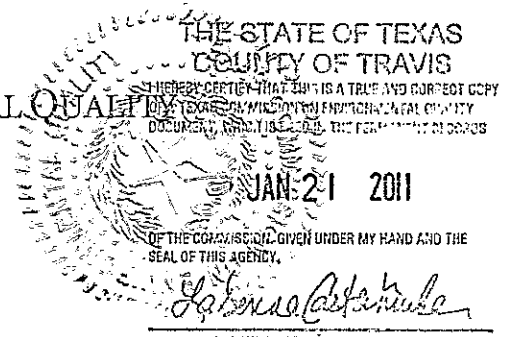


TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

§  
§  
§  
§

BEFORE THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY

On January 14, 2011 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Wharton 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 Wharton has satisfied the requirements of §366.031, THSC. The Commission finds that the County of Wharton Order should be approved.

FINDINGS OF FACT

1. The County of Wharton drafted a proposed Order which regulates on-site sewage facilities.
2. On December 1, 2010, the County of Wharton caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Wharton area of jurisdiction, of a public meeting to be held on December 13, 2010.
3. The County of Wharton held a public meeting to discuss its proposed Order on December 13, 2010.
4. The County of Wharton Order regulating on-site sewage facilities was adopted on December 13, 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 Wharton Order was submitted to the Commission.
7. The Order is at least equivalent to the standards of the Commission.

CONCLUSIONS OF LAW

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 Wharton'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 Wharton agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Wharton'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 Wharton is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Wharton 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 Wharton's adopted Order, marked as Exhibit "A," to the County of Wharton 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 14, 2011



Executive Director  
Texas Commission on Environmental Quality

EXHIBIT A

COUNTY OF WHARTON

§

STATE OF TEXAS

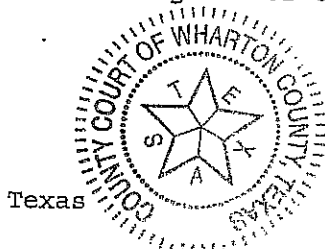
§

AFFIDAVIT

Before me, the undersigned authority, personally appeared Sandra K. Sanders, being by me duly sworn, deposed as follows:

My name is Sandra K. Sanders, 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 Clerk's Office for the County of Wharton, Texas. Attached hereto are five (5) pages of records known as Order Adopting Rules of Wharton County, Texas for On-Site Sewage Facilities. The records are kept by me as County Clerk, County of Wharton, 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.



Sandra K. Sanders  
County Clerk, Wharton County,

BEFORE ME, the undersigned authority, a Deputy County Clerk in and for said County, Texas, on this day personally appeared Sandra K. Sanders, 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 21st day of December, 2010.

Tracy K. Hinkle  
Deputy County Clerk  
Wharton County, Texas

ORDER ADOPTING RULES OF WHARTON 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; and

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

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

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

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

SECTION 3. THAT an Order for Wharton 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 Wharton County.

## SECTION 5. ON-SITE SEWAGE FACILITY REGULATION AND ENFORCEMENT

The County of Wharton, 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 (H&SC) 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 area lying in Wharton County, Texas, except for the area regulated under an existing Rule and the areas within incorporated cities.

(B) These Rules shall apply to those incorporated cities or towns that have executed intergovernmental contracts with Wharton County, Texas.

## SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Wharton 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 Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Wharton 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. AMENDMENTS.

The County of Wharton, Texas wishing to adopt more stringent Rules for its On-Site Sewage Facility Order understands that the more stringent local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Wharton County, Texas:

- (A) Permitting shall be required for all on-site sewage facility installations, regardless of acreage.
- (B) All construction of any type of on-site sewage facility shall be done or supervised and controlled by a Licensed Installer. The Licensed Installer will be the installer of record. There shall be no property owner/homeowner installations unless the property owner/homeowner is also a Licensed Installer
- (C) All on-site sewage facilities permitted for a "Food Establishment" that utilizes secondary treatment of the effluent shall be required to be checked and maintained monthly by a contracted service provider. A chlorine residual or fecal coliform test shall be made at each site visit where disinfection is required. All other testing and reporting as required shall remain. When a visible and audible alarm is required, an additional visual and audible alarm shall be located or installed inside the facility, located in an area conspicuous to view by employees or management.  
(for the purpose of this Order, a "Food Establishment" is an operation that stores, prepares, packages, serves, or otherwise provides food for human consumption, such as: a food

establishment; retail food store; satellite or catered feeding location; catering operations.)

(D) The backfill material shall be on the site (in sufficient quantities to complete the job) at the time of inspection.

(E) All tanks/tank compartments must be filled with water at the time of inspection.

(F) 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 on-site sewage facility or other approved method of wastewater treatment and disposal.

(G) In addition to 30 TAC Chapter 285 requirements, surface application systems shall be required to spray during the nighttime hours (after 10:00 p.m. and before 6:00 a.m.), preferably just before sunrise.

(H) Property owner/homeowner maintenance of any on-site sewage facility (OSSF) shall not be allowed unless the property owner/homeowner:

(1) provides documentation of completing and passing a basic OSSF maintenance course acceptable to Wharton County for aerobic treatment units, or holds a TCEQ Class D or higher Wastewater Treatment license. (acceptable courses will be approved by Wharton County Commissioners Court)

(2) An owner/homeowner may not maintain an OSSF for commercial, speculative residential or multifamily property.

(3) Owner/homeowners will be required to notify Wharton County declaring their intent to perform their own maintenance and provide Wharton County with inspection reports on four month intervals.

(4) Any Violation of the Rules and Orders adopted herein may result in the homeowner being required to obtain a maintenance contract with a licensed maintenance provider as provided in Title 30 Texas Administrative Code § 285.70.

(5) Homeowners will be provided with forms and reporting requirements by the Designated Representative of Wharton County.

(I) A person must be licensed by TCEQ, as well as registered with Wharton County Permit & Inspection Department before engaging in any OSSF related activity in the area of jurisdiction of this Order, as an installer or maintenance provider. 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 OSSF's in Wharton 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 Wharton County's area of jurisdiction if their County Registration has been suspended or revoked.

(J) Maintenance providers who fail to perform maintenance testing at the required intervals, or who fail to submit a report on time, two (2) or more times during any twelve (12) month period may have their registration suspended for up to one (1) year in addition to any other penalties that may apply. No new or renewal maintenance contracts will be accepted from a maintenance provider during the time their registration is suspended. Owner/homeowners are not required to register with the County.

(K) Low Pressure Dosing systems will be required to use the following formula for sizing: number of bedrooms + 1. For example, a 2 bedroom home will be required to be sized as a 3 bedroom home.

(L) Pumped Effluent systems will be required to have 12" of rock in trenches.

## SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC §285.2 (17)) of Wharton County, Texas, must be certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities.

## SECTION 12. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to Wharton 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 Texas Health & Safety Code, 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 Wharton County, Texas.

## SECTION 14. ENFORCEMENT PLAN.

The County of Wharton, 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 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 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 Wharton 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 Wharton 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) §285.14 after the date that delegation has been relinquished.



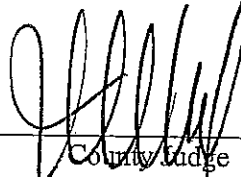
SECTION 17. EFFECTIVE DATE.

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 13<sup>th</sup> DATE OF December, 2010.

APPROVED:

  
\_\_\_\_\_  
County Judge

ATTEST:

  
\_\_\_\_\_  
County Clerk

(SEAL)

