

Bryan W. Shaw, Ph.D, *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

January 15, 2015

The Honorable Bruce Wood
County Judge
Kaufman County
Kaufman County Courthouse
100 West Mulberry
Kaufman, Texas 75142

Re: On-Site Sewage Facilities Order for Kaufman County

Dear Judge Wood:

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-235, at 512-239-4777.

Sincerely,

A handwritten signature in black ink, appearing to read "June Ella Martinez".

June Ella Martinez, Water Team Leader
Program Support Section, MC-174
Office of Compliance and Enforcement

Enclosures: Certified Order
Recipient Mail List

APPLICATION BY KAUFMAN COUNTY
TO INITIATE THEIR ON-SITE SEWAGE FACILITY ORDER

The Honorable Bruce Wood
County Judge
Kaufman County
Kaufman County Courthouse
100 West Mulberry
Kaufman, Texas 75142

Randy Richards
Fire Marshal, Kaufman County
3003 S. Washington St.
Kaufman, TX 75142

TCEQ - Region 4
Attn: Daniel Hernandez

James McCaine
OSSF Program
Field Operations Support, MC- 235

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



Bridget C. Bohac JAN 15 2015

Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality

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

§ BEFORE THE EXECUTIVE
§ DIRECTOR OF THE TEXAS
§ COMMISSION ON
§ ENVIRONMENTAL
QUALITY

On January 12, 2015, the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Kaufman for an Order pursuant to §366.031, Texas Health and Safety Code (THSC), 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 County of Kaufman has satisfied the requirements of §366.031, THSC. The Commission finds that the County of Kaufman Order should be approved.

FINDINGS OF FACT

1. The County of Kaufman drafted a proposed Order which regulates on-site sewage facilities.
2. On November 6, 2014, the County of Kaufman caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Kaufman's area of jurisdiction, of a public meeting to be held on November 10, 2014.
3. The County of Kaufman held a public meeting to discuss its proposed Order on November 10, 2014.
4. The County of Kaufman Order regulating on-site sewage facilities was adopted on November 10, 2014.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the County of Kaufman Order was submitted to the Commission.
7. The Order is at least equivalent to the standards of the Commission.

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 Kaufman'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 Kaufman agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Kaufman'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 Kaufman is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Kaufman 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 Kaufman's adopted Order, marked as Exhibit "A," to the County of Kaufman and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: January 12, 2015



Executive Director
Texas Commission on Environmental Quality

ORDER ADOPTING RULES OF KAUTMAN 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 in Texas Health and Safety Code (THSC) Chapter 966, 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, the Commission on Environmental Quality (CEQ) has issued an Order of Approval for the use of on-site sewage facilities in Kautman County, Texas, providing the installation or use of on-site sewage facilities in the County of Kautman, Texas; and

WHEREAS, the Commissioners Court of Kautman County, Texas finds that the use of on-site sewage facilities in Kautman County, Texas is causing or may cause

EXHIBIT A

WHEREAS, the Commissioners Court of Kautman County, Texas has considered the matter and deems it appropriate to enact an Order adopting the following on-site sewage facilities to abate or prevent pollution, or injury to public health in Kautman County, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF KAUTMAN COUNTY, TEXAS:

SECTION 1. THAT the matters and facts recited in the preamble herein are true and correct.

SECTION 2. THAT the use of on-site sewage facilities in Kautman County, Texas is causing or may cause pollution or is injuring or may injure the public health.

SECTION 3. THAT an Order for Kautman County, Texas be adopted entitled "On-Site Sewage Facilities", which shall read as follows:

AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

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

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

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

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

SECTION 3. THAT an Order for Kaufman 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 Kaufman County, Texas.

SECTION 5. ON-SITE SEWAGE FACILITY REGULATION AND ENFORCEMENT

The County of Kaufman, 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.

- (A) The Rules shall apply to all the areas lying within Kaufman County, Texas, except for areas regulated under an existing Order, Ordinance or Resolution, and the areas within incorporated cities.
- (B) These Rules shall apply to those incorporated cities or towns that have executed intergovernmental contracts with Kaufman County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

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

- (A) Persons in Kaufman County, regardless of the amount of land owned, on which a private on-site sewage facility is to be installed must obtain a permit from the licensing authority prior to commencing the construction or installation of the on-site sewage facility. Persons will be required a soil evaluation test. All private on-site sewage facilities will be constructed or installed in accordance with 30 TAC 285 Rules.
- (B) The construction or installation of an on-site sewage facility on a lot or tract that is smaller than one (1) acre shall not be allowed. However, on such smaller lots or tracts, recorded with the County in its official plat recorded prior to January 1, 1988, an on-site sewage facility may be permitted to be constructed and licensed to operate on a lot smaller than one (1) acre if it is demonstrated by a thorough investigation of a Registered Professional Engineer or Registered Professional Sanitarian (either having demonstrated expertise in on-site sewage facility design) that an on-site sewage facility on one of these lots can be operated without causing a threat or harm to an existing or proposed water supply system or to the public health, or creating the threat of pollution or nuisance conditions.
- (C) A variance may be granted for individual tracts of land smaller than one (1) acre recorded after January 1, 1988, if they are not part of a subdivision. The request for the variance must be thoroughly reviewed by the County Sanitarian and the Commissioners Court and/or the appropriate County Commissioner in which precinct the property is located. The on-site sewage facility for a lot less than one (1) acre must be designed by a Registered Professional Engineer or Registered Professional Sanitarian that has expertise in on-site sewage facility design. It must be demonstrated that the system can be operated without causing a threat or harm to existing or proposed water supply system or to the public health, or creating the threat of pollution or nuisance conditions. All State and County construction Standards must be followed. A variance will not be granted for a subdivision that has been platted and recorded since March 23, 1990. No less than one (1) acre per residence for an on-site sewage facility will be allowed in any subdivision planned after March 23, 1990. Under no circumstances will a variance be granted if the total land is less than 1/2 acre per residence.
- (D) Upon construction of an on-site sewage facility, if the on-site sewage facility fails the inspection, a re-inspection fee set by the Authorized Agent shall be assessed to the installer of record each time a re-inspection is required.
- (E) All on-site sewage facility designs must be performed by a Registered Sanitarian or a Registered Professional Engineer that have expertise in on-site sewage facility design. Systems subject to required maintenance and reporting must register annually. Registration is subject to a fee, which is set by the Authorized Agent. The fee is due upon submission of Maintenance Contract renewals. The fee for a two (2) year Maintenance Contract renewal will be twice that of an annual Maintenance Contract renewal.

- (F) Any on-site sewage disposal system using aerobic treatment shall have a maintenance contract on that system.
- (G) All contracted maintenance of an on-site sewage disposal system using aerobic treatment shall be conducted by a certified maintenance provider. There shall be no homeowner or property owner maintenance of an on-site sewage disposal system using aerobic treatment unless the property owner or homeowner is a certified maintenance provider for that aerobic treatment unit.
- (H) The Authorized Agent may periodically inspect the on-site sewage disposal system using aerobic treatment for a single-family residence that is maintained directly by the owner of the system regardless of when the Authorized Agent conducted the last inspection.
- (I) No construction or installation of any type of on-site sewage facility by a homeowner or property owner. Installer must hold a current and proper level of license to install any On-Site Sewage Facility within the unincorporated areas of Kaufman County, Texas.

SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC § 285.2(17) of Kaufman 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 Kaufman County, Texas. A fee of \$10 will also be collected for each on-site sewage facility permit to be paid to the credit of the TCEQ Water Resources Management Account as required by the THSC, Chapter 367.

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 Kaufman County, Texas.

SECTION 14. PENALTIES /ENFORCEMENT

The County of Kaufman, 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, 343 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 Kaufman 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 Kaufman 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 10th DAY OF November,
2014.

APPROVED:

(SEAL)

Bruce Wood
County Judge

ATTEST:

Laura Hughes
County Clerk
By Deputy Clerk Morgan Hunter