

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

§ BEFORE THE EXECUTIVE
§ DIRECTOR OF THE TEXAS
§ COMMISSION ON
§ ENVIRONMENTAL
§ QUALITY

On **DEC 22 2009** the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Polk 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 Polk has satisfied the requirements of §366.031, THSC. The Commission finds that the County of Polk Order should be approved.

FINDINGS OF FACT

1. The County of Polk drafted a proposed Order which regulates on-site sewage facilities.
2. On November 5, 2009, the County of Polk caused notice to be published, in a newspaper regularly published and of general circulation, in the County of Polk area of jurisdiction, of a public meeting to be held on November 10, 2009.
3. The County of Polk held a public meeting to discuss its proposed Order on November 10, 2009.
4. The County of Polk Order regulating on-site sewage facilities was adopted on November 10, 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 Polk 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 Polk'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 Polk agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The County of Polk'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 Polk is hereby authorized to implement its new County Order regulating on-site sewage facilities.
2. Any amendments to the County of Polk 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 Polk's adopted Order, marked as Exhibit "A," to the County of Polk and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: **DEC 22 2009**



Executive Director
Texas Commission on Environmental Quality

COUNTY OF POLK
STATE OF TEXAS

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AFFIDAVIT

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

My name is Schelana Walker, 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 Polk, Texas. Attached hereto are _____ (6) pages of records known as (Order) N/A. The records are kept by me as County Clerk, County of Polk, 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.

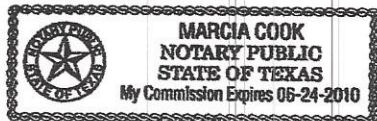
Schelana Walker

Schelana Walker, County Clerk

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Schelana Walker, 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 10th day of November, 2009.

(SEAL)



Marcia Cook
Notary/Public, State of Texas
My commission expires:

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

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

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

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

SECTION 3. THAT an Order for Polk 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 Polk County.

SECTION 5. CHAPTER 366.

The County of Polk, 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 area lying in Polk County, Texas, except for the area regulated under an existing Rule and the areas within incorporated cities.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Polk 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 Polk 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 Polk, 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 Polk County, Texas:

(A) All maintenance of an on-site sewage disposal system using aerobic treatment shall be conducted by a TCEQ registered or licensed maintenance company unless:

1. The homeowner of his/her primary single family residence is a TCEQ Registered or Licensed Maintenance Provider for their aerobic treatment unit; or
2. The homeowner of his/her primary single family residence is trained and certified by an Installer II, Aerobic Manufacturer or the OSSF Designative Representative for the County; or
3. The homeowner of his/her primary single family residence is trained by a TCEQ Registered or Licensed Maintenance Provider.

(B) The required maintenance inspection and test report, conducted by the above described certified homeowner or the TCEQ registered Maintenance Company, which must be submitted once every 4 months to the permitting authority, shall:

1. Meet all inspection requirements as set by TCEQ Rules, Polk County Policy and Procedural Requirements, as well as, the inspection requirements outlined by the manufacturer for the brand being inspected; and
2. Address all testing requirements as set by the TCEQ Rules, Polk County Policy and Procedural Requirements, as well as, the testing requirements outlined by the manufacturer for the brand being inspected; and
3. Report the sludge levels in the pump tank, and the condition of the spray area.

SECTION 11. DUTIES AND POWERS.

The OSSF Designated Representative (DR) (30 TAC § 285.2(17)) of Polk 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 Polk County, Texas. A processing fee of \$15.00 per year for all service policies shall be submitted to the Permitting Office through the Maintenance Company or Technician. 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 Polk County, Texas.

SECTION 14. ENFORCEMENT PLAN

The County of Polk, 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 Polk 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 Polk 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 10th DATE OF November, 2009.

APPROVED:



John P. Loup
County Judge

ATTEST:

Shelana Walker
County Clerk