

ORDER NO. _____

ORDER ADOPTING RULES FOR ON-SITE SEWAGE FACILITIES WITHIN
2,075 FEET OF LAKE CONROE, TEXAS

WHEREAS, the Texas Commission on Environmental Quality (the "TCEQ") has adopted rules related to OSSFs, including rules related to local government regulation of OSSFs, in order to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, Chapter 366 of the Texas Health and Safety Code sets forth certain legal requirements related to on-site sewage facilities ("OSSFs") and, in pertinent part, authorizes a local government to regulate OSSFs within the local government's jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of OSSFs; and

WHEREAS, the Board of Directors of the San Jacinto River Authority (the "Authority") passed and approved an Order on February 26, 2004, regulating OSSFs located within 2,075 feet of Lake Conroe in order to abate or prevent pollution of the waters of Lake Conroe or injury to public health; and

WHEREAS, the Board of Directors of the Authority has considered the matter and deems it appropriate to amend and restate the aforesaid Order relative to the Authority's standards for OSSFs located within 2,075 feet of Lake Conroe in order to abate or prevent pollution of the waters of Lake Conroe or injury to public health; and

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE SAN JACINTO RIVER AUTHORITY, THAT:

Section 1: Recitals. The matters and facts recited in the preamble of this Order are hereby found and determined to be true and correct.

Section 2: Findings. It is hereby found, determined and declared that:

(1) the operation or use of OSSFs within 2,075 feet of Lake Conroe is causing or may cause pollution or is injuring or may injure the public health;

(2) a draft of this Order was duly submitted to the TCEQ as required by the rules and procedural requirements of the TCEQ, and the Authority has received the written approval of same from the Executive Director of the TCEQ;

(3) this Order was considered and passed and approved at a regular meeting of the Board of Directors of the Authority beginning at 7:30 a.m., Conroe, Texas time on December 10, 2015, at the Authority's General and Administration Building, 1577 Dam Site Road, Conroe, Montgomery County, Texas 77304 (the "Meeting"), and that the Meeting was open to the public, as required by law, at all times during which this Order and the subject matter hereof was discussed, considered and acted upon;

(4) written notice of the date, hour, place and subject of the Meeting was duly and timely posted and/or furnished for posting to the County Clerk of Montgomery County, Texas,

and to the Secretary of State of Texas for the time prescribed by law preceding the Meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code, as amended, and Chapter 49, Texas Water Code, as amended;

(5) written notice of the consideration and proposed passage and approval of this Order at the Meeting was duly published in newspapers of general circulation as required rules and procedural requirements of the TCEQ; and

(6) all requirements of the constitution and laws of the State of Texas and the rules and procedural requirements of the TCEQ with respect to the notice, consideration, passage and approval of this Order have been fulfilled and accomplished.

Section 3: Governing Laws. The Authority acknowledges and understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating OSSFs and will fully enforce Chapter 366 of the Texas Health and Safety Code and Chapters 7 and 37 of the Texas Water Code (the "Governing Laws"), and the associated rules referenced in Section 4 of this Order.

Section 4: OSSF Rules Adopted. The rules and regulations set forth in Title 30, Texas Administrative Code ("TAC"), Chapters 285 and 30, as promulgated and amended and revised from time to time by the TCEQ for OSSFs (the "Rules") are hereby incorporated by reference and adopted, and all officials and employees of the Authority having duties under the Rules are authorized to perform such duties as are required of them under the Rules.

Section 5: Area of Jurisdiction. The Rules shall apply to all the area lying within 2,075 feet of Lake Conroe, except for any portion of said area:

- (1) regulated under any predecessor Rule; or
- (2) located within the corporate limits of any municipality.

Section 6: OSSF Permits. Any permit issued for an OSSF within the jurisdictional area of the Authority must comply with the Rules.

Section 7: Local Standards. (a) Pursuant to the Governing Laws and the Rules, the Authority hereby adopts the following local standards for OSSFs within the area of jurisdiction of the Authority:

- (1) All lots utilizing an OSSF and being served by a public water system must be at least one acre, and all lots not served by a public water system must be at least one and one half acres in size.
- (2) All new OSSFs, and existing OSSF being modified, must be designed and submitted by a registered sanitarian or professional engineer.
- (3) All OSSFs, regardless of the size of the property served, must meet all requirements of the Rules and the Authority and must be permitted by the Authority.
- (4) The inspection and maintenance of all OSSFs requiring secondary treatment (as identified in 30 TAC § 285.91(12)) must be performed by a maintenance provider licensed by the

TCEQ, under a written contract between the property owner served by the OSSF and such TCEQ-licensed maintenance provider, unless the OSSF serves a single family dwelling that is the primary residence of the property owner and:

(A) the property owner is a maintenance provider licensed by the TCEQ;

(B) the property owner holds a valid Class D or higher wastewater treatment license;

(C) the property owner has satisfactorily completed a TCEQ-approved Basic Maintenance Provider Course; or

(D) the property owner has satisfactorily completed the OSSF – Aerobic/Surface Application System Orientation and Maintenance Course entitled – General Guidance for Monitoring Aerobic Treatment Units, Disinfection Units, and Spray Fields in Texas (B-6235) offered by the AgriLife Extension, Texas A&M System.

(5) The Authority may periodically inspect any OSSF at a frequency deemed appropriate by the Authority.

(6) All subsurface OSSFs shall be designed with the usage rate in gallons per day without the 20-percent reduction for using water-saving devices.

(7) Timed pump tanks will allow for a two-third day flow in reserve. An override switch may be installed as long as it is positioned above the high-water alarm to activate after the reserve storage space has been used and prior to the tank completely filling.

(8) All gravity-fed subsurface disposal fields must be close-looped and have an inspection port at the furthest point of the disposal area from the tank.

(9) OSSFs will not be installed in the regulatory floodplain. Aerobic systems may be installed in the regulatory floodplain if the components of the OSSF (risers, chlorinator, clean-outs, inspection ports, control panels, compressors) are elevated above the base-flood elevation. Sprinklers shall be of the back-flow prevention type.

(10) Maintenance inspections and reports.

(A) All OSSFs requiring secondary treatment (as identified in 30 TAC § 285.91(12)) must be inspected at least once every four calendar months. An inspection report must be filed with the Authority within fourteen calendar days after the inspection, either directly by the property owner or indirectly through a TCEQ-licensed maintenance provider.

(B) Any property owner that is not required to contract with a TCEQ-licensed maintenance provider to perform testing, reporting, and maintenance on an OSSF under subdivision (4), above, shall still be required to submit all required reports and testing required of a TCEQ-licensed maintenance provider to the Authority.

(C) Inspections and maintenance, at a minimum, must meet all requirements set forth in the Rules.

(D) Inspection and maintenance reports shall address all inspection and testing required by the policies and procedures of the Authority and the State of Texas, including the Rules. In addition to the information required by 30 TAC, Chapter 285, all inspection and maintenance reports shall include:

- (i) the date of the inspection;
- (ii) the date of the preceding inspection;
- (iii) the reporting of any unauthorized alterations to the OSSF;
- (iv) the condition of the spray area, if applicable;
- (v) the permit number of the OSSF;
- (vi) the TCEQ license number of the maintenance provider;
- (vii) the physical address of the OSSF;
- (viii) the printed name and signature of the representative of the TCEQ-licensed maintenance provider, or the property owner if the property owner is submitting the inspection report; and
- (ix) the physical address, business address, business phone number and emergency phone number of the TCEQ-licensed maintenance provider, if applicable.

(E) In addition to the information required by 30 TAC Chapter 285, all contracts of TCEQ-licensed maintenance providers shall include:

- (i) the permit number of the OSSF;
- (ii) the physical address of the OSSF;
- (iii) the printed name and signature of the representative of the TCEQ-licensed maintenance provider and the property owner; and
- (iv) the physical address, business address, business phone number and emergency phone number of the maintenance provider.

(b) The local standards adopted hereinabove shall control and take precedence over any conflicting requirements of the Rules.

Section 8: Conflicts. This Order repeals and replaces any prior resolution or order of the Authority related to the regulation of OSSFs within 2,075 feet of Lake Conroe including, without limitation, that certain Order passed and approved by the Board of Directors of the Authority on February 26, 2004.

Section 9: Duties and Powers. The General Manager shall designate an "OSSF Designated Representative." The OSSF Designated Representative must be (i) an Authority employee, and (ii) licensed by the TCEQ before assuming the duties and responsibilities of said position pursuant to 30 TAC § 285.62. Subject to the supervision of the General Manager and the Board of Directors, the OSSF Designation Representative is authorized and directed to implement and administer the Authority's OSSF program and this Order and, without limiting the foregoing, may enforce this Order, the Rules, and the Governing Laws in any manner authorized by law.

Section 10: Administrative Fees. (a) The OSSF Designated Representative, with the prior approval of Board of Directors, may adopt and publish fees to be imposed and collected in connection with the OSSF program implemented and administered by the Authority under this Order, including, without limitation, contract and periodic inspection report filing fees applicable to property owners and/or TCEQ-licensed maintenance providers, late fees related to delinquent contracts and inspection reports, and other reasonable administrative fees. Following approval of such fees by the Board of Directors, the OSSF Designated Representative shall be authorized to impose and collect same, subject to the supervisions of the General Manager. A fee of \$10.00 will also be collected for each OSSF permit to be paid to the credit of the TCEQ Water Resources Management Account as required by Texas Health and Safety Code, Chapter 367.

(b) The Board of Directors of the Authority specifically authorizes the General Manager to require that any inspection filing fee(s) be paid, at the time of filing of the inspection report, by:

(1) the TCEQ-licensed maintenance provider that prepared the inspection report;
or

(2) the property owner, if the property owner is not required to contract with a TCEQ-licensed maintenance provider under subsection 7(a)(4), above.

(c) All fees adopted hereunder shall be made payable to the San Jacinto River Authority.

(d) All fees adopted, published or collected hereunder shall be construed as being separate and apart from, and in addition to, any penalties sought or collect under Section 12 hereof.

Section 11: Appeals. Persons aggrieved by an action or decision of the OSSF Designated Representative may appeal such action or decision to the General Manager of the Authority. Persons aggrieved by an action or decision of the General Manager of the Authority on appeal from an action or decision of the OSSF Representative may appeal such action or decision of the General Manager of the Authority to the Board of Directors of the Authority.

Section 12: Enforcement Plan. The Authority 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 OSSFs, 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 13: Severability. It is hereby declared to be the intention of the Authority 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 a 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 Authority without incorporation in this Order of such unconstitutional phrases, clause, sentence, paragraph, or section.

Section 14: Relinquishment of Order. If the Board of Directors of the Authority decides that it no longer wishes to regulate OSSFs in its area of jurisdiction, the Board of Directors of the Authority, 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 15: Effective Date. This Order shall be in full force and effect as of and after June 1, 2016, subject only to the prior approval of this Order by the TCEQ.

[signatures commence on following page]

PASSED AND APPROVED on _____, 2015.

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

DRAFT