

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

On December 6, 2018, the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of Wichita County 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 Wichita County has satisfied the requirements of §366.031, THSC. The Commission finds that the Wichita County Order should be approved.

## FINDINGS OF FACT

1. Wichita County drafted a proposed Order which regulates on-site sewage facilities.
2. On September 26, 2018, Wichita County caused notice to be published, in a newspaper regularly published and of general circulation, in the Wichita County's area of jurisdiction, of a public meeting to be held on October 1, 2018.
3. Wichita County held a public meeting to discuss its proposed Order on October 1, 2018.
4. The Wichita County Order regulating on-site sewage facilities was adopted on October 5, 2018.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the Wichita County 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 Wichita County's intent to adopt a new Order was properly provided. TEXAS HEALTH & SAFETY CODE § 366.031 and TEXAS ADMINISTRATIVE CODE § 285.10.
4. Wichita County agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. Wichita County'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. Wichita County is hereby authorized to implement its new Order regulating on-site sewage facilities.
2. Any amendments to the Wichita County 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 Wichita County's adopted Order, marked as Exhibit "A," to Wichita County and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: December 6, 2018

A handwritten signature in black ink, appearing to read "T. G. Baker", written in a cursive style.

Executive Director  
Texas Commission on Environmental Quality

## EXHIBIT A

COUNTY OF WICHITA  
STATE OF TEXAS

§  
§

AFFIDAVIT

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

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

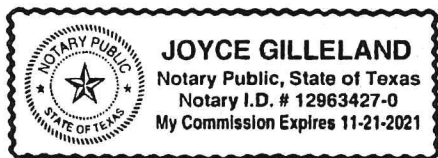
I am the custodian of the records of the County Clerks Office for the County of Wichita, Texas. Attached hereto are Six (6) pages of records known as (Order) 18.10.747. The records are kept by me as County Clerk, County of Wichita, in the regular course of business with knowledge of the act, event, condition, 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.

Lori Bohannon

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Lori Bohannon, 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 5th day of October, 2018.

(SEAL)



Joyce Gilleland  
Notary Public, State of Texas  
My commission expires:

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

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

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF WICHITA COUNTY, TEXAS:

THAT the matters and facts recited in the preamble hereof are hereby found and determined to be true and correct;

THAT the use of unregulated on-site sewage facilities in Wichita County, Texas may cause pollution with the potential to injure the public health;

THAT an Order for Wichita County, Texas be adopted entitled "An Order Governing On-Site Sewage Facilities In Wichita County" which shall read as follows:

## **AN ORDER GOVERNING ON-SITE SEWAGE FACILITIES IN WICHITA COUNTY**

### **SECTION 1. CONFLICTS.**

This Order repeals and replaces any other On-site Sewage Facility order for Wichita County.

### **SECTION 2. ENFORCEMENT OF CODES AND RULES.**

In compliance with legislative mandate, the County of Wichita, Texas hereby enforces 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 5 of this Order including technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities.

### **SECTION 3. AREA OF JURISDICTION.**

The Rules shall apply to all the area lying in Wichita County, Texas, except for any areas regulated under an existing Rule compliant with Chapter 366 of the Texas Health and Safety Code (H&SC), Chapters 7 and 37 of the Texas Water Code (TWC), or other law.

### **SECTION 4. ON-SITE SEWAGE FACILITY RULES.**

Any permit issued for an on-site sewage facility within the jurisdictional area of Wichita County, Texas must comply with the Rules adopted in Section 5 of this Order.

### **SECTION 5. 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 (TCEQ) for on-site sewage facilities are hereby adopted, and all officials and employees of Wichita County, Texas having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

### **SECTION 6. INCORPORATION BY REFERENCE.**

The Rules, 30 TAC Chapters 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 7. AMENDMENTS.**

The County of Wichita, Texas hereby adopts the following more stringent Rules for its On-Site Sewage Facility Order. A more stringent conflicting local Rule shall take precedence over the corresponding TCEQ requirement, pursuant to ceding of statutory authority to municipalities and counties. Listed below are the more stringent Rules adopted by Wichita County, Texas:

- (a) A permit shall be required for all on-site sewage facilities regardless of acreage, and so the exception found in 30 TAC §285.3(f)(2) shall not apply in the unincorporated areas of the county.
- (b) Permits shall not transfer automatically to a new owner upon sale or other legal transfer of an

OSSF, and so 30 TAC §285.3(a)(3) shall not apply in the unincorporated areas of the county. Within 60 days prior to the sale or transfer of any property on which a permitted OSSF exists, the seller or transferor must pay an inspection fee and have an inspection of the OSSF performed by a licensed designated representative of the Health District. Only after the payment of such a fee and the conduct of an inspection in which the OSSF is found to be compliant, does the permit become transferable upon any sale or legal transfer which occurs within 60 days of the inspection. Permits for OSSFs which transfer legally without the required fee and inspection shall be deemed to be invalid, and the new owner, buyer or transferor must make application for a new permit and follow the procedures required for same before operating the OSSF.

(c) Within 60 days prior to the sale or transfer of any property on which any OSSF, including an OSSF exempt from permitting requirements by 30 TAC § 285.3(f), exists, the seller or transferor must pay an inspection fee and have an inspection of the OSSF performed by a licensed designated representative of the Health District. Said inspection shall be conducted for the purpose of determining whether the system is in need of repair.

(d) The following requirement is added to 30 TAC §285.32(a): Structures which have more than one sewer stub out shall have a common connection of all sewer lines before the treatment system unless the treatment system is designed with more than one entrance.

(e) The following requirement is added to 30 TAC §285.3(d): Installers and their apprentices shall, during installation, maintain on the job site copies of all approved plans, contracts, manifests, well data, and the specifications of the components relating to the installation of the OSSF, and shall make same available to the inspector until all required inspections are completed.

(f) On-Site Sewage Facilities Maintenance and Management Practices: Maintenance contract requirements for all OSSF's 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 disposal system using aerobic treatment unless the homeowner/property owner:

1. Provides documentation of completing and passing a basic OSSF maintenance course approved by the regulatory authority for aerobic treatment units and the property to be maintained is owned by the trained home owner, or
2. Holds a valid wastewater Class D license or higher wastewater treatment license, or
3. An owner of an OSSF lawfully installed as of October 1, 2009, who has maintained said OSSF prior to that date may continue to do so.
4. All of the above mentioned must be able to demonstrate to a licensed designated representative of the health district that he can perform the following procedures for maintaining the OSSF: replacing air filters, cleaning aerobic diffusers, spinners and agitators, cleaning pumps, testing for chlorine and/or fecal coliform, monitoring turbidity, scum and sludge build-up, controlling odor, and ensuring the application area is distributing properly and according to the original system design. The owner must inspect the OSSF and submit an inspection report to the health district every four months. An owner who fails to submit inspections as required shall not be permitted to self-maintain, and will be required to obtain a testing and reporting contract from a licensed OSSF maintenance provider.

(g) Each maintenance provider having contracts in Wichita County shall register with Wichita Falls-Wichita County Public Health District (health district) Environmental Health

Division. Maintenance provider registration shall be effective from the date of registration to December 31<sup>st</sup> of the same year. Renewal maintenance provider registration for the next year shall not be accepted before December 1<sup>st</sup> of the current year. New and renewal maintenance contracts will only be accepted from maintenance providers whose registration is current and in good standing. Maintenance provider registration shall be free of charge.

1. Maintenance providers who fail to perform maintenance testing at the required intervals, mark an inspection tag, or submit a report on time two (2) or more times during any twelve (12) month period may have their registration suspended for no longer than 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.

2. A licensed OSSF maintenance provider will submit an inspection report for each OSSF to the health district every four months. Renewal contracts shall be for a term of no less than one year and include at least 3 inspections. Contract renewals with the same maintenance provider will not be accepted by the health district unless all of the maintenance reports from the previous contract period have been received.

(h) All components that need to be replaced on an OSSF should be replaced by an individual licensed by the TCEQ to maintain OSSFs. Said replacement should utilize components certified by the manufacturer for use on the specific model being maintained.

(I) The Aerobic Treatment Unit Sizing Chart in Table II of 30 TAC § 285.91(2) is replaced with the following:

Size of Home	Minimum Aerobic Tank Treatment Capacity in gallons per day
3 or fewer bedrooms and less than 2,501 sq. ft.	450
4 bedrooms and less than 3,501 sq. ft. or less than 4 bedrooms, larger than 2,500, but smaller than 3,501	600
5 bedrooms and less than 4,501 sq. ft. or less than 5 bedrooms, larger than 3,500, but smaller than 4,501	750
6 bedrooms and less than 5,501 sq. ft. or less than 6 bedrooms, larger than 4,500, but smaller than 5,501	900
7 bedrooms and less than 7,001 sq. ft. or less than 7 bedrooms, larger than 5,500, but smaller than 7,001	1050
8 bedrooms and less than 8,501 sq. ft. or less than 8 bedrooms, larger than 7,000, but smaller than 8,501	1200
9 bedrooms and less than 10,001 sq. ft. or less than 9 bedrooms, larger than 8,500, but smaller than 10,001	1350
10 bedrooms and less than 11,501 sq. ft. or less than 10 bedrooms, larger than 10,000, but smaller than 11,501	1500
For each additional bedroom above ten or every additional 1,500 sq. ft. of living area above 11,500	add 150



## SECTION 8. DUTIES AND POWERS.

The Wichita Falls/Wichita County Public Health District of Wichita County, Texas is herewith declared the Designated Representative (DR) (30 TAC §285.2 (17)) for the administration and enforcement of these Rules 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 Wichita County, Texas.

## SECTION 9. COLLECTION OF FEES.

All fees collected for processing fees, late fees, penalty fees, permit renewal fees, permits, inspections, and/or re-inspections shall be made payable to Wichita Falls/Wichita County Public Health District. 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 and Safety Code, Chapter 367.

## SECTION 10. APPEALS.

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Commissioners Court of Wichita County, Texas.

## SECTION 11. ENFORCEMENT PLAN

The County of Wichita, 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 Chapters 30, Subchapters A and G, and 285.

## SECTION 12. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Wichita 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 13. RELINQUISHMENT OF ORDER

If the Commissioners Court of Wichita 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 13. 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 5<sup>th</sup> DATE OF October, 2018.

APPROVED:

(SEAL)

W. Rodrow M. Gibson  
County Judge

ATTEST:

Lori Bohannon  
County Clerk