

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify this to be 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 DEC 21 2007

LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality

IN THE MATTER OF THE APPLICATION
OF THE COUNTY OF CALDWELL
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 DEC 19 2007 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Caldwell, ("Applicant" or "Caldwell"), 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 Caldwell County Order should be approved.

FINDINGS OF FACT

1. The County of Caldwell drafted a proposed amendment to its order which regulates on-site sewage facilities.
2. On September 20, 2007 the County of Caldwell 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 Monday, September 24, 2007.
3. The County of Caldwell held a public meeting to discuss the proposed amendment to its order on September 24, 2007.
4. Caldwell County's Order regulating on-site sewage facilities was adopted on September 24, 2007.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the Caldwell 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

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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 Caldwell is hereby authorized to implement its Order which regulates on-site sewage facilities.
2. Any amendments to the Caldwell 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: **DEC 19 2007**



Executive Director
Texas Commission on Environmental Quality

EXHIBIT "A"



09-2007

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

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

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

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

SECTION 3. THAT an Order for Caldwell 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 Caldwell County.

SECTION 5. CHAPTER 366.

The County of Caldwell, 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 Caldwell 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 Caldwell County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Caldwell 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 Caldwell 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 Caldwell, 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 Caldwell County, Texas:

- (A) Caldwell 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.
- (B) Effective September 1, 2007, Caldwell 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.

(C) Maintenance Inspections and Reports:

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

(D) Only lots of less than one acre existing before October 18, 1984, will be grandfathered from the one acre minimum lot size and only if existing lot is found to support an on-site sewage facility.

(E) Under no circumstances will more than one habitable structure be utilized on a one acre lot/tract.

(F) All construction, alteration, extension or repair to any type of on-site sewage facility shall be by a TCEQ licensed installer. There shall be no property owner/homeowner installations unless the property owner/homeowner is also a licensed installer.

(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) The use of portable toilets and holding tanks may be authorized by the permitting authority only as a temporary means of domestic sewage disposal for no longer than 180 days. Exceptions beyond two weeks may be made for businesses which operate less than two days per week and construction sites requiring restroom facilities. Written documentation of proper transfer and disposal of contents shall be provided to permitting authority prior to installation.

SECTION 11. DUTIES AND POWERS.

The OSSF Inspector of Caldwell 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 Caldwell 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 Caldwell 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 Caldwell 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 24 DATE OF September, 2007

(SEAL)

APPROVED:


H. T. Wright, County Judge

ATTEST:


Nina S. Selis, County Clerk



COUNTY OF CALDWELL §

STATE OF TEXAS §

AFFIDAVIT

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

My name is Nina S. Sells, 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 Caldwell, Texas. Attached hereto are four (4) pages of records known as (Order) ORDER ADOPTING RULE OF CALDWELL COUNTY, TEXAS FOR ON-SITE SEWAGE FACILITIES. The records are kept by me as County Clerk, County of Caldwell, 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.

Nina S. Sells
Nina S. Sells, County Clerk

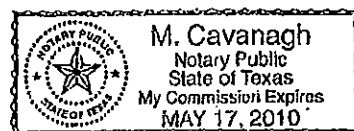
BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Nina S. Sells, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24th day of September, 2007.

(SEAL)

M. Cavanagh

Notary Public, State of Texas
My commission expires:





COUNTY OF CALDWELL §

STATE OF TEXAS §

AFFIDAVIT

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

My name is Nina S. Sells, 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 Caldwell, Texas. Attached hereto are four (4) pages of records known as (Order) ORDER ADOPTING RULE OF CALDWELL COUNTY, TEXAS FOR ON-SITE SEWAGE FACILITIES. The records are kept by me as County Clerk, County of Caldwell, 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.

Nina S. Sells
Nina S. Sells, County Clerk

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Nina S. Sells, 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 24th day of September, 2007.

(SEAL)

M. Cavanagh
Notary/Public, State of Texas
My commission expires:

