.

Individual members of the public may seek further information by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,


LaDonna Castanuela
Chief Clerk

LDC/sw

cc: Blas Coy, TCEQ Public Interest Counsel (MC 103)

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

February 5, 2009

The Honorable Judge Cox
Fannin County Courthouse
101 E. Rayburn Drive, Suite 101
Bonham, Texas 75418

Re: On-Site Sewage Facilities Order for Fannin County

Dear Judge Cox:

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 cursive script that reads "Tony Franco".

Tony Franco, Director
Compliance Support Division, MC-178

Enclosures: Certified Order
Recipient Mail List

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

The Honorable Judge Cox
Fannin County Courthouse
101 E. Rayburn Drive, Suite 101
Bonham, Texas 75418

Mary Bloodsworth, D.R.
Fannin County Inspector
1203 E. Sam Rayburn Dr.
Bonham, Texas 75418

Texas Commission on Environmental Quality
Tony Walker, Regional Director
Region 4 – Dallas/Fort Worth
2309 Gravel Drive
Fort Worth, Texas 76118-6951

Texas Commission on Environmental Quality
Jeff Tate
Region 4 – Dallas/Fort Worth
2309 Gravel Drive
Fort Worth, Texas 76118-6951

James McCaine, OSSF Program, Regulatory Compliance Section, MC-178

EXHIBIT A

①

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

PREAMBLE

FANNIN COUNTY, TEXAS

A CERTIFIED COPY

ATTEST

TAMMY RICH
COUNTY CLERK, FANNIN
COUNTY, TEXAS

By  Deputy

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 Fannin County, Texas should enact an ORDER controlling or prohibiting the installation or use of on-site sewage facilities in the County of Fannin, Texas; and

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

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

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

SECTION 3. THAT an ORDER for Fannin County, Texas be adopted entitled "ON-SITE SEWAGE FACILITIES", which shall read as follows:

0066382 BK 1404 Vol 463 Pg

2
FANNIN COUNTY COURT CLERK
CERTIFIED COPY
ATTEST
TAMMY RICH
COUNTY CLERK, FANNIN
COUNTY, TEXAS
BY *[Signature]* Deputy

AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

SECTION 4. CONFLICTS.

This Order repeals and replaces any other On-site Sewage Facility ORDER for Fannin County.

SECTION 5. ENFORCEMENT OF CODES AND RULES.

The County of Fannin, 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. It is further understood that, by this Order, the County of Fannin, Texas satisfies the requirement of H&SC § 366.032(a)(3).

SECTION 6. AREA OF JURISDICTION.

- (A) The Rules shall apply to all the area lying in Fannin 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 Fannin County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Fannin 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 Fannin 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, Title 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. MORE STRINGENT STANDARDS.

The County of Fannin, 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.

CERTIFIED COPY
ATTEST
TAMMY RICH
COUNTY CLERK, FANNIN
COUNTY, TEXAS

Listed below are the more stringent Rules adopted by Fannin County, Texas:

- (A) Fannin County, to provide greater public health and safety protection, shall require an application, permit, authorization to construct and inspection for construction, alteration, extension or repair to a residential or commercial on-site sewage facility and subject to the permitting requirements, regardless of the size of the tract of land.
- (B) After the effective date of this ORDER, subdivision of land, platted or unplatted, for single family residents or commercial, using OSSF systems must have a minimum of one (1) acre.
- (C) Effective September 1, 2007, all maintenance providers, established under Section 30.247 of Title 30 Texas Administrative Code (TAC) Chapter 30, Subchapter G, and homeowners, allowed by Fannin County to maintain their own aerobic treatment system pursuant to the requirements of the Rules, Title 30 TAC Chapter 285 and within the unincorporated areas of Fannin County and incorporated cities in which Fannin County Health Department acts as the designated representative, must register aerobic treatment systems with the Fannin County Health Department annually. Aerobic treatment systems are subject to an annual registration fee which is set by commissioners court to defray administrative costs associated with the maintenance of data and the enforcement of the requirements of the Rules, Title 30 Texas Administrative Code (TAC) Chapter 285. Failure to register the aerobic treatment system annually and/or pay the annual registration fee by an approved home owner to maintain their system shall result in having their approval to maintain their ATU revoked and they will be required to execute a maintenance/service contract with a licensed maintenance provider. All maintenance providers shall submit the registration fee with each contract or the contract will not be accepted.
- (D) All maintenance of an on-site sewage disposal system using aerobic treatment shall be conducted by a licensed maintenance provider. There shall be no homeowner/property owner maintenance of an aerobic sewage disposal system using aerobic treatment unless:
 - (1) the homeowner/property owner is a licensed maintenance provider for that aerobic treatment unit.
 - (2) the homeowner/property owner was trained by an installer according to HB 2510 prior to adoption of the Fannin County Amended ORDER on August 13, 2007 approved by the Executive Director on September 7, 2007.
 - (3) the homeowner/property owner completes and passes the Texas On-Site Wastewater Association Basic Maintenance Provider 16 hour Course, or similarly approved course by TCEQ. The homeowner/property owner must

Doc
00006382 DR
1404
901
465

provide proof of passing the course and having proper equipment to test for chlorine residual and sludge levels. A home owner shall apply for approval from the Fannin County Health Department to maintain their Aerobic treatment system.

- (E) Three OSSF violations in a twelve month period by an approved homeowner/property owner for self-maintenance shall require the homeowner/property owner to immediate execution of a maintenance contract with a licensed maintenance provider.
- (F) Maintenance inspections and reports.
 - (1) Inspections at a minimum must meet all inspection requirements as set by the TCEQ, Fannin County, and as outlined by the manufacturer for the brand being inspected and must be conducted every 4 months for a single family residence.
 - (2) Inspection Reports must address all inspection requirements as set by the TCEQ, Fannin County, and as outlined by the Manufacturer for the brand being inspected and must be submitted to the Fannin County Health Department within 14 days of the date of service.
 - (3) Fannin County requires that each inspection measure sludge levels in the treatment tank and pump tank, the chlorine residual prior to adding any disinfection, condition of the spray area, repairs that were made or repairs that need to be done.
 - (4) Licensed maintenance providers are required to tag or label the control panel with the company name and phone number, notate inspection date and provide a copy of the inspection report to the property owner and the Fannin County Health Department within 14 days from the date of the inspection.
- (G) No construction or installation of any type of on-site sewage facility by a home owner or property owner. Installer must hold a current and proper level of license to install any on-site sewage facility.

CERTIFIED COPY
 ATTEST
 TAMMY RICH
 COUNTY CLERK, FANNIN
 COUNTY, TEXAS
 Deputy

SECTION 11. DUTIES AND POWERS.

The OSSF Inspector of Fannin 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 permits, re-inspections, annual registration fees and any other fees deemed necessary by the commissioners court shall be made payable to Fannin 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 Fannin County, Texas within 30 days of such action or decision.

SECTION 14. PENALTIES.

This Order adopts and incorporates all applicable penalty provisions related to on-site

Doc
 00006382
 BK
 1404
 01
 456
 PG

3
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 Fannin 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. 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 10 DATE OF November, 2008

APPROVED:

Butch Henderson
Fannin County Judge

ATTEST:

Tammy Rich
Tammy Rich Fannin County Clerk



FANNIN COUNTY COURT
SERIALIZED COPY, O
ATTEST

TAMMY RICH
COUNTY CLERK, FANNIN
COUNTY, TEXAS
By Tammy Rich

Doc
00006382 BR
1404 V01
Pg 467

6

COUNTY OF FANNIN §

STATE OF TEXAS §

AFFIDAVIT

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

A CERTIFIED COPY ATTEST 11/3/08 TAMMY RICH COUNTY CLERK, FANNIN COUNTY, TEXAS BY [Signature] Deputy

My name is Tammy Rich, 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 Fannin, Texas. Attached hereto are EIGHT (8) pages of records known as ORDER ADOPTING RULES OF FANNIN COUNTY, TEXAS FOR ON-SITE SEWAGE FACILITIES. The records are kept by me as County Clerk, County of Fannin, 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.

Tammy Rich
TAMMY RICH

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Tammy Rich, 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 12 day of November, 2008.



Suzanne Stowe
Notary Public, State of Texas
My commission expires:

Doc 00006382 BK Vol Pg 1404 468