

CHAPTER 406

H.B. No. 1875

AN ACT

relating to the regulation of on-site sewage disposal systems; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 71, Revised Statutes, is amended by adding Article 4477-7e to read as follows:

Art. 4477-7e. ON-SITE SEWAGE DISPOSAL SYSTEMS

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Sec. 1. INTENT; FINDINGS; POLICY. (a) The intent of the legislature is to assist the state's citizens in obtaining safe and adequate on-site sewage disposal systems.

(b) The legislature finds and determines that:

(1) safe and adequate sewage disposal protects the health and welfare of the state's citizens by:

(A) minimizing the exposure of Texas citizens to the disease transmission potential of human and domestic waste;

(B) minimizing the contamination of drinking water supplies and hazards to the state's recreational areas; and

(C) reducing the potential for ground and surface water pollution;

(2) on-site sewage disposal systems, when properly designed and constructed in suitable soils, provide a safe and adequate method of sewage disposal; and

(3) in some areas of the state, the soil is not suitable for normal underground sewage disposal and the improper and unapproved construction and installation of on-site sewage disposal in those areas has created conditions dangerous to the public health.

(c) It is the public policy of this state and the purpose of this article to:

(1) eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems;

(2) authorize the department or authorized agent to impose and collect a permit fee for:

(A) construction, installation, alteration, repair, or extension of on-site sewage disposal systems; and

(B) tests, designs, and inspections of those systems;

(3) authorize the department or authorized agent to impose a penalty for a violation of this article or a rule adopted under this article;

(4) require an on-site sewage disposal system installer to register with the department; and

(5) allow the individual owner of a disposal system to install and repair the system in accordance with this article.

Sec. 2. DEFINITIONS. In this article:

(1) "Authorized agent" means the local governmental entity authorized by the department to implement and enforce rules under this article.

(2) "Department" means the Texas Department of Health.

(3) "Designated representative" means a person that:

(A) is designated by the department or authorized agent to make percolation tests, system designs, and inspections subject to the department's or authorized agent's approval;

(B) demonstrates to the department's or authorized agent's satisfaction the person's competency to make percolation tests, designs, and inspections for on-site sewage disposal systems, in accordance with this article and the rules adopted under this article; and

(C) has successfully completed the educational training program provided by the department.

(4) "Installer" means a person that is compensated by another for the construction, installation, alteration, or repair of an on-site sewage disposal system.

(5) "Local governmental entity" means a municipality, county, river authority, or special district, including an underground water district and a soil and water conservation district.

(6) "Municipality" means an incorporated city or town.

(7) "Nuisance" means:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between a person or persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage disposal system, or a blatant discharge from an on-site sewage disposal system.

(8) "On-site sewage disposal system" means a single system or systems of treatment devices and disposal facilities that produce not more than 5,000 gallons of waste per day and are used only for on-site disposal of that sewage, that is not regulated by the Texas Water Commission.

(9) "Owner" means a person that owns a building or property served by an on-site sewage disposal facility.

(10) "Person" means an individual, partnership, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(11) "Sewage" means waste that is primarily organic and biodegradable or decomposable and that generally originates as human, animal, or plant waste from certain activities, including using toilet facilities, washing, bathing, and preparing food.

Sec. 3. **COMPLIANCE REQUIRED.** A person may not construct, alter, repair, or extend, or cause to be constructed, altered, repaired, or extended, an on-site sewage disposal system that is not in compliance with this article and applicable rules.

Sec. 4. **AUTHORITY TO ADOPT RULES AND ESTABLISH PROCEDURES.** (a) The department or its authorized agents have general supervision and authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems and are responsible for administering this article and the rules adopted under this article.

(b) To assure the effective and efficient administration of this article, the department shall:

(1) adopt rules governing the installation of on-site sewage disposal systems that are consistent with the Texas Board of Health's requirements, including rules regarding the:

(A) review and approval of on-site sewage disposal systems;

(B) registration of on-site disposal systems installers; and

(C) temporary waiver of a permit for an emergency repair, as defined by the department;

(2) modify or amend rules governing on-site sewage disposal systems, subject to the Texas Board of Health's approval;

(3) delegate to local governmental entities responsibility for the implementation and enforcement of applicable rules, subject to the Texas Board of Health's approval;

(4) adopt and amend rules under this article that encourage the use of economically feasible alternative techniques and technologies for on-site sewage disposal systems that can be used in soils not suitable for conventional on-site sewage disposal;

(5) include in rules adopted under this article definitions and detailed descriptions of good management practices and procedures for the construction of on-site sewage disposal systems that:

(A) justify variation in field size or in other standard requirements;

(B) promote the use of good management practices or procedures in the construction of on-site sewage disposal systems;

(C) require the use of one or more specific management practices or procedures as a condition of approval of a standard on-site sewage disposal system if, in the opinion of the department or its authorized agent, site conditions or other problems require the use of additional management practices or procedures to ensure the proper operation of an on-site sewage disposal system; and

(D) make available general, operational information to the general public;

(6) enforce this article and any rules adopted under this article; and

(7) issue or authorize the issuance of permits, registrations, and other documents, including:

(A) the establishment and collection of reasonable permit and registration fees; and

(B) the establishment of procedures and adoption of forms for the submission, review, approval, or rejection of permit and registration applications required under this article.

(c) The department shall establish an educational training program specifically developed for installers, authorized agents, and designated representatives. Reasonable fees may be charged of the participants to cover the cost of the training.

Sec. 5. DELEGATION OF AUTHORITY. (a) The department shall designate a local governmental entity as an authorized agent if the governmental entity:

(1) notifies the department that the entity wants to locally regulate the use of on-site sewage disposal facilities in its jurisdiction; and

(2) in accordance with departmental procedures, holds a public hearing and enters an order or resolution incorporating the department's rules regarding the abatement or prevention of pollution and the prevention of injury to the public health.

(b) The local governmental entity's order or resolution is effective only if the entity submits the order or resolution to the department and obtains the department's written approval.

(c) The local governmental entity's order or resolution must meet the department's minimum requirements for on-site sewage disposal systems and include a written enforcement plan. The order or resolution may adopt more stringent standards for on-site sewage disposal systems than the department's standards.

(d) If the department approves the local governmental entity's order or resolution, the local governmental entity is designated as an authorized agent of the department.

(e) An authorized agent must obtain departmental approval of any substantive amendments to the agent's order or resolution.

(f) If the department approves a local order or resolution and designates the local governmental entity as an authorized agent, a person that installs or uses an on-site sewage disposal system that is required to be permitted under this article must obtain a permit from the authorized agent before installation or use of the system.

(g) The department shall conduct an investigation of each authorized agent not more than once a year to determine its compliance with this article and shall submit an annual report to the Texas Board of Health relating to the status of the local governmental entity's regulatory program. If the department determines that a local governmental entity designated as an authorized agent under this section does not consistently enforce the department's minimum requirements for on-site sewage disposal systems, the department shall hold a hearing and determine whether the local governmental entity shall lose its designation and authority as an authorized agent of the department.

Sec. 6. INSPECTIONS. (a) The department or its authorized agent shall review a proposal for an on-site sewage disposal system and make inspections of the system as necessary to assure that the on-site sewage disposal system is in substantial compliance with this article and the rules adopted under this article.

(b) An on-site sewage disposal system may not be used unless it is inspected and approved by the department or its authorized agent.

(c) *If a local governmental entity has not been designated as an authorized agent, application for an on-site sewage disposal system in the local governmental entity's jurisdiction shall be made to the department.*

(d) *The department or its authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections authorized under Subsection (a) of this section.*

(e) *If a system is not approved under Subsection (d) of this section, the on-site sewage disposal system may not be used until all deficiencies are corrected and the system is reinspected and approved by the department or its authorized agent.*

(f) *A holder of a permit issued under this article shall notify the department, its authorized agent, or a designated representative not later than the fifth working day before the date of the installation of the sewage disposal system, that the installation is ready for inspection. The inspection shall be made on a date and time mutually agreed on by the holder of a permit and the department, its authorized agent, or designated representative. The owner, owner's representative, or occupant of the property on which the installation is located shall give the department, its authorized agent, or a designated representative reasonable access to the property at reasonable times to make necessary inspections.*

(g) *An installation inspection shall be made not later than the second working day, not including holidays, after the date on which notification that the installation is completed and ready for inspection is given to the department, its authorized agent, or a designated representative.*

Sec. 7. PERMITS. (a) A person must hold a valid permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system. The permit and plan must be issued in the name of the person who owns the system and identified by the specific property location or address for the specific construction, alteration, extension, repair, or operation proposed by the person.

(b) *A person may not begin construction, alteration, repair, or extension of an on-site sewage disposal system that is owned by another person unless the owner or owner's representative shows proof of a valid permit and approved plan from the department or its authorized agent.*

(c) *An installer may not begin construction, alteration, repair, or extension of an on-site sewage disposal system that is owned by another person unless the installer notifies the department or authorized agent of the date on which the installer plans to begin work on the system.*

(d) *Application for a permit must be made on a form provided by the department or an authorized agent and must include all information required by the department or its authorized agent to establish that the individual sewage disposal system is in compliance with this article and any rules adopted under this article.*

(e) *The department may not issue a permit for the construction, alteration, repair, or extension of an on-site sewage disposal system if:*

- (1) *the issuance of a permit conflicts with other applicable laws; or*
- (2) *the issuance of a permit conflicts with the public policy declared under this article.*

(f) *This section does not apply to an on-site sewage disposal system of a single residence that is located on a land tract that is 10 acres or larger in which the field line or sewage disposal line is not closer than 100 feet of the property line. Effluent from the on-site sewage disposal system on a single residence must be retained within the specified limits, a nuisance may not be created, and the groundwater may not be polluted.*

Sec. 8. PERMIT FEES. (a) The department by rule shall establish a reasonable permit fee to cover the cost of issuing permits under this article and administering the permitting system. The department at its discretion may provide variances to the uniform application of the permit fee.

(b) *If a local governmental entity performs the permitting function as an authorized agent, the permit fee shall be paid to the local governmental entity.*

(c) *If the department performs the permitting function for a local governmental entity, the permit fee shall be paid to the department. The department may assess a charge-back fee to a local governmental entity for administrative costs relating to the permitting function that are not covered by the permit fees collected.*

Sec. 9. REGISTRATION OF INSTALLERS. (a) *A person may not operate as an installer in this state unless he is registered by the department or its authorized agent. The department shall issue registration to an installer if the installer completes an application form that is in compliance with this article and the rules adopted under this article and if the installer complies with other requirements provided by this article.*

(b) *If the department designates a local governmental entity as an authorized agent, the installer shall notify the authorized agent of the intent to install an on-site sewage disposal system before the installer begins installation of the system.*

(c) *To be registered, an installer must successfully complete the educational training program provided by the department.*

(d) *The installer's statewide registration may be revoked by the department or an authorized agent after notice and hearing if the installer violates this article or a rule adopted under this article. The installer may appeal a revocation under this subsection as provided by law. The department's or authorized agent's revocation procedures must comply with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(e) *If the department or authorized agent determines that an emergency exists and that the public health or safety is endangered because of the operation of an on-site sewage disposal system that is not in compliance with this article or a rule adopted under this article, the department or authorized agent may issue an order suspending the license of the installer or regulating the on-site sewage disposal system, or both. The order may be issued with or without notice and hearing. If an emergency order is issued under this authority without a hearing, the department or authorized agent shall set a time and place for a hearing to be held not later than the 30th day after the date on which the emergency order is issued in accordance with the department's rules or laws and rules governing the authorized agent to affirm, modify, or set aside the emergency order. General notice of the hearing shall be given in accordance with the laws of this state and rules adopted by the department or authorized agent.*

(f) *Each installer shall furnish proof of valid registration if requested by the department, an authorized agent, or a designated representative.*

(g) *The department may provide for periodic renewal of registration.*

(h) *On request, the department semiannually shall disseminate to the public an official roster of registered installers and provide to authorized agents a monthly update of the roster.*

Sec. 10. REQUIRED REPAIRS. *The department or its authorized agent may require a property owner to repair a malfunctioning on-site sewage disposal system on the owner's property not later than the 30th day after the date on which the owner is notified by the department or an authorized agent of the malfunctioning system. The property owner must take adequate measures as soon as possible to abate an immediate health hazard. The property owner may be assessed a penalty under Section 24, Chapter 178, Acts of the 49th Legislature, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), for each day that the on-site sewage disposal system remains unrepaired.*

Sec. 11. PENALTIES. (a) *A person commits an offense if the person fails to register as an installer with the department or an authorized agent.*

(b) *A person commits an offense if the person begins construction, alteration, repair, or extension of an on-site sewage disposal system owned by another person*

before the owner of the system obtains a valid permit for construction, alteration, repair, or extension of the on-site sewage disposal system in violation of Section 7 of this article.

(c) An offense under this article is a misdemeanor punishable by a fine of not less than \$50 nor more than \$100. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this article, he shall be punished by a fine of not less than \$125 nor more than \$500, by confinement in jail for not more than one month, or by both. Each day of a continuing violation is a separate offense.

(d) The department or an authorized agent may bring suit for injunction to prevent or restrain a violation of this article.

(e) An emergency repair made to an on-site sewage disposal system without a permit as provided by Section 4(b)(1)(C) of this article is not an offense under this section.

Sec. 12. LEGAL PROCEEDINGS. If the department or its authorized agent reports a violation of this article or a rule adopted under this article to a prosecuting attorney, the attorney shall begin appropriate proceedings in the proper court without unnecessary delay and shall prosecute the cause as required by law.

Sec. 13. CONFLICT WITH OTHER LAWS. A local governmental entity's orders and rules that are more stringent than this article or rules adopted under this article and that provide greater protection to the public health or safety prevail in the local governmental entity's jurisdiction.

Sec. 14. IMMUNITY. The department, an authorized agent, or a designated representative is not liable for damages resulting from the department's or authorized agent's approval of the installation and operation of an on-site sewage disposal system.

SECTION 2. Sections 26.031 and 26.032, Water Code, are repealed.

SECTION 3. (a) Except as provided by this subsection, this Act takes effect September 1, 1987. Section 2 of this Act takes effect September 1, 1989.

(b) Before September 1, 1989, the Texas Department of Health shall implement this Act and shall adopt the rules required by Section 4, Article 4477-7e, Revised Statutes, as added by this Act, to be effective on that date.

(c) Before September 1, 1988, the Texas Department of Health shall submit to the Texas Board of Health a schedule for the implementation of this Act in those local governmental entities that have not adopted a resolution or order under Section 5, Article 4477-7e, Revised Statutes, as added by this Act, regulating the sewage disposal systems regulated under this Act.

(d) A local governmental entity authorized to license private sewage facilities by the Texas Water Commission on the effective date of this Act shall be designated as an authorized agent of the Texas Department of Health, if the local governmental entity meets the department's minimum requirements.

(e) Except as provided by Subsection (f) of this section, an on-site sewage disposal system may not be required to comply with the design, construction, and installation requirements of this Act if the on-site sewage disposal system:

(1) is installed before the effective date of this Act if no significant increase in its use has occurred; or

(2) received approval for construction from a legally authorized licensing authority before the effective date of this Act.

(f) If the department or its authorized agent determines that an on-site sewage disposal system described by Subsection (e) of this section is a nuisance under Chapter 178, Acts of the 49th Legislature, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), the on-site sewage disposal system must comply with Article 4477-7e, Revised Statutes, and applicable rules adopted under that article to abate the nuisance.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1987, by a non-record vote. Passed by the Senate on May 21, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987, except § 2 effective Sept. 1, 1989.