

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 Hidalgo'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 Hidalgo agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Hidalgo'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 Hidalgo is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Hidalgo 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 Hidalgo's adopted Order, marked as Exhibit "A," to the County of Hidalgo 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 28 2010**



Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

COUNTY OF HIDALGO §

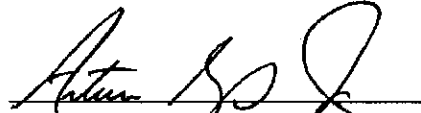
STATE OF TEXAS §

AFFIDAVIT

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

My name is Arturo Guajardo Jr. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

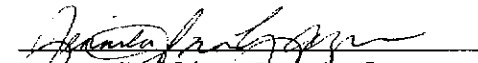
I am the custodian of the records of the County Clerks Office for the County of Hidalgo, Texas. Attached hereto are _____ () pages of records known as the On-Site Sewage Facilities Order. The records are kept by me as County Clerk, County of Hidalgo, in the regular course of business with knowledge of 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.


Arturo Guajardo, Jr.
County Clerk

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Arturo Guajardo, Jr., 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 30 day of NOV., 2010.

(SEAL)


~~Notary Public~~, State of Texas
My commission expires:
Jennilee Anna Garza
Deputy Clerk

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

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) 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 (THSC), 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 Hidalgo County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Hidalgo, Texas; and

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

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

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

SECTION 3. THAT an Order for Hidalgo 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 (OSSF) Order for Hidalgo

County.

SECTION 5. CHAPTER 366.

The County of Hidalgo, 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 THSC 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.

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

These rules shall apply to those incorporated cities or towns that have executed inter-governmental contracts with Hidalgo County.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Hidalgo 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 30, Subchapters A and G, and Chapter 285, promulgated by the TCEQ for on-site sewage facilities are hereby adopted, and all officials and employees of Hidalgo 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 Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

SECTION 10. AMENDMENTS.

The County of Hidalgo, Texas wishing to adopt more stringent Rules for its OSSF Order understands that the more stringent local Rule shall take precedence over the corresponding TCEQ requirement. Listed below are the more stringent Rules adopted by Hidalgo County, Texas:

10.1 All Texas Water Development Board statutes, rules and regulation now or hereafter applicable to an economically distressed area shall apply to permitting associated with on-site sewage facilities.

10.2 A permit shall be required for all on-site sewage facilities located within Hidalgo County's area of jurisdiction regardless of the size of the tract to be served by the facility.

10.3 Prior to the issuance of a permit, and in order to insure floodplain issues are properly

addressed, an applicant for an on-site sewage facility must obtain a determination from the Hidalgo County Floodplain Administrator that the tract to be serviced by the on-site sewage facility is in compliance with the Hidalgo County Flood Damage Prevention Order.

- 10.4 An applicant is required to insure that all persons and/or entities retained by the applicant to install an on-site sewage facility on the applicant's tract maintain a copy of their current certificate/registration at the job-site while installation of the on-site sewage facility is in progress.
- 10.5 The County may assess the applicant a re-inspection fee on the on-site sewage facility each time a County re-inspection is required. The re-inspection fee shall be set by the County and the County may revise this fee from time to time.
- 10.6 In no case shall the sewer line diameter for the proposed on-site sewage facility be reduced to a size smaller than the sewer stub out for the improvements to be serviced by the on-site sewage facility.
- 10.7 No personal property, including but not limited to, picnic tables, play equipment or BBQ pits, shall be placed within the surface application spray area of the on-site sewage facilities installed on the applicant's tract.
- 10.8 Hidalgo County will require two (2) OSSF permits the **Installation permit** and **Final Inspection permit** each to be purchased prior to each phase of inspection. The Installation permit and Final Inspection fees shall be set by the County Commissioners Court and the County may revise this fee from time to time.
- 10.9 The **Installation permit** will be purchased at the beginning of development. The homeowner/developer must present the appropriate OSSF site plans and meet all of the OSSF guidelines as required by Hidalgo County and TCEQ. In addition, the homeowner/developer must have been approved and cleared for construction by the Hidalgo County Planning Department prior to site development. In the event of a commercial development, a Fire Marshal Inspection/approval must be obtained to assure continuation of the project. The Fire Marshal must be an official representative of the indicated jurisdiction.

The **Final Inspection permit** will be purchased when the dwelling/commercial development is completed and the final connections from the dwelling/commercial development to the system is made and confirmed. The final inspection will also consist of a confirmation that the system installed has met the guidelines in accordance to the final square footage of the structure built.

In the event that the dwelling/commercial development constructed is larger than initially approved by Hidalgo County OSSF and Hidalgo County Planning Department officials, the homeowner may need to upgrade the OSSF system in order to meet Hidalgo County/TCEQ requirements. Final approval of the dwelling/commercial development will not be given until the final inspection is completed.

- 10.10 Upon final inspection, Hidalgo County OSSF inspectors must visually confirm that the identified dwelling/commercial development is physically connected to the OSSF system.

In addition, the Hidalgo County OSSF inspector must verify that there is no additional dwelling connected to the single approved system. This is to assure that Hidalgo County's requirements are met in regards to the "one single family detached dwelling per lot rule."

- 10.11 It will be the homeowner's responsibility to make sure that only one officially approved dwelling will be connected to the OSSF system. Violation of this requirement may lead to an issuance of a citation resulting in fines and additional legal action.
- 10.12 In the event of a pre-existing building or agricultural site requiring an electrical service, an inspection must be made to assure that there is no additional structure illegally connected to the existing OSSF system.
- 10.13 Regarding multi-family units, i.e., duplex, apartments, etc., the owner/developer must have met all the Hidalgo County OSSF and TCEQ requirements concerning the OSSF system, i.e., tank capacity, length of drain field and the size of lot to be built on. In addition, the owner/developer must meet all the Hidalgo County Planning Department requirements and Hidalgo County Fire Marshall guidelines.

SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC § 285.2(17)) of Hidalgo County, Texas, must be certified by the TCEQ before assuming the duties and responsibilities.

SECTION 12. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to Hidalgo County, Texas. A fee of \$10 will also be collected for each on-site sewage facility permit to be paid to the On-Site Wastewater Treatment Research Council as required by the THSC, Chapter 367.

Hidalgo County Commissioners Court will assess the OSSF fee structure and determine the permit rate as indicated in section 10.8

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 Hidalgo County, Texas.

SECTION 14 ENFORCEMENT PLAN

The County of Hidalgo, Texas clearly understands that, at a minimum, it must follow the requirements in 30 TAC § 285.71 Authorized Agent Enforcement of OSSFs.

This Order adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to, those found in Chapters 341 and 366 of the THSC, Chapters 7, 26, and 37 of the TWC and 30 TAC Chapter 30, Subchapters A and G, and Chapter 285.

SECTION 15. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Hidalgo 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, clauses, sentences, paragraphs, or sections.

SECTION 16. RELINQUISHMENT OF ORDER.

If the Commissioners Court of Hidalgo County, Texas decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the Commissioners Court, as the authorized agent, and the TCEQ shall follow the procedures outlined in 30 TAC § 285.10 (d) (1) through (4).

After relinquishing its OSSF authority, the authorized agent understands that it may be subject to charge-back fees in accordance with 30 TAC § 285.10 (d) (5) and §285.14 after the date that delegation has been relinquished.

SECTION 17. 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 TCEQ.

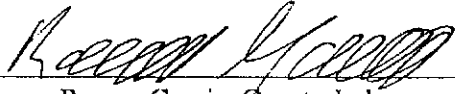
AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 09th day of November, 2010.

Approved by Commissioners' Court
on 11/9/10

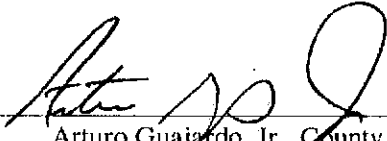
APPROVED:

(SEAL)



Ramon Garcia, County Judge

ATTEST:



Arturo Guajardo, Jr., County Clerk