



Brazoria County Environmental Health Department
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Phone: 979-864-1600 Fax: 979-864-1904
Karen Carroll, BA, RS, DR Director

September 22, 2014

The Honorable Robert C Wall
12003 County Road 65
Iowa Colony, TX 77583

RE: Attached Letter from the Texas Commission on Environmental Quality (TCEQ)

Dear Mayor Wall,

We are writing in reference to the County's Interlocal Agreement for Regulation of On-Site Sewage Facilities within Iowa Colony city limits. On September 9, 2014, we received a copy of the TCEQ letter which is attached. As you can see this letter is dated October 6, 2011, and it requires compliance by September 1, 2014.

Since we are not in compliance with the requirements stated in the letter, our department is unable to continue permitting and inspecting OSSF in Iowa Colony at this time. We will be working with the County Judge, the County Commissioners, and the Brazoria County District Attorney's Civil Division on this matter. This subject is still under consideration by the County at this time. In the meantime, any permitting or inspecting issues within Iowa Colony city limits should be directed to the TCEQ Houston office at 713-767-3650

Please direct any technical questions regarding the attached letter to the TCEQ Austin office. The contacts are James McCaine at 512-239-4777 and Mike Price at 512-239-2150.

We will let you know once any decision has been made by the County.

Sincerely,

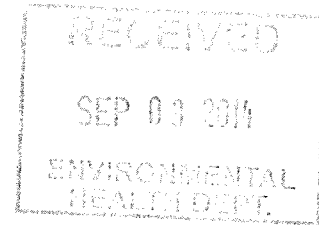
A handwritten signature in blue ink that reads "Karen Carroll".

Karen Carroll, Director

C: James McCaine, TCEQ Austin
Bryan Eastham, TCEQ Houston
Mary Shine, Brazoria County District Attorney's Office Civil Division

Enclosure: October 6, 2011 Letter from TCEQ

Bryan W. Shaw, Ph.D, *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 6, 2011

To: All Texas OSSF Authorized Agents (AAs)

Subject: Intergovernmental (Interlocal) Agreements

TCEQ's Office of Legal Services (OLS) has provided the OSSF Program a determination regarding the mechanism of OSSF interlocal agreements. In order for an OSSF interlocal agreement to be a valid document, the interlocal agreement must be between two active, current Authorized Agents (AAs). For example, if City Alpha intends to enter into an interlocal agreement with County Bravo in order for County Bravo to handle OSSF matters within the boundaries of City Alpha, both County Bravo and City Alpha must be current AAs. Further, County Bravo must follow City Alpha's OSSF order provisions within the boundaries of City Alpha.

The legal basis for this determination is rooted in contract law. An interlocal agreement is a contract between two governmental entities. To enter into such a contract, one must have the authority to do so. TCEQ has overall authority for the OSSF program statewide but it must delegate that authority to a local governmental entity when requested. If that authority has not been delegated to a local entity, such as a city, that entity does not have authority over the OSSF program and therefore cannot further delegate that authority to another entity, such as a county, through an interlocal agreement.

If the entities that have entered into a now invalid interlocal agreement wish to continue that arrangement for OSSF coverage, we believe the most feasible solution is to have the entity which is already an AA amend its order to add language that increases jurisdiction to cover the non-AA's area of jurisdiction. This language would be in Section 6, Area of Jurisdiction, in the current model order. An example of such language follows:

"This Order shall apply to all areas lying within Bravo County, Texas, except for the areas regulated under an existing Order, Ordinance or Resolution and those areas under the responsibility of the corresponding TCEQ Regional Office. The county will regulate OSSF matters in all areas in the county without an existing Order, Ordinance or Resolution except for those areas under the responsibility of the corresponding TCEQ Regional Office."

Order amendments will be handled under a phased-in approach and we expect the process to take approximately three (3) years to complete. Those AAs that are affected will have until 9/1/2014 to take appropriate steps to remedy the situation. After that date, the AA will be subject to enforcement actions by the Region if, during a Compliance Review, for example, it was documented that the AA had made no progress toward remedying the situation. Obviously we would prefer that the matter be corrected sooner than the 2014 deadline.

Please note that OLS has agreed that TCEQ and the Regions can honor the existing interlocal agreements until such time as appropriate corrective steps are taken.

Obviously one other possible solution is to have the non-AA in an existing interlocal agreement go through the process and become an AA. The OSSF Program in Austin is prepared to assist the non-AA through this process.

Also note that orders, ordinances and resolutions will have to be amended in order to address language related to the dissolution of the Texas Onsite Wastewater Treatment Research Council (TOWTRC). We plan to handle this change as AAs voluntarily submit amendments to their orders, ordinances or resolutions but addressing the interlocal agreement issue gives us the opportunity to take care of the revised TOWTRC language as well.

If any AA personnel want to discuss this matter further, please contact Gus Chavez at 512-239-4775 or at gus.chavez@tceq.texas.gov. If any legal representative or attorney from an AA wants to discuss this matter, our OLS staff is more than willing to undertake that discussion. Contact information can be provided as necessary.

Please contact Gus Chavez with any additional questions or concerns.

Sincerely,



Tracy Miller, Water Team Leader
Program Support Section, MC-174
Field Operations Support Division

OSSF Interlocal Agreement Issue

Summary of Issue: In an October 6, 2011 letter to OSSF Authorized Agents (AAs), TCEQ stated that if there was an interlocal agreement between a city and a county, both entities needed to be an authorized agent. Furthermore, we gave them until September 1, 2014 to address this issue and if it was documented during a compliance review that they had not addressed this issue, enforcement was possible.

Examples of County Order language causing trouble

SECTION 6. AREA OF JURISDICTION.

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

or

The Rules shall apply to all the area lying in _____ County, Texas, except for the areas within incorporated cities.

Examples of County Order language not causing trouble

SECTION 6. AREA OF JURISDICTION.

The Rules shall apply to all the areas lying within _____ County, Texas, except for areas regulated under an existing Order, Ordinance or Resolution.

Conclusions

- If the language in the county order is not causing trouble, everything is fine;
- If the language in the county order is causing trouble, then the county should not be permitting within incorporated cities unless the city is also an AA and there is an interlocal agreement between the two entities. In these counties, permitting within the incorporated areas should be done by the TCEQ regional office. Should the AA continue permitting within incorporated areas after September 1, 2014, regional OSSF staff will notify them to stop and let them know that enforcement against them is possible;
- If there is confusion about how the jurisdictional language within the county order relates to this issue, please contact OSSF staff at 512-239-3799; and
- Should the county wish to amend their order to cover the incorporated areas, have them contact OSSF staff at 512-239-3799.