

Bryan W. Shaw, Ph.D, *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

December 4, 2009

The Honorable Jim Lewis
County Judge
McLennan County
501 Washington Avenue
Waco, Texas 76701

Re: On-Site Sewage Facilities Order for McLennan County

Dear Judge Lewis:

Enclosed is a certified copy of an order issued by the Commission regarding the referenced matter.

Should you have any questions, please contact Mr. Agustin Chavez, of the Texas Commission on Environmental Quality On-Site Sewage Facilities Program, MC-235 at 512-239-4775.

Sincerely,

A handwritten signature in cursive script that reads "Tracy Miller".

Tracy Miller, Acting Manager
Water Program Support Section, MC-174
Field Operations Support Division

Enclosures: Certified Order
Recipient Mail List

APPLICATION BY McLENNAN COUNTY
TO AMEND THEIR ON-SITE SEWAGE FACILITY ORDER

The Honorable Jim Lewis
County Judge
McLennan County
501 Washington Avenue
Waco, Texas 76701

Mr. Luke Lammert, PE
Assistant County Engineer
McLennan County
P.O. Box 648
Waco, Texas 76703-0648

TCEQ - Region 9

Agustin Chavez, PE, OSSF Program, Field Operations Support Division, MC- 235

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on

LaDonna Costantini

DEC 04 2009

LaDonna Costantini, Chief Clerk
Texas Commission on Environmental Quality

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

BEFORE THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

On NOV 30 2009 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of McLennan 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 McLennan has satisfied the requirements of §366.031, THSC. The Commission finds that the County of McLennan Order should be approved.

FINDINGS OF FACT

1. The County of McLennan drafted a proposed Order which regulates on-site sewage facilities.
2. On October 15, 22, 29, 2009, the County of McLennan caused notice to be published, in a newspaper regularly published and of general circulation, in the County of McLennan area of jurisdiction, of a public meeting to be held on November 3, 2009.
3. The County of McLennan held a public meeting to discuss its proposed Order on November 3, 2009.
4. The County of McLennan Order regulating on-site sewage facilities was adopted on November 3, 2009.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the County of McLennan 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 McLennan'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 McLennan agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of McLennan'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 McLennan is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of McLennan 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 McLennan's adopted Order, marked as Exhibit "A," to the County of McLennan 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

§

STATE OF TEXAS

§

AFFIDAVIT

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

My name is Kelly Fullbright, 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 McLennan, Texas. Attached hereto are seven (7) pages of records known as (Order) OSSF (Rules) The records are kept by me as County Clerk, County of McLennan, 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.

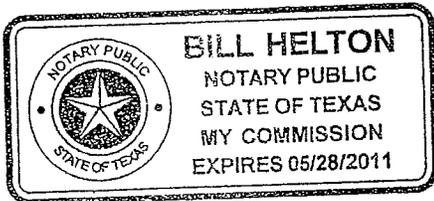
Kelly Fullbright
Kelly Fullbright

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Kelly Fullbright, 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 6th day of Nov., 2009.

(SEAL)

Bill Helton
Notary Public, State of Texas
My commission expires:



A CERTIFIED COPY

Attest: November 6, 2009

FILED: NOV 03 2009

J. A. "Andy" Harwell, County Clerk
McLennan County, Texas

J.A. "ANDY HARWELL, County Clerk
McLennan County, Texas
By: KELLY FULLBRIGHT DEPUTY

By Kelly Fullbright Deputy
Kelly Fullbright

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

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

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

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

SECTION 3. THAT an Order for McLennan 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 McLennan County.

SECTION 5. CHAPTER 366.

The County of McLennan, 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.

The Rules shall apply to all the unincorporated areas of McLennan County, Texas. The rules shall also govern within the incorporated areas of cities or towns which have elected to be members of the Waco-McLennan County Public Health District. The rules shall apply except for the area regulated under an existing Rule and the areas within incorporated cities except as noted above.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of McLennan 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, and all officials and employees of McLennan 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 McLennan, 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 McLennan County, Texas:

(A) PERMITTING REQUIREMENTS:

Permits shall be required for all On-Site Facilities regardless of lot size of acreage tract.

(B) MAINTENANCE REQUIREMENTS:

In order to provide greater public health and safety protection, the maintenance for all aerobic treatment units shall be performed by a TCEQ licensed provider or registered maintenance technician unless:

1. The homeowner is a TCEQ licensed maintenance provider or registered maintenance technician for his/her aerobic treatment unit, or;
2. The homeowner receives specific on-site maintenance training for their aerobic treatment unit from either an installer II or the manufacturer of the unit, or;
3. The homeowner holds a TCEQ Class D or higher Wastewater Treatment license, or;
4. The homeowner successfully completes the basic maintenance provider class approved by TCEQ.

Homeowners choosing to perform their own inspections must submit a contract, on a form provided by the Designated Representative for McLennan County, to the Designated Representative indicating that they will conduct the required maintenance and provide periodic inspections reports along with verifiable documentation indicating they are qualified by items 1, 2, 3 or 4 above.

Should any of the below occur two (2) or more times in a twelve (12) month period, a homeowner performing their own inspections will be required to contract with a licensed maintenance provider.

1. Failing to submit the required testing and timely reporting results, or;
2. Falsifying the required documents, or;
3. Has confirmed nuisance complaints.

(C) MAINTENANCE INSPECTION AND REPORTS:

Inspections and reporting at a minimum must meet all requirements as set by the Rules of McLennan County and TAC Chapter 285 OSSF Rules as well as the inspection requirements outlined by the manufacturer for the brand of system being inspected.

SECTION 11. DUTIES AND POWERS.

The Waco-McLennan County Public Health District of McLennan County, Texas is herewith declared the Designated Representative (DR) for the administration of these Rules within its jurisdictional area. The OSSF DR (30 TAC § 285.2(17)), appointed individuals of McLennan 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 the City of Waco, 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 McLennan County, Texas.

SECTION 14 ENFORCEMENT PLAN.

The County of McLennan, 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.

SECTION 15. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of McLennan 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 McLennan 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 3RD DATE OF November, 2009.

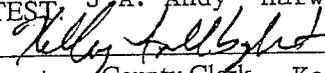
(SEAL)

APPROVED:



County Judge

ATTEST, J. A. "Andy" Harwell, McLennan County Clerk



Deputy County Clerk Kelly Fullbright