

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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| IN THE MATTER OF THE APPLICATION | § | BEFORE THE EXECUTIVE DIRECTOR |
| OF THE COUNTY OF JOHNSON | § | OF THE TEXAS COMMISSION ON |
| FOR A TEXAS HEALTH AND SAFETY CODE | § | ENVIRONMENTAL QUALITY (TCEQ) |
| §366.031 ORDER | § | |

On _____, 2018 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Johnson 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 Johnson has met the requirements of §366.031, Texas Health and Safety Code (THSC). The Commission finds that the County of Johnson Order should be approved.

FINDINGS OF FACT

1. The County of Johnson drafted a proposed Order which regulates on-site sewage facilities.
2. On _____, 2018 the County of Johnson caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Johnson area of jurisdiction, of a public meeting to be held on _____, 2018.
3. The County of Johnson held a public meeting to discuss its proposed Order on _____ 2018.
4. The County of Johnson Order regulating on-site sewage facilities was adopted on _____ 2018.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality (TCEQ).
6. A certified copy of the County of Johnson 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, Chapter 5 and TEXAS HEALTH & SAFETY CODE, Chapter 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 Johnson's intent to adopt a new County Order was properly provided. TEXAS HEALTH & SAFETY CODE § 366.031 and TEXAS ADMINISTRATIVE CODE §285.10.
4. County of Johnson agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. County of Johnson'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 Johnson is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. The Commission must approve any amendments to the County of Johnson Order.
3. The Office of Chief Clerk of the Commission is directed to forward a copy of this Order and the County of Johnson's adopted Order, marked as Exhibit "A," to the County of Johnson and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: _____

Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

COUNTY OF JOHNSON §
STATE OF TEXAS §

AFFIDAVIT

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

My name is BECKY IVEY, and 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 Johnson County, Texas. Attached hereto are _____ () pages of records known as Order _____. The records are kept by me as County Clerk, County of Johnson 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.

BECKY IVEY
COUNTY CLERK
COUNTY OF JOHNSON

BEFORE ME, the undersigned authority, a Notary Public in Texas, on this day personally appeared Becky Ivey, known to me to be the person whose name is subscribed to the preceding 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 THE _____ DAY OF _____, 2018.

SEAL

Notary Public
State of Texas

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

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

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

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

SECTION 3.

That an Order for Johnson 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 Johnson County.

SECTION 5. ON-SITE SEWAGE FACILITY REGULATION AND ENFORCEMENT

The County of Johnson, 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.

These Rules shall apply to all the areas lying within Johnson County, Texas, except for the areas regulated under an existing Order, Ordinance or Resolution.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Johnson County, Texas shall comply with the Rules adopted in Section 8 of this Order.

SECTION 8. ON-SITE SEWAGE FACILITY RULES ADOPTED.

The Rules, 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 Johnson 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 Johnson, 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 TCEQ requirement. Listed below are the more stringent Rules adopted by Johnson County, Texas:

- (A) Johnson County to provide greater public health and safety protection shall require an application, permit, and inspection for construction, alteration, extension or repair to a residential or commercial on-site sewage facility, regardless of the size of the tract of land.
- (B) All new lots for single family dwellings shall be one acre minimum when serviced by a public water supply. Environmental protection must be demonstrated in flood hazard areas.
- (C) All new lots for single family dwellings shall be two acre minimum when serviced by a private water well. Environmental protection must be demonstrated in flood hazard areas.
- (D) All construction, alteration, extension or repair of any on-site sewage facility shall be by a licensed Installer. There shall be no property owner/homeowner installations unless the property owner/homeowner is also a licensed Installer.

- (E) Site evaluations shall only be performed by a registered professional engineer or registered professional sanitarian holding a valid TCEQ site evaluator license.
- (F) Planning materials for all OSSFs in Johnson County shall be designed by a professional sanitarian or a professional engineer and submitted to the Johnson County Public Works Department for its review and approval.
- (G) All habitable structures, upon their completion, must be connected to either a central wastewater treatment sanitary sewer system or an approved sewage disposal system.
- (H) Any building/structure other than single-family dwelling using an on-site sewage facility and receiving secondary treatment of the effluent with water usage of no more than 500 G.P.D. and/or a B.O.D. level of no more than 65 shall be required to have a maintenance contract performed by a TCEQ licensed maintenance provider. Testing and reporting frequency shall be once every four months. One BOD and TSS Grab sample will be required once each year. Test results of each testing shall be sent to the Johnson County Public Works Department within 14 days after the test is performed. Annual water bill shall be provided upon request. The OSSF system does not require any additional treatment components.
- (I) Any building/structure other than single-family dwelling using an on-site sewage facility and receiving secondary treatment of the effluent with water usage of 501 G.P.D. or more and/or a B.O.D. level of 66 or more shall be checked and maintained monthly by a contracted TCEQ licensed maintenance provider. A chlorine residual or fecal coliform test shall be made at each site visit where disinfection is required. One BOD and TSS Grab Sample test shall be conducted per year. The test results shall be sent to the Public Works Department within 14 days after the test is performed.
- (J) In order to provide greater public health and safety protection, a private sewage facility may be installed for commercial buildings under the following guidelines.
 1. One commercial building with a maximum square footage of 20,000 square feet will be allowed on one acre, or two commercial buildings with a maximum square footage of 10,000 square feet for each building will be allowed on one acre. More than two commercial buildings on one acre would require a variance from the commissioners court.
 2. The estimated daily wastewater usage rate of the combined commercial buildings [as defined by 30 TAC §285.91(3) Table III Wastewater Usage rate] shall not exceed the operating capacity of the private sewage facility.
 3. The one acre tract of property may not be divided or sold off in parts per 30 TAC §285.4 (2) (D) and §285.6(a).
 4. A maintenance contract will be required for all private sewage facilities for commercial buildings.
 5. 30 TAC §285.4 (c) (1) (A) through (I) will apply to manufactured housing communities, multi-unit residential developments, business parks and

commercial buildings.

- (K) Each new private sewage facility shall be inspected and approved by the Johnson County Public Works Department prior to the final covering of the facility.
- (L) The applicant or licensed installer must be present at the time of the inspection.

SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC §285.2(17)) of Johnson 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 Johnson County, Texas.

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 Johnson County, Texas.

SECTION 14. ENFORCEMENT PLAN

The County of Johnson 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 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 CLAUSE

It is hereby declared to be the intention of the Commissioners Court of Johnson 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 Commissioners Court would have enacted the same without incorporation in this Order of such unconstitutional phrases, clauses, sentences, paragraphs, or sections.

SECTION 16. RELINQUISHMENT OF ORDER

If the Commissioners Court of Johnson 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.

PASSED, APPROVED, AND ADOPTED IN OPEN COURT BY THE COMMISSIONERS COURT OF JOHNSON COUNTY, TEXAS ON THIS THE _____ DAY OF _____, 2018.

Roger Harmon, County Judge

Rick Bailey, Commissioner Precinct No. 1

Kenny Howell Commissioner Precinct No. 2

Jerry Stringer, Commissioner Precinct No. 3

Larry Woolley, Commissioner Precinct No. 4

ATTEST:

Becky Ivey, County Clerk