

AN ACT

relating to the regulation of on-site sewage disposal systems and the maintenance of those systems; imposing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 366.0515, Health and Safety Code, is amended by amending Subsections (a) and (g) and adding Subsections (h), (i), (j), (k), (l), (m), (n), and (o) to read as follows:

(a) An authorized agent or the commission may not condition a permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence ~~[located in a county with a population of less than 40,000]~~ on the system's owner contracting for the maintenance of the system.

(g) The owner of a single-family residence ~~[located in a county with a population of less than 40,000]~~ shall maintain the system directly or through a maintenance contract. The commission shall adopt rules governing:

(1) the training in system maintenance to be provided to an owner who elects to maintain the system directly; and

(2) the maintenance of a system by the owner of the system.

(h) If the owner of an on-site sewage disposal system using aerobic treatment for a single-family residence elects to maintain the system directly, the owner must obtain from the manufacturer or

1 installer of the system an amount of on-site training specified by
2 commission rule not to exceed six hours, either at the time of
3 acceptance of the system from the installer or at the time of an
4 on-site maintenance visit by a maintenance company under the
5 initial term of the maintenance contract for the system, if
6 applicable. The training must include instruction regarding the
7 importance to public health and safety of proper maintenance of the
8 system and a demonstration of the procedure for performing a
9 scheduled maintenance. On the owner's completion of the training,
10 the manufacturer or installer shall provide the owner with a
11 certificate or letter stating that the owner has received the
12 required training. An owner who elects to maintain the owner's
13 system is subject to any inspection and reporting requirements
14 imposed by an authorized agent or the commission under Subsection
15 (k) applicable to a maintenance company that contracts to maintain
16 a system. If the residence is sold, the new owner, not later than
17 the 30th day after the date the owner takes possession of the
18 property, must obtain the training required by this subsection from
19 an installer certified by the manufacturer of the system under
20 Subsection (n) or contract with a maintenance company for the
21 maintenance of the system.

22 (i) An authorized agent or the commission may periodically
23 inspect an on-site sewage disposal system using aerobic treatment
24 for a single-family residence that is maintained directly by the
25 owner of the system. The commission by rule may specify the
26 procedure for conducting the inspections and the frequency with
27 which inspections must be conducted, except that inspections may

1 not be required more often than once every five years.

2 (j) Notwithstanding Subsections (a) and (b), an authorized
3 agent or the commission may condition the permit or the approval of
4 a permit for an on-site sewage disposal system using aerobic
5 treatment for a single-family residence on the owner's contracting
6 with a maintenance company for the maintenance of the system if:

7 (1) the authorized agent or commission determines that
8 the system is a nuisance or has failed a periodic inspection under
9 Subsection (i);

10 (2) the owner fails to timely inspect the system or
11 submit a report on the inspection as required by Subsection (k), if
12 applicable, for three consecutive intervals; or

13 (3) the owner is notified under Section 366.017 at
14 least three times during a 12-month period that the system is
15 malfunctioning.

16 (k) If, under Subsection (b), an authorized agent or the
17 commission conditions approval of a permit for an on-site sewage
18 disposal system using aerobic treatment on the system's owner
19 contracting for the maintenance of the system, the order,
20 resolution, or rule may require the maintenance company to:

21 (1) inspect the system at specified intervals;

22 (2) submit a report on each inspection to the
23 authorized agent or commission; and

24 (3) provide a copy of each report submitted under
25 Subdivision (2) to the system's owner.

26 (l) A maintenance company that violates a provision of an
27 order, resolution, or rule described by Subsection (k) is subject

1 to an administrative penalty. The commission may recover the
2 penalty in a proceeding conducted as provided by Subchapter C,
3 Chapter 7, Water Code, or the authorized agent may recover the
4 penalty in a proceeding conducted under an order or resolution of
5 the agent. Notwithstanding Section 7.052, Water Code, the amount
6 of the penalty for the first violation of that order, resolution, or
7 rule is \$200, and the amount of the penalty for each subsequent
8 violation is \$500.

9 (m) If a maintenance company violates an order, resolution,
10 or rule described by Subsection (k) three or more times, the
11 commission, in the manner provided by Subchapter G, Chapter 7,
12 Water Code, may revoke the license or registration of the
13 maintenance company or any person employed by the maintenance
14 company issued under:

15 (1) Section 26.0301, Water Code;

16 (2) Chapter 37, Water Code; or

17 (3) Section 366.071 of this code.

18 (n) A person must be certified by the manufacturer of an
19 on-site sewage disposal system using aerobic treatment to maintain
20 the system under a maintenance contract with the owner of the system
21 or to provide training to the owner in maintenance of the system. A
22 manufacturer may not unreasonably withhold certification and,
23 except as otherwise provided by this subsection, must offer the
24 certification to persons who are not employees of the manufacturer
25 on the same terms as the manufacturer offers the certification to
26 the manufacturer's employees. To be certified by a manufacturer, a
27 person who is not an employee must:

1 (1) successfully complete a course approved by the
2 commission that provides up to 32 hours of training in maintenance
3 of on-site sewage disposal systems using aerobic treatment;

4 (2) be employed by a maintenance company at least one
5 employee of which holds a license as:

6 (A) an installer, if the commission recognizes
7 only one level of installer; or

8 (B) the highest level of installer recognized by
9 the commission, if the commission recognizes more than one level of
10 installer;

11 (3) meet all of the manufacturer's criteria and
12 requirements for entering into a business relationship; and

13 (4) satisfactorily complete any other reasonable
14 requirements imposed by the manufacturer for certification.

15 (o) Subsection (n) does not allow the commission or an
16 authorized agent to dictate to the manufacturer of on-site sewage
17 disposal systems using aerobic treatment the person who is
18 authorized to maintain the systems or to provide training in
19 maintenance of the systems in a particular area. That subsection
20 merely facilitates the expansion of the pool of persons who are
21 qualified to maintain or to provide training in maintenance of
22 those systems and protects the rights of owners and manufacturers
23 of those systems. [~~If the owner elects to maintain the system~~
24 ~~directly, the owner must obtain training in system maintenance from~~
25 ~~the authorized agent or the installer.]~~

26 SECTION 2. Section 366.071(a), Health and Safety Code, is
27 amended to read as follows:

1 (a) A person who constructs, installs, alters, extends,
2 services, maintains, or repairs an on-site sewage disposal system
3 or any part of an on-site sewage disposal system for compensation
4 must hold a license or registration issued by the commission under
5 Chapter 37, Water Code.

6 SECTION 3. Subchapter E, Chapter 7, Water Code, is amended
7 by adding Section 7.1735 to read as follows:

8 Sec. 7.1735. VIOLATION RELATING TO MAINTENANCE OF SEWAGE
9 DISPOSAL SYSTEM. (a) A person commits an offense if the person
10 knowingly violates an order or resolution adopted by an authorized
11 agent under Section 366.0515, Health and Safety Code.

12 (b) An offense under this section is a Class C misdemeanor.

13 SECTION 4. Section 366.071(d), Health and Safety Code, is
14 repealed.

15 SECTION 5. (a) The changes in law made by this Act apply
16 only to a violation committed on or after the effective date of this
17 Act. For purposes of this section, a violation is committed before
18 the effective date of this Act if any element of the violation
19 occurs before that date.

20 (b) A violation committed before the effective date of this
21 Act is covered by the law in effect when the violation was
22 committed, and the former law is continued in effect for that
23 purpose.

24 SECTION 6. The Texas Commission on Environmental Quality
25 shall be prepared to accept applications for licenses or
26 registrations described by Section 366.071(a), Health and Safety
27 Code, as amended by this Act, not later than March 1, 2006.

1 SECTION 7. (a) Except as provided by Subsection (b) of this
2 section, this Act takes effect September 1, 2005.

3 (b) Section 2 of this Act takes effect September 1, 2006.

President of the Senate

Speaker of the House

I certify that H.B. No. 2510 was passed by the House on April 21, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2510 on May 26, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2510 on May 29, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 2510

I certify that H.B. No. 2510 was passed by the Senate, with amendments, on May 23, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2510 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor