

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

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

On March 4 2021, the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), considered the application of Montgomery 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 Montgomery County has satisfied the requirements of §366.031, THSC. The Commission finds that the Montgomery County Order should be approved.

## FINDINGS OF FACT

1. Montgomery County drafted a proposed Order which regulates on-site sewage facilities.
2. On December 1, 2020, Montgomery County caused notice to be published, in a newspaper regularly published and of general circulation, in the Montgomery County's area of jurisdiction, of a public meeting to be held on December 8, 2020.
3. Montgomery County held a public meeting to discuss its proposed Order on December 8, 2020.
4. The Montgomery County Order regulating on-site sewage facilities was adopted on December 8, 2020.
5. A certified copy of the minutes was submitted to the Texas Commission on Environmental Quality.
6. A certified copy of the Montgomery 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 Montgomery County's intent to adopt a new Order was properly provided. TEXAS HEALTH & SAFETY CODE § 366.031 and TEXAS ADMINISTRATIVE CODE § 285.10.
4. Montgomery County agreed to the proposed Order in writing.
5. The proposed Order is uncontested.
6. The Montgomery County'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. Montgomery County is hereby authorized to implement its new Order regulating on-site sewage facilities.
2. Any amendments to the Montgomery 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 Montgomery County's adopted Order, marked as Exhibit "A," to Montgomery 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: March 4, 2021

A handwritten signature in black ink, appearing to read 'T. G. Bahr', is written over a horizontal line.

Executive Director  
Texas Commission on Environmental Quality

# **EXHIBIT A**

#20 18.A.

DEC 08 2020

ORDER ADOPTING RULES FOR MONTGOMERY COUNTY, TEXAS FOR  
ON-SITE SEWAGE FACILITIES (OSSF)

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, 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 give of a public meeting to determine whether the Commissioners Court of Montgomery County, Texas should enact an order controlling or prohibiting the installation or use of on-site sewage facilities in the County of Montgomery, Texas; and,

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

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

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

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

I hereby certify that this is a true and correct  
copy of the original record on file in my office.



Mark Turnbull, County Clerk  
Montgomery County, Texas

by Mark Turnbull Deputy  
Issued 12/9/20

## AN ORDER ENTITLED ON-SITE SEWAGE FACILITIES

### SECTION 4. CONFLICTS

This Order repeals and replaces any other Order for Rules or Regulations for On-Site Sewage Facilities or On-Site Sewage Disposal adopted and approved by Montgomery County, Texas.

### SECTION 5. ON-SITE SEWAGE FACILITY REGULATIONS AND ENFORCEMENT

The County of Montgomery County, Texas clearly understands 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 and Chapters 7 and 37 of the Texas Water Code, and associated rules referenced in Section 8 of this Order.

### SECTION 6. AREA OF JURISDICTION

These Rules shall apply to all the area lying in Montgomery County, Texas, except for the area regulated under an existing rule or ordinance and the areas within incorporated cities. Additionally, these Rules shall apply to incorporated cities or towns that have executed an intergovernmental contract with Montgomery County to administer an on-site sewage facility program.

### SECTION 7. ON-SITE SEWAGE FACILITY RULES

Any structure or facility discharging sewage into an on-site sewage facility within the jurisdictional area of Montgomery 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 Montgomery 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 of Montgomery County, Texas for On-Site Sewage Facilities, 30 TAC Chapters 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 Montgomery, 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 requirements if local rules provide greater public health and safety protection. Listed below are the more stringent Rules adopted by Montgomery County, Texas.

- (a) Definitions. Words and phrases in this Order have the same meaning as provided in Chapter 366 of the Texas Health and Safety Code and Chapter 285 of Title 30 of the Texas Administrative Code. The following words and terms in this Order shall be defined as follows:
  - (1) Certified Maintenance Provider shall mean a person that is licensed or registered with the TCEQ and Montgomery County, Texas as an authorized OSSF maintenance provider.
  - (2) Graywater shall mean wastewater from showers, bathtubs, handwashing lavatories, sinks that are not used for disposal of toxic or hazardous substances, sinks that are not used for food preparation or disposal, and clothes-washing machines.
  - (3) Organized Disposal System shall mean a public or private sewerage system for the collection and conveyance of sewage to a treatment and disposal system that is regulated by the rules of the TCEQ and Chapter 26 of the Texas Water Code.
  - (4) OSSF(s) shall mean On-Site Sewage Facility(ies) as defined in 30 TAC § 285 and that does not dispose of more than 5,000 gallons of sewage per day.
  - (5) TAC shall mean Texas Administrative Code.
- (b) All subsurface OSSFs will be sized based off use of non-water saving devices.
- (c) Pump tanks shall be sized to contain two-thirds (2/3) of a day's flow in the reserve. An override switch may be installed as long as it is positioned above the high water alarm to activate after the reserve is full and prior to the pump tank reaching capacity.
- (d) All subsurface disposal fields must be a closed loop system and have an inspection port at the furthest point of the disposal area from the tanks.

- (e) Residential lot sizing.
- (1) Platted or unplatted subdivisions served by public water system. Subdivisions of single family dwellings platted or created on or after December 16, 1986, served by public water supply, and using individual OSSFs for sewage disposal, shall have lots of at least three-fourths (3/4) acre.
  - (2) Platted or unplatted subdivisions not served by a public water system. Subdivisions of single family dwellings platted or created on or after December 16, 1986, not served by a public water supply, and using individual OSSFs, shall have lots of at least one and one-half (1-1/2) acre.
  - (3) Single family dwellings in platted or unplatted subdivisions, platted or created on or after December 16, 1986, and served by public water system and an individual OSSF on which a private water well is installed, must have a lot size of at least one and one-half (1-1/2) acre.
- (f) Submittal of Planning Material. All submissions of planning materials to the permitting authority for review and approval shall be prepared by a professional engineer or professional sanitarian with appropriate seal, date, and signature.
- (g) A permit shall be required for all OSSFs regardless of the size of the lot or acreage onto which the OSSF is installed.
- (h) OSSFs shall not be installed in the Floodway. Only aerobic treatment systems may be installed in the Floodplain. The following components of the aerobic system must be elevated above base flood elevation: risers, chlorinator, clean-outs, inspection ports, control panels, compressors. All other components must be completely buried without adding fill. Sprinkler systems shall be a backflow prevention system. Unless, a single tank system is used, all pump tanks are to be strapped with three-eighth (3/8) to one-half (1/2) inch ten thousand pound steel cable and connected to four by four by eight foot (4-in x 4-in x 8-ft) treated posts with backfill over them. Buoyancy calculations are required on all septic pump tanks.
- (i) Disposal of Graywater. Graywater shall be properly treated prior to disposal.
- (j) Maintenance. All contracted maintenance of an on-site sewage disposal system using an aerobic treatment system shall be conducted by a Certified Maintenance Provider. There shall be no homeowner or property owner maintenance of an on-



site sewage disposal system using aerobic treatment, unless the homeowner or property owner is also a Certified Maintenance Provider. All Commercial and multi-family OSSFs shall require Biological Oxygen Demand and Total Suspended Solids annually.

- (k) Inspections of OSSFs. The Designated Representative may conduct inspections of an OSSF at any time, regardless of when the authorized agent or Designated Representative conducted the last inspection.
- (l) Connection to Organized Disposal Systems. No person may cause or allow the installation of an OSSF when any part of the OSSF is located 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) Commercial Facilities.
  - (1) Minimum lot sizes for Manufactured Home Communities, Duplexes, Tiny Homes, and Park Model Recreational Vehicles shall comply with section 10(e) above.
  - (2) With the exception of Single Family Dwellings, Condominiums, Townhouses, and Mobile Homes, OSSFs serving Commercial Facilities listed in Table III of 30 TAC § 285.91 ("Table 3") and any other non-residential structure defined as a Commercial Facility shall be designed based upon overall site suitability to ensure adequate treatment and disposal of sewage. In addition to criteria provided in Table 3, review and evaluation of site suitability may include the following criteria:
    - A. Occupancy restrictions of the Commercial Facility as provided by the Montgomery County Fire Marshal.
    - B. The number of food preparation areas and kitchen facilities.
    - C. Service of alcoholic beverages as defined by the Texas Alcoholic Beverage Commission (TABC).
    - D. The number of restroom facilities.
    - E. The number of business operation days (applicable only to churches and wedding venues).



- (3) All Commercial Facilities served by a public water supply, and using individual OSSFs for sewage disposal, shall have a minimum lot size of 1 acre. Provided, however, the minimum lot size may be greater than 1 acre depending upon the site suitability and factors considered in Section (m)(2) above.
- (4) All Commercial Facilities not served by a public water system and using individual OSSFs for sewage disposal, shall have a minimum lot size of 1-1/2 acre. Provided, however, the minimum lot size may be greater than 1-1/2 acre depending upon the site suitability and factors considered in Section (m)(2) above. .
- (5) The minimum lot sizes shown above do not apply to Commercial Facilities located on lots in subdivisions platted or subdivided prior to December 16, 1986. Any OSSF to be installed or maintained on such lots must be designed to meet the minimum sanitary requirements of Chapter 366 of the Texas Health and Safety Code and Chapters 7 and 37 of the Texas Water Code.

#### SECTION 11. DUTIES AND POWERS

The Environmental health Services of Montgomery County, Texas is herewith declared the designated representative for the enforcement of these Rules within its jurisdictional area. The appointed individual(s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of the Designated Representative of Montgomery County.

#### SECTION 12. COLLECTION OF FEES

All fees collected for permits and/or inspections shall be made payable to Montgomery County, Texas. A fee of \$10 shall also be collected for each OSSF permit to be paid to the Texas Commission on Environmental Quality.

Fees shall be charged in accordance with the current fee schedule adopted by the Montgomery County Commissioners Court.

#### SECTION 13. APPEALS

Persons aggrieved by the denial of an OSSF permit, or action or decision by the Designated Representative may submit a written request for an appeal to the Designated Representative within 30 days of such denial of the OSSF permit or, action or decision. Upon receipt of a written request for an appeal, the Designated Representative shall submit such request for an appeal to the Commissioners Court of Montgomery County, Texas for review and consideration.

#### SECTION 14. ENFORCEMENT PLAN

The County of Montgomery, Texas clearly understands that, at a minimum, it must follow the requirements of 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 Texas Health and Safety Code, Chapters 7, 26, and 37 of the Texas Water Code, 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 Montgomery 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 Montgomery 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 outline 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 Texas Commission on Environmental Quality.

PASSED AND APPROVED this \_\_\_\_\_ day of DEC 08 2020, 2020.

**MONTGOMERY COUNTY, TEXAS**

  
\_\_\_\_\_  
MARK J. KEOUGH,  
COUNTY JUDGE

  
\_\_\_\_\_  
MIKE MEADOR,  
COMMISSIONER PRECINCT 1

  
\_\_\_\_\_  
CHARLIE RILEY,  
COMMISSIONER PRECINCT 2

 *Abstained*  
\_\_\_\_\_  
JAMES NOACK,  
COMMISSIONER PRECINCT 3

 *Abstained*  
\_\_\_\_\_  
JAMES METTS,  
COMMISSIONER PRECINCT 4

ATTEST   
\_\_\_\_\_  
MARK TURNBULL, COUNTY CLERK

