

When reading the following Order,  
please be sure to notice that there are  
more stringent requirements in both  
Section 10 in the 2001 Order and the  
amendments on the last page.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

On NOV 25 2008 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Brazos, for an Order pursuant to §366.031, Texas Health and Safety Code ("Code"), 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 Applicant has satisfied the requirements of §366.031 of the Code and, therefore, the Commission finds that the Brooks County Order should be approved.

FINDINGS OF FACT

1. The County of Brazos drafted a proposed amendment to the current order which regulates on-site sewage facilities.
2. On August 24, 2007, the County of Brazos caused notice to be published, in a newspaper regularly published and of general circulation, in the Applicant's area of jurisdiction, of a public meeting to be held on August 28, 2007.
3. The County of Brazos held a public meeting to discuss its proposed order on September 11, 2007.
4. Brazos County's Order regulating on-site sewage facilities was adopted on September 11, 2007.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the Brazos County Order was submitted to the Texas Commission on Environmental Quality.
7. The order is at least equivalent to the standards of the Texas Commission on Environmental Quality.

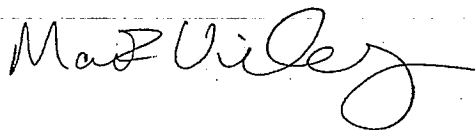
## CONCLUSIONS OF LAW

1. The above facts are conditions sufficient to issue this order pursuant to §366.031 of the Code.
2. Section 5.102 of the Texas Water Code authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of Chapter 366 of the Health and Safety Code and / or within the Commission's jurisdiction and who provides no comment on other statutory authority.
3. Issuance of this order will effectuate the purposes of Chapter 366 of the Code.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The County of Brazos is hereby authorized to implement its Order which regulates on-site sewage facilities.
2. Any amendments to the Brazos County Order must be approved by the Texas Commission on Environmental Quality.
3. The Chief Clerk of the Commission is directed to forward a copy of this Order and the Applicant's adopted order, ordinance, or resolution, marked as Exhibit "A", to the Applicant and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: **NOV 25 2008**



Executive Director  
Texas Commission on Environmental Quality

EXHIBIT A

# TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



IN THE MATTER OF THE APPLICATION           §       BEFORE THE EXECUTIVE  
OF THE COUNTY OF BRAZOS                   §       DIRECTOR OF THE TEXAS  
FOR A TEXAS HEALTH AND SAFETY           §       NATURAL RESOURCE  
CODE §366.031 ORDER                       §       CONSERVATION COMMISSION

On JUL 31 2001 the Executive Director of the Texas Natural Resource Conservation Commission ("Commission" or "TNRCC"), considered the application of the County of Brazos, ("Applicant" or "Brazos"), for an Order pursuant to §366.031, Texas Health and Safety Code ("Code"), 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 Applicant has satisfied the requirements of §366.031 of the Code and, therefore, the Commission finds that the Brazos County Order should be approved.

## FINDINGS OF FACT

1. The County of Brazos drafted a proposed amendment to the current order which regulates on-site sewage facilities.
2. On April 21, 2001, the County of Brazos caused notice to be published, in a newspaper regularly published and of general circulation, in Brazos's area of jurisdiction, of a public meeting to be held on Tuesday, April 24, 2001.
3. The County of Brazos held a public meeting to discuss the proposed amendment on April 24, 2001.
4. Brazos County Order regulating on-site sewage facilities was adopted on June 12, 2001.
5. A certified copy of the minutes was submitted to the Texas Natural Resource Conservation Commission.
6. A certified copy of Brazos County Order was submitted to the Texas Natural Resource Conservation Commission.

**ORDER ADOPTING RULES OF BRAZOS COUNTY, TEXAS**  
**FOR ON-SITE SEWAGE FACILITIES**  
**PREAMBLE**

WHEREAS, the Texas Natural Resource Conservation commission has established Design Criteria 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 disposal 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 meeting and public hearing to determine whether the Commissioners Court of Brazos County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Brazos, Texas; and

WHEREAS, said meeting and public hearing were held in accordance with the notice thereof, and the evidence and arguments there presented were considered by the Commissioners Court of Brazos County, Texas; and

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

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

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

SECTION 3. THAT an Order for Brazos County, Texas be adopted entitled "On-Site Sewage Disposal," which shall read as follows:

AN ORDER ENTITLED ON-SITE SEWAGE DISPOSAL

SECTION 4. CONFLICTS.

All Orders or parts of the Orders of Brazos County, Texas not consistent with or in conflict with the provisions of this Order are hereby repealed.

SECTION 5. ADOPTING CHAPTER 366.

The County of Brazos, Texas clearly understanding the technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, does adopt and will fully enforce Chapter 366 of the Texas Health and Safety Code.

SECTION 6. AREA OF JURISDICTION.

The Rules, as hereinafter defined, shall apply to all the areas lying in Brazos County, Texas, except for the area regulated under an existing Rule and the areas within incorporated cities; these Rules shall also apply to those incorporated cities that have executed intergovernmental contracts with Brazos County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any structure discharging sewage into an on-site sewage facility within the jurisdictional area of Brazos County, Texas must comply with the Rules adopted in Section 8 and 10 of this Order.

SECTION 8. ON-SITE SEWAGE FACILITY RULES ADOPTED.

The Rules ("Design Criteria For On-site Sewage Facilities" Texas Administrative Code 30 TAC 285.1 – 285.91) attached hereto, promulgated by the Texas Natural Resource Conservation Commission for on-site sewage systems are hereby adopted, and all officials and employees of Brazos County, Texas, and its Designated Representative, as hereinafter defined, 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 Design Criteria and all future amendments and revisions thereto are incorporated by reference and are thus made a part of this Order. A copy of the current Design Criteria is attached to these Rules as Appendix I.

## SECTION 10. AMENDMENTS.

The County of Brazos, Texas, wishing to adopt more stringent Rules for its On-site Sewage Facility Order, understands that the more stringent conflicting local rule shall take precedence over the corresponding Texas Natural Resource Conservation Commission requirement. Listed below are the more stringent Rules adopted by Brazos County, Texas, which hereinafter will be included with in the definition of "Rules" in this Order:

### **A. Definitions.**

1. "Illegal On-Site Sewage Facility" means (i) an on-site sewage facility installed after September 23, 1975 without a permit from the District; (ii) a malfunctioning system; or (iii) an on-site sewage facility that is not being properly maintained.
2. "License" means a permit to operate issued after 1975 by the District.
3. "Registered System" means an on-site sewage facility installed before September 1975, after which time Brazos County began regulating On-Site Sewage Facilities in the County. Registered Systems are grandfathered in these Regulations, as long as they do not pose a health and safety concern to the residents of Brazos County.

**B. Ten-Acre Non-Exemption Rule.** A License is required regardless of the size of the acreage to be serviced by the on-site sewage system.

**C. Transfer of Title.** Upon transfer of ownership, the new owner shall be required to transfer the License into his/her name. A fee will be collected, a surface inspection will be conducted and a letter issued. If such transfer is between the home builder/contractor and the first occupant of the home, no transfer fee shall be collected. If on transfer it is determined that the system is an Illegal On-Site Sewage Facility, a new on-site sewage facility will be required to be installed according to state and local standards. A license shall be required for the issuance of a Certification Letter to a lending institution on systems installed after 1975.

**D. Minimum Lot Size.** The minimum lot size for all on-site sewage facilities installed after the date of this Order, must be at least one acre in size or the application for a license for such system must be accompanied by a site-specific plan stamped by a registered professional engineer or professional sanitarian.

**E. Non-Residential Permits** Non residential facilities with an expected Biochemical Oxygen Demand (BOD) of 140 mg/L or greater shall have



pretreatment tanks (grease traps or other tanks receiving high strength waste) pumped on a schedule determined by the engineer or registered sanitarian who designed the facility, and shall set forth capacity and cleaning frequency of such tanks. This schedule shall be filed with the Designated Representative as part of On-Site Sewage Facilities planning materials. The Owner must keep records of manifests in the establishment.

**F. Cluster System.**

A Cluster System shall not be permitted.

**G. Illegal On-site Sewage Facility.** The use and possession of an Illegal Septic System shall be a violation of this Order and subject the Owner to the penalties set forth herein.

**H. No Exceptions.** Each habitual structure must be connected to a licensed or Registered on-site sewage facility.

**I. Application.** The Application for a Permit of an on-site sewage system shall expire one year from the date it is issued.

**J. Authority To Construct.** The Authority to Construct issued by the Designated Representative shall expire one year from the date it is issued.

**K. Inspections.** The registered installer or apprentice shall provide whatever reasonable assistance the Designated Representative requests in order to make an installation inspection. The registered installer must be present at the time of the installation inspection for that facility.

**SECTION 11. DUTIES AND POWERS.**

The Brazos County Health District is hereby declared the Designated Representative for the enforcement of these Rules within the jurisdictional area described in section 6 hereof (herein the "Designated Representative"). The Designated Representative has been approved and certified by the Texas National Resources Conservation Commission as qualified to serve in this capacity.

**SECTION 12. COLLECTION OF FEES.**

A list of fees for permits, licenses or inspections, payable to the Brazos County Health District, as the Designated Representative of the County shall be promulgated by the Brazos County Commissioners Court.

### SECTION 13. APPEALS.

Person aggrieved by an action or decision of the Designated Representative may appeal such action or decision to the Commissioners Court of Brazos County, Texas. Such appeal must be filed within ten (10) days of the date of such denial. Such appeal shall be heard at the next regularly scheduled Commissioners Court meeting which meets the notice requirements of the Open Meetings Act relative to such appeal.

### SECTION 14. ENFORCEMENT.

The Designated Representative may routinely inspect on-site sewage facilities to assure continued proper operation of such facilities.

The Designated Representative shall inspect any on-site system that it believes to be causing pollution, a threat to the public health, nuisance conditions, or is illegally installed, altered or not functioning properly or for which the Permit has expired. If upon inspection, it is found that any of these conditions exists, the owner of the on-site sewage facility will be notified in writing of the violation, and what must be done to achieve compliance, and require the owner to cure the violation in a time frame consistent with state law. The on-site sewage facility shall be reinspected at the expiration of the allotted time. If the facility is found to be compliant, a license may be issued, reissued or the existing license may be modified. If the facility is found to be noncompliant, appropriate enforcement action shall be taken and penalties sought.

### SECTION 15. PENALTIES.

The County of Brazos, Texas adopts and incorporates by reference, all applicable remedies and penalties provided for and set forth in Chapter 7 and 26 of the Texas Water Code; and Chapters 341 and 366 of the Texas Health and Safety Code and Chapter 285 of the Texas Administration Code.

### SECTION 16. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Brazos 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 phrase, clause, sentence, paragraph, or section.

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 Texas Natural Resource Conservation Commission.

AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 12<sup>th</sup> DAY OF JUNE, 2001.

ATTEST:

  
KAREN MCQUEEN, County Clerk

APPROVED:

  
ALVIN W. JONES, County Judge

## SECTION 10. AMENDMENTS

L. All Secondary Treatment systems in Brazos County require maintenance contracts which must be submitted thirty (30) days prior to the previous contract's expiration date to the Brazos County Health Department. Any "testing and reporting" required by these rules or rules of the Commission must be submitted to the Brazos County Health Department no later than fourteen (14) days after the date of testing.

M. Maintenance of On-Site Sewage Facilities with Secondary Treatment shall be conducted by a TCEQ registered maintenance provider, unless:

The OSSF using secondary treatment is located at the homeowner's residence, which is a single family dwelling, and:

- 1) The Homeowner is a TCEQ registered maintenance provider, or
- 2) The Homeowner holds a TCEQ Class D or higher Wastewater Treatment license, or
- 3) The Homeowner has been trained by an installer or manufacturer according to the requirements of HB 2510 [79(R)] prior to adoption of HB 2482 [80(R)].
- 4) The homeowner obtains a certificate of completion from the TCEQ approved course, meeting the training requirements for registration as a OSSF maintenance provider.

\*\* Effective date for this Section 10 amendment is September 1, 2007.

APPROVED:

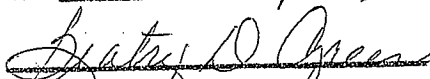


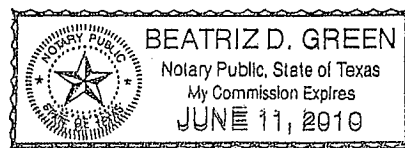
Randy Sims, County Judge

9/11/07  
date

APPROVED COPY FOR YOUR FILES

SUBSCRIBED AND SWORN BEFORE ME  
THIS 11 DAY OF Sept 2007

  
NOTARY PUBLIC



From: Debbie L. Lockledge

Date: