# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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| IN THE MATTER OF THE APPLICATION OF THE COUNTY OF HOOD FOR A TEXAS HEALTH AND SAFETY CODE §366.031 ORDER | §<br>§<br>§<br>§ | BEFORE THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY |

On June 16, 2011 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Hood 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 Hood has satisfied the requirements of §366.031, THSC. The Commission finds that the County of Hood Order should be approved.

## FINDINGS OF FACT

1. The County of Hood drafted a proposed Order which regulates on-site sewage facilities.

2. On April 16, 2011, the County of Hood caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Hood area of jurisdiction, of a public meeting to be held on April 26, 2011.

3. The County of Hood held a public meeting to discuss its proposed Order on April 26, 2011.

4. The County of Hood Order regulating on-site sewage facilities was adopted on April 26, 2011.

5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.

6. A certified copy of the County of Hood 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 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: June 16, 2011

Mark Vickery

Executive Director
Texas Commission on Environmental Quality

# EXHIBIT A

COUNTY OF HOOD §

STATE OF TEXAS §

AFFIDAVIT

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

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

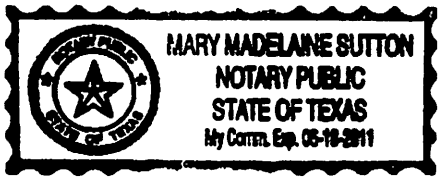
I am the custodian of the records of the County Clerk's Office for the County of Hood, Texas. Attached hereto are (5) pages of records known as An Order Entitled On-Site Sewage Facilities. The records are kept by me as County Clerk, County of Hood, in the regular course of business with knowledge of 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.

Mary Burnett by Marlina Stuckey

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Marlina Stuckey, 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 26th day of April, 2011.

(SEAL)




Mary Madelaine Sutton
Notary Public, State of Texas
My commission expires:

# 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.

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 does adopt and willfully 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 shall take precedence over this Section where a conflict of these rules may arise.

SECTION 6. AREA OF JURISDICTION.

These Rules shall apply to all the areas lying within Hood 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 Hood 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 except that the more stringent rules in Section 10 shall take precedence over this Section where a conflict of these rules may arise. 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 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 Hood County, Texas:

(A) Site and Soil evaluations performed in Hood County, Texas shall be conducted by a Professional Sanitarian or Professional Engineer.

(B) On-site sewage facilities to be located in or adjoining a Federal Emergency Management Agency delineated special flood hazard area shall have a professional design conducted by a Professional Sanitarian or Professional Engineer.

(C) On-going maintenance conducted for all on-site sewage facilities utilizing an aerobic treatment unit, including but not limited to single family residences, shall be conducted by a licensed maintenance provider. 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.

(D) A permit for the installation of an On-site Sewage Facility shall be obtained from Hood County for all property regardless of the size of the lot or acreage.

(E) There is established a Water Quality District adjacent to each water body in Hood County hereinafter listed in the following particulars.

(1) Lake Granbury Water Quality District shall extend along the entire length of Lake Granbury to be measured from the elevation of six hundred ninety three (693) feet mean sea level and for a distance of one (1) mile on each side of the lake.

(2) Brazos River Quality District shall extend along the entire length of the river and for a distance of one (1) mile on each side of the centerline of the river.

(3) Brazos River Tributaries Water Quality District shall extend along the length of all tributaries of the Brazos River for a distance of five (5) linear miles from the confluence of the tributary with the river and for a distance of one-half (.5) mile on each side of the centerline for the tributary. The following tributaries are included within such district: Stroud Creek, Long Creek, Fall Creek and Walnut Creek.

(4) Paluxy River Water Quality District shall extend along the entire length of the river and for a distance of one-half (.5) mile on each side of the centerline of the river.

(5) Squaw Creek Reservoir Water Quality District shall extend for the entire length of the reservoir and for a distance of one-half (.5) mile, on each side of the reservoir, to be measured from the normal pool elevation of seven hundred seventy-five feet (775') mean sea level.

(F) Subdivisions intended for single family dwellings or individual lots not located within a subdivision that are platted or created after the effective date of this order and served by a centralized water system and utilizing individual OSSF methods for sewage disposal, shall provide for individual lots having a gross surface area of at least two (2) acres when located in a Designated Water Quality District.

(G) Subdivisions intended for single family dwellings, manufactured housing communities, multi-unit residential developments, business parks, or other similar uses including individual lots not located within a subdivision, that are platted or created after the effective date of this order and served by a private water well and utilizing individual OSSF methods for sewage disposal, shall provide for individual lots having a gross surface area of at least three (3) acres.

(H) Subdivisions intended for single family dwellings, manufactured housing communities, multi-unit residential developments, business parks, or other similar uses including individual lots not contained within a subdivision that are platted or created on or after the effective date of this order and served by on-site sewage facilities and located within a designated Water Quality District, may not install on-site sewage facilities within two hundred (200) feet of Lake Granbury as measured from the six hundred ninety three feet mean sea level or within two hundred (200) feet of the centerline of rivers and tributaries. This requirement shall be measured for the entire length of the water body within the district as defined in Subsection E of this Section, or within the one hundred (100) year floodplain of the water body, whichever is greater.

(I) Upon the five-year anniversary of the effective date of this order an on-site sewage facility permitted on or after the effective date of this order shall have a surface inspection performed by Hood County every five years. A surface inspection performed under the provisions of this subsection shall be utilized only to identify public health nuisance conditions and shall not be misconstrued as an authorization that all components of the on-site sewage facility meet current applicable laws for installation or continued operation.

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 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 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 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 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 26th DATE OF April, 2011.

APPROVED:

(SEAL)

County Judge

ATTEST:

Mary Burnett by Marlina Stuckey

County Clerk