

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

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

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

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

SECTION 3. THAT an Order for Bandera 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 order for Bandera County.

SECTION 5. ADOPTING CHAPTER 366.

The County of Bandera, Texas “Authorized Agent” 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 Texas Health and Safety Code (H&SC) and Chapter 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 Bandera County, Texas, except for the area regulated under an existing Rule and the areas within the incorporated City of Bandera.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Bandera 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 285 and Chapter 30, attached hereto, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Bandera 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 and 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules. A copy of the current Rules are attached to these Rules as Appendix I.

SECTION 10. AMENDMENTS.

The County of Bandera, 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 Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Bandera, County, Texas:

- (a) All on-site sewage facilities in Bandera County, Texas are required to be licensed by the Licensing Authority regardless of lot size or acreage.
- (b) A person desiring to sell or transfer land upon which is located an on-site sewage facility, may make an application to the Licensing Authority for a re-inspection of the on-site sewage facility.

SECTION 11. DUTIES AND POWERS.

The OSSF Inspector or an alternate appointed by the Commissioners Court of Bandera County, Texas is herewith declared the designated representative for the enforcement of these Rules within its jurisdictional area. The designated representative must be certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities. The designated representative shall have the following duties and concomitant powers:

- (a) To resolve any question regarding any interpretation of these Rules or the Construction Standards.
- (b) To enforce these Rules and to make appropriate recommendations to proper County Officials when instances of noncompliance with these Rules have been determined.
- (c) To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities.
- (d) To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules.
- (e) To make semi-annual reports to the authorized agent on all actions, including legal actions, taken concerning these Rules.
- (f) To investigate nuisance complaints within 21 days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within 30 days.
- (g) To perform all other duties necessary to meet the requirements of these Rules.

SECTION 12. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to Bandera County, Texas.

SECTION 13. LICENSE TO OPERATE.

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

- (a) The applicant or registered installer shall notify the designated representative that an inspection is desired at least 5 working days prior to the need for inspection.
- (b) The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to make the inspection.
- (c) The applicant or registered installer must be present at the time of the inspection for the facility.

SECTION 14. APPEALS.

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

SECTION 15. ENFORCEMENT.

The designated representative may routinely inspect on-site sewage facilities to assure continued compliance with these Rules.

The designated representative shall inspect any on-site system that is believed to be causing pollution, a threat to the public health, nuisance conditions, or illegally or altered. 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 set a reasonable amount of time to comply. The on-site sewage facility shall be re-inspected at the expiration of the allotted time.

- (a) If the facility is found to be compliant, a license may be issued or the existing license may be modified.
- (b) If the facility is found to be non-compliant, appropriate enforcement shall be taken.

SECTION 16. PENALTIES.

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 Chapter 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 and 285.

CRIMINAL PENALTIES (Section 366.091)

- (a) A person commits an offense if a person operates as an installer unless the person is registered by the State.
- (b) A person commits an offense if the person violates a rule adopted by an authorized agent under Subchapter C in a county that is contiguous to an international border.
- (c) A person commits an offense if the person begins to construct alter, extend or repair an on-site sewage facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend or repair the on-site system as required.
- (d) An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if:
 - (1) The repair is made for the purpose of abatement of an immediate health hazard;
 - (2) That said repair does meet minimum state design criteria or the more stringent design criteria of the authorized agent;
 - (3) That said repair does not constitute an alteration of the on-site system;
 - (4) That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent not later than 72 hours after the repair is begun by the installer;
 - (5) That said repair must be inspected for compliance with the states or authorized agent's design criteria.

- (e) An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense under this chapter in which event the offense is punishable by:
 - (1) a fine of not less than \$125.00 nor more than \$500.00;
 - (2) confinement in jail for not more than one month; or
 - (3) both the fine and confinement.
- (f) Each day that a violation occur constitutes a separate offense

INJUNCTION OR CIVIL SUIT (Section 366.092).

- (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit or order of the Commission in partnership with the authorized agent or the Commission independently may request the attorney general to bring civil suit for:
 - (1) mandatory or prohibitory injunctive relief, as warranted by the facts;
 - (2) a civil penalty as provided by Chapter 366, Texas Health and Safety Code; or
 - (3) both injunctive relief and civil penalty.
- (b) Venue for an action under Chapter 366, Texas Health and Safety Code, is in Travis County District Court, the county in which the defendant resides, or in the county in which the violation occurs.

CIVIL PENALTY (Section 366.0921)

- (a) The authorized agent may request that the Commission initiate an enforcement action pursuant to these sections through a petition filed with the Commission.
 - (1) An owner who violates any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit, or order issued pursuant to Chapter 366, Texas Health and Safety Code, is subject to a civil penalty of not less than \$100.00 nor more than \$500.00 for each day of violation.
 - (2) Any other person who violates any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit, or order issued pursuant to Chapter 366, Texas Health and Safety Code, is subject to civil penalty of not less than \$500.00 nor more than \$5,000.00 for each act of violation and for each day of violation.
- (b) The civil penalties recovered shall be divided between the authorized agent and the state based on the proportion of resources expended by each entity in the course of the enforcement action.

CHAPTER 341 (SUBCHAPTER B. NUISANCE AND GENERAL SANITATION.)

CRIMINAL PENALTIES (Section 341.091)

- (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$10.00 or more than \$200.00.
- (b) If it is shown on the trial or that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the

defendant shall be punishable by a fine of not less than \$10.00 or more than \$1,000.00, confinement in jail for not more than 30 days, or both.

SECTION 17. EMERGENCY REPAIR.

An emergency repair to an on-site sewage facility without a permit is not an offence under these Rules if the following procedures are carried out:

- (a) The repair is made for the purpose of abatement of an immediate, dangerous, and serious health hazard.
- (b) That said repair does meet minimum state design criteria;
- (c) That said repair does not constitute an alteration of the on-site system;
- (d) That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within 72 hours of the date of the repair by the installer; and
- (e) That said repair must be inspected for compliance with the state's design criteria.

SECTION 18. SEVERABILITY.

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

SECTION 19. RELINQUISHMENT OF ORDER.

If the Commissioners Court of Bandera County, Texas decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the Commissioners Court shall follow the procedures outlined below:

- (a) The Commissioners Court shall inform the Texas Commission on Environmental Quality by certified mail at least 30 days before the published date of the public hearing notice that it wishes to relinquish its On-Site Sewage Facility Ordinance.
- (b) The Commissioners Court shall post the required public notice in a newspaper regularly published or circulated in the area of jurisdiction at least 30 days prior to the anticipated date of action by the authorized agent and must solicit written comments for the 30 day period.
- (c) The Commissioners Court shall send a copy of the public notice, a publisher's affidavit of public notice, and a certified copy of the court's minutes to the Texas Commission on Environmental Quality.
- (d) Upon relinquishment of the order, the local governmental entity shall pay the Texas Commission on Environmental Quality the appropriate charge back fees for permitting,

COUNTY OF BANDERA

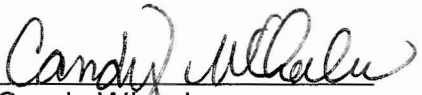
STATE OF TEXAS

AFFIDAVIT

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

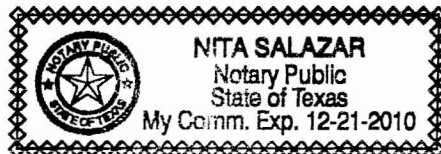
My name is Candy Wheeler, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

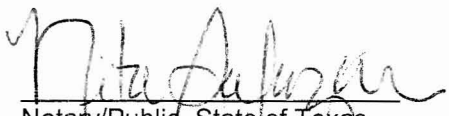
I am the custodian of the records of the County Clerks Office for the County of Bandera, Texas. Attached hereto are seven (7) pages of records known as an ORDER ADOPTING RULES OF BANDERA COUNTY, TEXAS FOR ON-SITE SEWAGE FACILITIES. The records are kept by me as County Clerk, County of Bandera, in the 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.


Candy Wheeler
Bandera County Clerk

BEFORE ME, the undersigned authority, a Notary Public in and for said Bandera County, Texas, on this day personally appeared Candy Wheeler, 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 6 day of July, 2007.




Notary/Public, State of Texas