

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

Issued this date: April 30, 2014



Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

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

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

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

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

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

SECTION 5. ON-SITE SEWAGE FACILITY REGULATION AND ENFORCEMENT

The County of Hood, 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 and does understand that more stringent local Rules as established in Section 10 of this Order shall take precedence over this Section where a conflict of these rules may arise.

SECTION 6. AREA OF JURISDICTION.

The Rules shall apply to all the areas lying within Hood County, Texas, except for 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 Hood County, Texas must comply with the Rules adopted in Section 8 and Section 10 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 Hood 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 Hood, 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 Hood County, Texas:

- (A) Site evaluation. A site evaluation to be performed in Hood County, Texas shall be conducted by a Registered Professional Sanitarian or Licensed Professional Engineer.
- (B) Professional Design. An on-site sewage facility to be located in or adjoining a Federal Emergency Management Agency delineated special flood hazard area Zone A or AE shall have a professional design conducted by a Registered Professional Sanitarian or Licensed Professional Engineer.
- (C) On-going maintenance for an on-site sewage facility. A property owner shall contract with a licensed maintenance provider or hold a maintenance provider license to perform on-going maintenance of an on-site sewage facility utilizing aerobic treatment on property including but not limited to single family residences. The licensed maintenance provider must meet the requirements for a licensed maintenance provider as stated in section 285.64 of Title 30 TAC Chapter 285 and shall test and report according to 285.7 (e)(1)(2)(3).
- (D) Installation of an on-site sewage facility. Owners of property and subdivisions of single family dwellings, manufactured housing communities, multiunit residential development, business parks or other similar uses including individual lots or tracts not located within a subdivision that are created after the effective date of this Order and served by on-site sewage facilities, shall not install an on-site sewage facility within a FEMA delineated floodplain or within 200 feet of the normal pool elevation of Lake Granbury and centerline of its tributaries, and within 200 feet of the centerline of the Brazos River and centerline of its tributaries, whichever is greater.
- (E) Holding tanks. A property owner shall have an on-going scheduled pumping contract with a waste transporter holding a current registration with the Texas Commission on Environmental Quality for the continued use of an existing holding tank following documentation by the permitting authority that the existing holding tank(s) has created a nuisance condition as defined by Health and Safety Code Chapter 366.002, (6).
When a nuisance condition has been documented for an existing holding tank(s) permitted prior to January 1, 1997, or an existing holding tank(s) that has no permit, Hood County shall make a determination of the components of the existing holding tank(s) for conformance to the current on-site sewage facility rules compilation Title 30, TAC Chapter 285. The holding tank(s) shall be uncovered and access to the tank(s) shall be provided by the owner to Hood County for determination of conformance. The owner of existing holding tanks found to be non-conforming shall discontinue use of the holding tank(s) until

repairs or installation of new holding tanks meeting the standards of Title 30, TAC Chapter 285 are achieved.

- (F) Permit to construct or operate. Regardless of the lot or tract size, a permit is required prior to construction or installation of an on-site sewage facility. A permit to construct or operate an on-site sewage facility may not be issued for a structure or development, including but not limited to single family residences, when the on-site sewage facility would serve new construction or development located within a FEMA identified special flood hazard area, unless the applicant can demonstrate compliance of the structure or development with all applicable flood damage prevention regulations. The burden is on the applicant to demonstrate compliance or that such regulations are not applicable.

SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC § 285.2(17)) of Hood 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 Hood 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 Hood County, Texas. Such appeals shall be requested in writing and submitted to the Office of County Judge.

SECTION 14. ENFORCEMENT PLAN

The County of Hood, 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 as well as the more stringent local Rules as established in Section 10 of this Order. Where there appears to be a conflict in the rules, the more stringent rules shall take precedence.

SECTION 15. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Hood 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 Hood 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 25th DAY OF February,
2013 2014

APPROVED:

(SEAL)

Arnold C. Cochran
County Judge

ATTEST:

Mary Burnett
County Clerk

