

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

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

On APR 04 2008 the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of the County of Concho, ("Applicant" or "Concho"), 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 Concho County Order should be approved.

## FINDINGS OF FACT

1. The County of Concho drafted a proposed amendment to its order which regulates on-site sewage facilities.
2. On September 6, 2007 the County of Concho 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 September 11, 2007.
3. The County of Concho held a public meeting to discuss the proposed amendment to its order on September 11, 2007.
4. Concho 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 Concho 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 Concho is hereby authorized to implement its Order which regulates on-site sewage facilities.
2. Any amendments to the Concho 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: **APR 04 2008**



Executive Director  
Texas Commission on Environmental Quality

# **EXHIBIT “A”**

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

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

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

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

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



True and Correct  
Copy of Original  
Filed in Concho  
County Clerks Office

AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

SECTION 4. CONFLICTS.

This Order repeals and replaces any other On-site Sewage Facility order for Concho County.

SECTION 5. CHAPTER 366.

The County of Concho, 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 Texas Health and Safety Code (H&SC) 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.

(A) The Rules shall apply to all the area lying in Concho County, Texas, except for the area regulated under an existing Rule and the areas within incorporated cities.

(B) These Rules shall apply to those incorporated cities or towns that have executed intergovernmental contracts with Concho County, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any permit issued for an on-site sewage facility within the jurisdictional area of Concho 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 Concho 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 Chapters 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 is attached to these Rules as Appendix I.



True and Correct  
Copy of Original  
Filed in Concho  
County Clerks Office

## SECTION 10. AMENDMENTS.

The County of Concho, 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 Concho County, Texas:

- (A) Concho County, to provide greater public health and safety protection, shall require an application, permit and inspection for construction, alteration, extension or repair to a residential or commercial on-site sewage facility, regardless of the size of the tract of land.
- (B) In order to provide greater public health and safety protection, Concho County shall require the maintenance for all OSSF's identified in 285.91(12) to be performed by a TCEQ registered maintenance company unless:
  - (1) The homeowner/property owner is a TCEQ registered maintenance provider for their aerobic treatment unit; or
  - (2) The homeowner/property owner was trained by an installer or manufacturer according to the requirements of HB 2510 [79(R)] prior to adoption of HB 2482 [80(R)]; or
  - (3) The homeowner/property owner holds a valid wastewater Class D license or higher wastewater treatment license, and is certificated by the manufacturer for the brand of OSSF that they own.
- (C) Maintenance Inspections and Reports:
  - (1) Inspections at a minimum must meet all inspection requirements as set by the Rules, Concho County, as well as, the inspection requirements outlined by the manufacturer for the brand being inspected.
  - (2) Inspection reports shall address all inspection and testing requirements as set by the Rules, Concho County, as well as, the testing requirements outlined by the manufacturer for the brand being inspected.
  - (3) Concho County shall require the reporting of the sludge levels in the pump tank, and the condition of the spray area to be included on each required testing report specified by the Rules.

## SECTION 11. DUTIES AND POWERS.

The OSSF Inspector of Concho County, Texas, must be certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities.

## SECTION 12. COLLECTION OF FEES.

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

## 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 Concho County, Texas.



True and Correct  
Copy of Original  
Filed in Concho  
County Clerks Office

SECTION 14. 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 Chapters 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.

SECTION 15. SEVERABILITY

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

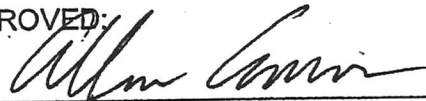
SECTION 16. EFFECTIVE DATE.

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 Commission on Environmental Quality.

AND IT IS SO ORDERED:

PASSED AND APPROVED THIS 11 DATE OF September, 2007.

APPROVED:

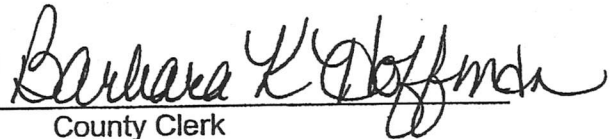


County Judge

(SEAL)



ATTEST:



County Clerk

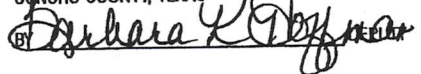
CERTIFIED TRUE AND CORRECT COPY CERTIFICATE  
STATE OF TEXAS  
COUNTY OF CONCHO

The above and foregoing is a full, true and correct photographic copy of the original record now in my lawful custody and possession, as the same is filed/recorded in the Concho Records of my office, found in VOL. 13, PAGE 14-17

I hereby certified on Oct 19, 2007



BARBARA K. HOFFMAN, COUNTY & DISTRICT CLERK  
CONCHO COUNTY, TEXAS



COUNTY OF CONCHO

§

STATE OF TEXAS

§

AFFIDAVIT

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

My name is BARBARA K. Hoffman 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 Concho, Texas. Attached hereto are four (4) pages of records known as (Order)                     . The records are kept by me as County Clerk, County of Concho, 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.

Barbara K. Hoffman

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared BARBARA K. Hoffman, 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 16th day of October, 2007.



Martha Hovorak  
Notary/Public, State of Texas  
My commission expires:

