

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

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

On December 1, 2023, the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of Liberty 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 Liberty County has satisfied the requirements of §366.031, THSC. The Commission finds that the Liberty County Order should be approved.

FINDINGS OF FACT

1. Liberty County drafted a proposed Order which regulates on-site sewage facilities.
2. On October 12, 2023, Liberty County caused notice to be published, in a newspaper regularly published and of general circulation, in the Liberty County's area of jurisdiction, of a public meeting to be held on October 24, 2023.
3. Liberty County held a public meeting to discuss its proposed Order on October 24, 2023.
4. The Liberty County Order regulating on-site sewage facilities was adopted on October 24, 2023.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the Liberty 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 Liberty County's intent to adopt a new Order was properly provided. TEXAS HEALTH & SAFETY CODE § 366.031 and TEXAS ADMINISTRATIVE CODE § 285.10.
4. Liberty County agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The Liberty County 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. Liberty County is hereby authorized to implement its new Order regulating on-site sewage facilities.
2. Any amendments to the Liberty 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 Liberty County adopted Order, marked as Exhibit "A," to Liberty 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 1, 2023



Interim Executive Director
Texas Commission on Environmental Quality

EXHIBIT A

COUNTY OF LIBERTY

STATE OF TEXAS

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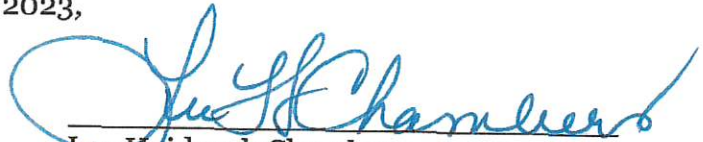
AFFIDAVIT

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

My name is Lee Haidusek Chambers, 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 Liberty County Clerk's Office, Liberty County, Texas. Attached hereto are five (5) pages of records known as Order Adopting Rules of Liberty County, Texas for On-Site Sewage Facilities. The records are kept by me as County Clerk, County of Liberty, TX, 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 as noted on each page of the certified copies."

SIGNED on this the 17th day of November, 2023,

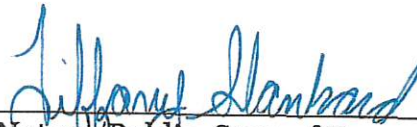
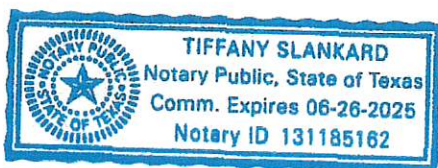


Lee Haidusek Chambers
Liberty County Clerk

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Lee Haidusek Chambers, 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 17th day of November, 2023.

(SEAL)



Notary Public, State of Texas
My commission expires:

ORDER ADOPTING RULES OF LIBERTY COUNTY, TEXAS

FOR ON-SITE SEWAGE FACILITIES

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 Texas Legislature 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 to eliminate and prevent health hazards from the use of on-site sewage facilities; and

WHEREAS, the County of Liberty, Texas understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and may have responsibilities under the following provisions:

Texas Health and Safety Code Chapters 366 (On-Site Sewage Disposal Systems) and 367 On-Site Wastewater Treatment Research;

Texas Water Code Chapters 7 (Enforcement), 26 (Water Quality), and 37 (Occupational Licensing and Registration);

30 Texas Administrative Code Chapters 30, (Occupational Licensing and Registrations) 70 (Enforcement), and 285 (On-Site Sewage Facilities; and

Section 9 of this Order (More Stringent Requirements).

WHEREAS, due notice was given of a public meeting to determine whether the Commissioners Court of Liberty County, Texas should enact an Order regulating the installation and use of on-site sewage facilities in the County of Liberty, Texas; and

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

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

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

SECTION 1. THAT the matters and facts recited in the preamble are true and correct;

SECTION 2. THAT the use of on-site sewage facilities in Liberty County, Texas is causing or may cause pollution or is injuring or may injure the public health;

SECTION 3. This Order repeals and replaces any other On-site Sewage Facility (OSSF) Order for Liberty County, Texas.

SECTION 4. THAT an Order for Liberty County, Texas be adopted entitled "On-Site Sewage Facilities," which shall read as follows:

ORDER ADOPTING RULES OF LIBERTY COUNTY, TEXAS FOR ON-SITE SEWAGE FACILITIES

SECTION 5. THAT the County of Liberty, Texas, wishing to adopt more stringent requirements for its OSSF ORDER understands that the more stringent requirements in this ORDER take precedence over the corresponding TCEQ rule.

SECTION 6. AREA OF JURISDICTION. This Order shall apply to all the areas lying within Liberty County, Texas, except for areas regulated under an existing Order, Ordinance, or Resolution.

SECTION 7. COMPLIANCE WITH ORDER.

All on-site sewage disposal systems installed in the jurisdictional area of Liberty County, Texas must comply with this Order.

SECTION 8. INCORPORATION BY REFERENCE.

The following statutes and rules, including all future amendments to the statutes and rules, are incorporated by reference specifically, but not limited to:

Texas Health and Safety Code Chapters 366 (On-Site Sewage Disposal Systems) and 367 On-Site Wastewater Treatment Research;

Texas Water Code Chapters 7 (Enforcement), 26 (Water Quality), and 37 (Occupational Licensing and Registration); and

30 Texas Administrative Code Chapters 30, (Occupational Licensing and Registrations) 70 (Enforcement), and 285 (On-Site Sewage Facilities).

SECTION 9. MORE STRINGENT REQUIREMENTS

30 TAC § 285.10 allows local governmental entities to propose more stringent standards than minimally required by 30 TAC Chapter 285. Liberty County has determined that more stringent requirements are necessary to protect human health and the environment. The Justification for the more stringent requirements is in Attachment A of this ORDER. The following more stringent requirements are adopted by Liberty County, Texas in this ORDER:

(A) Any tract, lot, or parcel of land proposed to be occupied by more than one residence, referred to as "Multi-Residential Development," shall provide the additional planning materials required by 30 TAC §§ 285.4(c)(1)(A)-(H). All on-site sewage facilities, regardless of acreage served, must meet all Requirements in Section 7 above.

(B) Platted subdivisions of single-family dwellings, platted or created after June 1, 1986, served by a public water supply, but utilizing individual on-site sewage facilities must provide for individual lots having a surface area of at least 21,780 sq. ft. (0.5 acres), exclusive of roadways and ditches. Platted subdivisions of single-family dwellings platted or created after June 1, 1986, served by an individual water well system and utilizing individual on-site sewage facilities must provide for individual lots having surface areas of at least 46,560 sq. ft. (1.0 acres) exclusive of roadways and ditches.

(C) Commercial property; strip centers, warehouses, mobile homes, and RV Parks (which rent or lease space); will be approved on a case-by-case basis at the discretion of the permitting authority of Liberty County in regard to lot size requirements and sewage treatment facilities.

(D) All OSSF's that require additional inspections will be subject to a re-inspection fee.

(E) Homeowners must keep in force a Maintenance Agreement by a licensed Maintenance Company for the Life of the system. On-site septic facilities required to have maintenance contracts are identified in §285.91(12).

(F) All maintenance contracts shall include the permit number, OSSF maintenance operator license identification, the printed name and signature of the system owner and the maintenance company representative or maintenance provider, the starting and ending dates of the contract with the starting date being the date of the authorization to operate (final inspection), the physical address and phone number and emergency phone number of the maintenance company or maintenance provider. Under regulatory requirements described in §285.64. The individual fulfilling the service policy shall be a maintenance provider or a maintenance technician working under the supervision of a maintenance provider.

(G) Maintenance reports shall be submitted by e-mail to the Liberty County Permit Clerk. The maintenance frequency shall be:

Residential 4 visits per year

Commercial 12 visits per year

(Requests for quarterly maintenance visits for commercial systems will be considered on a case-by-case basis.)

(H) All on-site sewage facilities, whether standard, non-standard or proprietary, must be designed under the seal of a registered Sanitarian or a Registered Licensed Engineer in accordance with the design standards set up in these Rules and the Texas Commission on Environmental Quality (TCEQ) rules for OSSF and approved by the local authority of Liberty County Engineering and Permitting Department.

(I) All Site Evaluations, Septic Designs, and any planning material must have Original Signatures, dates, and seals. This includes Site Evaluators, Registered Sanitarians, and Professional Engineers. The seal must be acceptable to Liberty County and/or the State of Texas.

(J) Latitude and Longitude shall be provided by the Site Evaluators for all boreholes dug on the proposed OSSF site.

(K) The installer shall notify Liberty County at least 5 days before the date the OSSF will be ready for the final inspection.

(L) Connection to organized disposal systems (public sewer): No person may cause or allow the installation of a private sewage facility when any part of the facility is to be within three hundred feet in horizontal distance (measured on the closest practicable access route) of an existing organized disposal system, with the exception of written denial of service from the owner or governing body of the organized disposal system.

(M) When a visual and audible alarm is required for an on-site sewage facility connected to a "Food Establishment", an additional visual and audible alarm shall be located or installed inside the facility, located in an area conspicuous to view by employees or management.

(N) The authorized agent may periodically inspect the on-site sewage disposal system

using aerobic treatment, regardless of when the authorized agent conducted the last inspection.

(O) Food service providers such as delis, restaurants, and/or convenience store food courts and fixed location food trucks shall have a grease trap designed and installed in their OSSF system. Grease interceptors shall be properly sized and installed according to the current requirements.

(P) It shall be a violation of this order for secondary structures such as a garage, storage building, and/or shop to be erected within the established set back rules.

SECTION 10. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to Liberty County, Texas. A fee of \$10 will also be collected for each on-site sewage facility permit to be paid to the credit of the TCEQ Water Resources Management Account as required by the THSC Chapter 367.

SECTION 11. LICENSE TO OPERATE

Each new on-site facility shall be inspected and approved by the designated representative prior to the final covering and use of the facility.

- (a) The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to commence the inspection.
- (b) The permit applicant, licensed installer, licensed installer's apprentice, or the engineer of record must be present at the time of the final inspection of the OSSF system.

SECTION 12. APPEALS.

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

SECTION 13. ENFORCEMENT PLAN

The County of Liberty, Texas understands that, at a minimum, it must follow the requirements in 30 Texas Administrative Code § 285.71 Authorized Agent Enforcement of OSSFs. This includes timely investigating complaints, notifying complainants of findings, and taking appropriate action related to any documented violations. Records related to these activities shall be retained for review by TCEQ.

The County shall take appropriate and timely action on all documented violations, which may include any available penalties and remedies, pursuant to all applicable provisions related to on-site sewage facilities, including those found in Chapters 341 and 366 of the Texas Health and Safety Code, Chapters 7 and 26 of the Texas Water Code, and 30 Texas Administrative Code Chapter 285.

SECTION 14. SEVERABILITY

It is hereby declared to be the intention of the Commissioners Court of Liberty 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 void by a valid judgment or decree of any court of competent jurisdiction the judgment or decree shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Order.

SECTION 15. RELINQUISHMENT OF ORDER

If the Authorized Agent of Liberty County, Texas decides to relinquish its authority to regulate on-site sewage facilities in its area of jurisdiction, the local governmental entity

(previously the Authorized Agent) and the TCEQ shall follow the procedures in 30 TAC § 285.10 (d) (1) through (4).

After relinquishing its OSSF authority, the local governmental entity understands that it may be subject to charge-back fees in accordance with 30 TAC § 285.10 (d) (5) and §285.14.

SECTION 16. TITLE VI COMPLIANCE

If necessary, based on the need for access to information in a language other than English by the community, the Authorized Agent shall provide information regarding this Order, including notice, applications, and enforcement actions, in an alternative language. The Authorized Agent may base its determination on all relevant factors including whether the elementary or middle school nearest to the site is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B; whether there is newspaper regularly published in an alternative language; or if the Authorized Agent has historical knowledge.

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 TCEQ.

AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 24 DAY OF OCTOBER, 2023

APPROVED:

(SEAL)

County Judge

ATTEST:

[Signature]
County Clerk



APPROVED: _____
TCEQ Executive Director

[Signature]
Liberty County Commissioner PCT. 1
Bruce Karbowski

[Signature]
Liberty County Commissioner PCT. 2
Greg Arthur

[Signature]
Liberty County Commissioner PCT. 3
David Whitmire

[Signature]
Liberty County Commissioner PCT. 4
Leon Wilson