

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF THE APPLICATION	§	BEFORE THE EXECUTIVE
OF THE COUNTY OF BRAZORIA	§	DIRECTOR OF THE TEXAS
FOR A TEXAS HEALTH AND SAFETY	§	COMMISSION ON
CODE §366.031 ORDER	§	ENVIRONMENTAL
		QUALITY

On **JUN 30 2010** the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Brazoria 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 Brazoria has satisfied the requirements of §366.031, THSC. The Commission finds that the County of Brazoria Order should be approved.

FINDINGS OF FACT

1. The County of Brazoria drafted a proposed Order which regulates on-site sewage facilities.
2. On May 19, 2010, the County of Brazoria caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Brazoria area of jurisdiction, of a public meeting to be held on May 25, 2010.
3. The County of Brazoria held a public meeting to discuss its proposed Order on May 25, 2010.
4. The County of Brazoria Order regulating on-site sewage facilities was adopted on June 10, 2010.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the County of Brazoria 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 Brazoria'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 Brazoria agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Brazoria'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 Brazoria is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Brazoria 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 Brazoria's adopted Order, marked as Exhibit "A," to the County of Brazoria and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: **JUN 30 2010**



Executive Director
Texas Commission on Environmental Quality

**RULES OF BRAZORIA COUNTY, TEXAS
FOR ON-SITE SEWAGE FACILITIES**



**ENVIRONMENTAL HEALTH
451 N. VELASCO, SUITE 270
ANGLETON, TEXAS 77515
(979) 864-1600
(281) 756-1600**

COUNTY OF BRAZORIA §

STATE OF TEXAS §

AFFIDAVIT

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

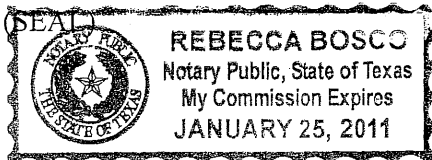
My name is Cindy Atkins, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of the County Clerks Office for the County of Brazoria, Texas. Attached hereto are eight (8) pages of records known as (Order) OSSF Order. The records are kept by me as County Clerk, County of Brazoria, 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.

Cindy Atkins

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Cindy Atkins, 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 10th day of June, 2010.



Rebecca Bosco
Notary/Public, State of Texas
My commission expires:

ORDER ADOPTING RULES OF BRAZORIA 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 ("OSSF"); and

WHEREAS, due notice was given of a public meeting to determine whether the Commissioners Court of Brazoria County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Brazoria, Texas; and

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

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

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

SECTION 3. THAT an Order for Brazoria 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 Brazoria County.

SECTION 5. ENFORCEMENT OF CODES AND RULES.

The County of Brazoria, 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 ("TH&SC") and Chapters 7 and 37 of the Texas Water Code ("TWC"), and associated rules referenced in Section 8 of this Order. It is further understood that, by this Order, the County of Brazoria, Texas satisfies the requirement of TH&SC §366.032(a)(3).

SECTION 6. AREA OF JURISDICTION.

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

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any person who has an ownership interest in an OSSF or who participates in any activity relating to the development of planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, inspection, or investigation of an OSSF within the jurisdictional area of Brazoria 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, subchapters A and G, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Brazoria 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, Subchapters A and G, and 285 and all future

amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

SECTION 10. MORE STRINGENT STANDARDS.

The County of Brazoria, 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 Brazoria County, Texas.

- (a) Definitions: Unless specifically defined below, words or phrases used in these Rules are defined in Section 366 of the Texas Health and Safety Code, Title 30, Texas Administrative Code, Sections 30 and 285 or shall be interpreted to give them the meaning they have in common usage and to give these Rules its most reasonable application.
 - (1) *Graywater System* – a system designed to collect and utilize or dispose of wastewater from showers, bathtubs; hand washing lavatories; sinks that are not used for disposal of hazardous or toxic ingredients; or sinks that are not used for food preparation or disposal; and clothes washing machines.
 - (2) *Permitting Authority* – the Authorized Agent, Brazoria County.

- (b) Registration: A person must be licensed or registered by TCEQ, as well as, registered with the Brazoria County Environmental Health Department, before engaging in any OSSF related activity in the area of jurisdiction of this Order, as an installer or maintenance provider. The County Registration application shall be submitted in person, on a standard form with attached evidence of current license or registration. No fee shall apply to the registration. It is the responsibility of the Registrant to maintain required current registration information. Non-compliance of registration requirements shall result in denial of all permit applications. An installer may not install any OSSFs in Brazoria County's area of jurisdiction if their County Registration has been suspended or revoked. Maintenance providers may not enter into any new OSSF contracts in Brazoria County's area of jurisdiction if their County Registration has been suspended or revoked.

Homeowners are not required to register with the County.

Installers and maintenance providers who are currently performing OSSF-related activity within Brazoria County's area of jurisdiction will have 90 days from the effective date of this Order to register with Brazoria County Environmental Health Department.

- (1) A person (Registrant), maintaining a County Registration is subject to additional disciplinary action by the County of Brazoria, Texas, if such person is convicted of a Class "C" misdemeanor violation relating to TH&SC 366, TWC Chapter 7, and/or 30 TAC, Chapters 30 or 285.

- (2) Enforcement action against a Registrant shall be initiated and pursued for any and all violations of this Order by the issuance of a notice of violation or a notice of enforcement or a Class "C" misdemeanor citation. Upon conviction of a Class "C" misdemeanor citation, the Registrant's penalty for each separate occurring offense is as follows:
- (A) First Class "C" Misdemeanor Conviction: Provide to the Brazoria County Environmental Health Department documented proof of violation resolution and a \$125.00 fee payment within 72 business hours of the violation resolution. This fee is in addition to any additional fee which is assessed to Registrant from formal judicial prosecution. An installer will be prohibited from obtaining permits until the fee is paid regardless of appeals of the Class "C" Misdemeanor Conviction. A maintenance provider will be prohibited from entering new contracts until the fee is paid regardless of appeals of the Class "C" Misdemeanor Conviction.
- (B) Second Class "C" Misdemeanor Conviction: Provide to the Brazoria County Environmental Health Department documented proof of violation resolution and a \$250.00 fee payment within 72 business hours of the violation resolution. This fee is in addition to any additional fee which is assessed to Registrant from formal judicial prosecution. Failure to pay fee within allotted period will result in denial of new permits until fee paid. Further, the Registrant's County Registration shall be suspended three-months from the conviction. An installer will be prohibited from obtaining permits and installing OSSFs from the date of the conviction regardless of appeals of the Class "C" Misdemeanor Conviction. A maintenance provider will be prohibited from entering new contracts from the date of the conviction regardless of appeals of the Class "C" Misdemeanor Conviction.
- (C) Third Class "C" Misdemeanor Conviction: Provide to the Brazoria County Environmental Health Department documented proof of violation resolution and a \$500.00 fee payment within 72 business hours of the violation resolution. This fee is in addition to any additional fee which is assessed to Registrant from formal judicial prosecution. Failure to pay fee within allotted period will result in denial of new permits until fee paid. Further, the Registrant's County Registration shall be suspended six-months from the date of conviction. An installer will be prohibited from obtaining permits and installing OSSFs from the date of the conviction regardless of appeals of the Class "C" Misdemeanor Conviction. A maintenance provider

will be prohibited from entering new contracts from the date of the conviction regardless of appeals of the Class "C" Misdemeanor Conviction.

- (D) Fourth Class "C" Misdemeanor Conviction: Provide to the County documented proof of violation resolution and a \$750.00 fee payment within 72 business hours of the violation resolution. This fee is in addition to any additional fee which is assessed to Registrant from formal judicial prosecution. Failure to pay fee within allotted period will result in denial of new permits until fee paid. The Registrant's County Registration shall be suspended for twelve-months from the date of conviction. An installer will be prohibited from obtaining permits and installing OSSFs from the date of the conviction regardless of appeals of the Class "C" Misdemeanor Conviction. A maintenance provider will be prohibited from entering new contracts from the date of the conviction regardless of appeals of the Class "C" Misdemeanor Conviction.

Each Class "C" Misdemeanor Conviction will be maintained for a 36-month period in order to determine the level of penalty applied.

All judicial disciplinary documentation of Registrant's violation(s) shall be forwarded to TCEQ Operator Licensing Section.

Failure to comply with provisions of this subchapter will result in immediate revocation of County Registration.

Registrants aggrieved by an action or decision of this provision may appeal such action or decision to the Brazoria County Commissioners Court within 30 days of notice of disciplinary action. Notice of Appeal must be delivered to the Brazoria County Judge. After Notice of Appeal is properly served, a hearing will be held within 30 days.

- (c) Excavations may be partially backfilled to the bottom of the lowest outlet of the tanks with appropriate fill of Class 3 or better. All ends and other critical items shall not be covered until the Designated Representative has determined, as evidenced by the issuance of a Notice of Approval, that the installation, construction, extension or repair complies with these Rules, Standards, or other special conditions specified in the permit.
- (d) When sprinklers are used as the application method, the sprinkler heads shall be stabilized to ensure the uniform distribution of the treated effluent.
- (e) 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 OSSF or other approved method of wastewater treatment and/or disposal.

- (f) Before the Permitting Authority issues an authorization to construct/install an OSSF, the owner of an OSSF requiring a maintenance contract must record an affidavit in the Brazoria County Deed Records pursuant to 30 TAC 285.3(b)(3). An example of the affidavit is located in 30 TAC 285.90(2)

The owner of the OSSF or the owner's agent must provide to the Designated Representative a filed-copy affirming the recording of the above Affidavit in the Deed Records.

- (g) On-Site Sewage Facilities Maintenance and Management Practices: Maintenance contract requirements for all OSSFs are identified in 30 TAC 285.91(12). Further, maintenance and management practices shall comply with 30 TAC 285.7 and 285.39.

No homeowner/property owner shall be allowed to perform any maintenance on an on-site sewage disposal system using aerobic treatment unless the homeowner/property owner

- (1) Provides documentation of completing and passing a basic OSSF maintenance course, approved by TCEQ for aerobic treatment units and the property to be maintained is owned by the trained homeowner, or
- (2) Holds a valid wastewater Class D license or higher wastewater treatment license and is certified by the manufacturer for the brand of the OSSF that they own.

An exception to the prohibition on homeowner/property owner maintenance includes:

- (1) The homeowner/property owners that were approved to conduct maintenance upon completion of training through a licensed installer between September 1, 2005 and August 30, 2007 under the training requirements included in HB 2510[79(R)]; and
- (2) The homeowner/property owner is currently conducting maintenance on their own aerobic treatment system that was in place prior to August 30, 2007.

This exception will no longer apply if:

- (1) The aerobic treatment system is replaced after August 30, 2007; or
- (2) The homeowner/property owner no longer owns the property on which the aerobic treatment system is installed.

- (h) The owner of a malfunctioning OSSF shall initiate repair no later than the 10th day after the date which the owner is notified by the Designated Representative.

- (i) All construction of any type of OSSF shall be by a State licensed and County Registered installer. There shall be no property owner installations unless the property owner is also a State licensed and County Registered Installer.

SECTION 11. DUTIES AND POWERS.

Brazoria County Environmental Health Department of Brazoria County, Texas is herewith declared the Designated Representative for the administration and enforcement of the Rules and this Order within its jurisdictional area. The appointed individual(s) must be certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities as Designated Representatives of Brazoria County, Texas.

SECTION 12. COLLECTION OF FEES.

All fees collected for processing permits, late fees, penalty fees, permit renewal fees, licensee registrations, administration of maintenance contracts and reports, inspections and/or re-inspections shall be made payable to Brazoria 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.

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 Brazoria 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, Subchapters A and G, and 285.

A person who violates this Order commits an offense. An offense under this Article is a Class "C" Misdemeanor and is punishable by fine.

SECTION 15. SEVERABILITY.

It is hereby declared to be the intention of the Commissioners Court of Brazoria 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. RELINQUISHMENT OF ORDER

If the Commissioners Court of Brazoria 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 Texas Commission on Environmental Quality.

AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 10th DAY OF June, 2010.

APPROVED:

(SEAL)



E. J. King
Brazoria County Judge

ATTEST:



Brazoria County Clerk