

**ORDER No. 2013-1**  
**NORTHEAST TEXAS PUBLIC HEALTH DISTRICT**

**ADOPTION OF TEXAS DEPARTMENT OF STATE HEALTH SERVICES  
STANDARDS FOR PUBLIC SWIMMING POOLS, SPAS,  
INTERACTIVE WATER FEATURES AND FOUNTAINS**

**WHEREAS**, the Northeast Texas Public Health District is a governmental entity created pursuant to Texas Health and Safety Code, Sec. 121.041 et. seq. and is the designated regulatory authority with jurisdiction over public swimming pools, spas, bathhouses, and associated facilities; and

**WHEREAS**, the Texas Health and Safety Code at Sections 121.043(a) and 121.006 authorizes the Northeast Texas Public Health District to adopt rules to charge certain fees for public health services and that those fees may be applied uniformly throughout the District; and

**WHEREAS**, pursuant to the Texas Health and Safety Code, Section 341.064, the Northeast Texas Public Health District may require that the owner or operator of a public swimming pool, spa, or bathhouse obtain an original permit for operation of the pool or spa and annual renewal permits, and pre and post-permit inspections may be conducted by the District to ensure that public swimming pools, spas, and bathhouses within its jurisdiction are being operated in a sanitary condition and consistent with Texas Administrative Code, Title 25, Part I, Chapter 265 General Sanitation, Subchapter L, Standards for Public Pools and Spas, Rule Sec. 265.181 et.seq. implementing standards required by Texas Health and Safety Code, Sec. 341.064 (g);

**WHEREAS**, pursuant to the Texas Health and Safety Code, Section 341.0695 defines interactive water features and fountains, the Northeast Texas Public Health District may require that the owner or operator of a public interactive water feature or fountain obtain an original permit for the operation of the interactive water feature or fountain and annual renewal permits;

**WHEREAS**, Texas Administrative Code, Title 25, Part I, Chapter 265 General Sanitation, Subchapter M, Public Interactive Water Features and Fountains, Rule Sec. 265.301 – 265.308 establishes the requirements for the minimum sanitation standards for public interactive water features and fountains;

**WHEREAS**, both civil and criminal enforcement procedures as authorized by the Texas Health and Safety Code, Sections 341.091-.092 allow the Northeast Texas Public Health District to file criminal charges and/or assess civil penalties against owners or operators in violation of either permitting or inspection requirements or closure orders issued per authority of Section 341.064(o); and

**THEREFORE, BE IT ORDERED** by the **Northeast Texas Public Health District Board that:**

**PART 1:**

**SECTION I. Incorporation of Texas Department of State Health Services Standards and Applicable Texas Administrative Code rules and regulations.**

- A.** The Northeast Texas Public Health District Board of Health adopts and incorporates herein by reference the rules found in Texas Administrative Code, Title 25, Part I, Chapter 265, Sections 265.181 through 265.207 implementing Texas Health and Safety Code Section 341.064 regarding the regulation of public pools and spas in this jurisdiction, as said rules currently exist and as they may hereafter be amended, as well as Texas Health and Safety Code Section 341.0695 regarding the regulation of interactive water features and fountains and Texas Administrative Code, Title 25, Part 1, Chapter 265, Sections 265.301 through 265.308.
- B. Conflicts.** In the event of any conflict between the provisions adopted in subsection (A) of this section and the other provisions of this article, the other provisions of this article

shall prevail.

## **SECTION II. Definitions.**

The definitions found in Texas Administrative Code, Title 25, Part 1, Chapter 265, Sections 265.181 through 265.207 regarding the regulation of public pools and spas, as well as Sections 265.301 through 265.308 regarding the regulation of public interactive water features and fountains shall apply to this article except as such terms may be otherwise defined herein.

**A. Administrator.** The term “Administrator” shall mean the Northeast Texas Public Health District designated by the Northeast Texas Public Health District Board of Health to administer and/or enforce the provisions of this article and any person or persons designated by such a division or department to represent the division or department for said purposes.

**B. Modify or modified or modification.** The term "modify" or "modified" or "modification" shall mean the replacement of or modification to a pool structure, circulation system and/or appurtenances such that the design, configuration, and/or operating characteristics are different than the original design, configuration, and/or operating characteristics, but does not include normal maintenance and repair or the replacement of equipment which had been previously approved, provided that the type, size, and/or operating characteristics of the equipment are not substantially different than the original equipment.

**C. Person.** The term "person" shall include private, not-for-profit, or governmental entity.

**D. Pool, spa, interactive water feature or fountain permit.** The term "pool, spa, interactive water feature or fountain permit" shall mean the permit required by the provisions of this Order. The term does not include any other permit required for the construction of a public pool, spa, interactive water feature or fountain, and the issuance

of a permit under the provisions of this Order shall not be construed to exempt a public pool, spa, interactive water feature or fountain from any other applicable legal requirements, including without limitation the requirement to obtain a building permit or any other permit required by law.

**E. Interactive water feature and fountain** in this section means an installation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons and that is maintained for public recreation. The installation and operation must meet the standards set in Section 341.0695 (a) through (h) Texas Health and Safety Codes.

**F. Pool operator training** means the individual maintaining a public pool, spa, interactive water feature or fountain must attend a training course taught or approved by the Northeast Texas Public Health District. Each public pool, spa, interactive water feature or fountain must have at least one pool, spa, interactive water feature or fountain operator trained per location each year. The cost to attend one of the training classes offered by the Northeast Texas Public Health District is \$65.00. A minimum of three trainings will be held each year. In lieu of training each pool, spa, interactive water feature or fountain operator may present proof of current Certified Pool Operator at no fee.

**SECTION III. Public pool, spa, interactive water feature, or fountain permits. Original permit fee, annual renewal and late fees.**

**A. Posted Permit Required.** No person shall operate a public pool, spa, interactive water feature or fountain without a valid permit for each pool, spa, interactive water feature or fountain issued by the Administrator, the Northeast Texas Public Health District. A valid pool, spa, interactive water feature or fountain permit shall at all times be available on the premises for inspection and shall at all times be displayed in public view. A pool, spa,

interactive water feature or fountain permit that has been revoked, that has expired, or that has lapsed for any reason is not valid. A suspended pool, spa, interactive water feature or fountain permit is not valid during the period of suspension.

**B. Issuance of permit. Duration. Annual renewal requirement.**

- 1) The Administrator shall issue a public pool, spa, interactive water feature or fountain permit to any person making application in Smith County; provided that the person complies with the requirements of this Order and the annual pool, spa, interactive water feature or fountain permit fee of \$250.00 is paid. An establishment with multiple public swimming pools, spas, interactive water features or fountains at the same location shall pay \$250.00 for the first swimming pool or spa, \$250.00 for the first interactive water feature or fountain and \$150.00 for each additional swimming pool, spa, interactive water feature or fountain at the same location.
- 2) Public pool, spa, interactive water feature or fountain permits shall expire one year from date of issuance, unless the annual permit fee is paid, or unless the permit is suspended for cause before expiration date. Pool, spa, interactive water feature or fountain permit renewal fees per pool, spa, interactive water feature or fountain permit must be paid in full prior to issuance of any renewal permit. A late fee of \$100.00 shall be charged when the fee for the renewal of a permit is not paid before the expiration of the existing permit.
- 3) Public pool, spa, interactive water feature or fountain permits that lapse solely due to non-payment of the annual permit fee will be reinstated upon payment of the annual permit fee and the late fee.
- 4) The Administrator shall conduct a public swimming pool, spa, interactive water

feature or fountain training course of instruction on the regulations, design, maintenance and operation of public swimming pools and spas at least three times per year. Each establishment must have at least one responsible person that is currently certified and on premise during operational hours. Training must be demonstrated within sixty (60) days of becoming employed. A training fee shall be \$65.00 for a one year certification and a certificate of training shall be issued by the Administrator. After the expiration of the one (1) year certification, an application must be processed for a new certificate, which will not be issued until the satisfactory completion of the training course. In lieu of attending training required by the Administrator, each pool, spa, or interactive water feature may present proof of current Certified Pool Operator on site during operational hours.

**C. Permits not transferable.** A pool, spa, interactive water feature or fountain permit is not transferable from one person to another or from one location to another location, except as otherwise permitted by this article. A pool, spa, interactive water feature or fountain permit shall permit the operation of the pool, spa, interactive water feature or fountain only at the location and for the owner or operator for which granted.

**D. Required language.** Every permit issued by the Administrator pursuant to the provisions of this article shall contain on its face the following language or language substantially similar thereto: “Although the Northeast Texas Public Health District attempts to inspect public pools, spas, interactive water features or fountains and to enforce applicable Texas Department of State Health Services regulations, a valid Northeast Texas Public Health District permit does not guarantee that the inspected pool, spa, interactive water feature or fountain is safe. The Northeast Texas Public Health District does not warrant that any public pool, spa, interactive water feature or fountain,

whether inspected or uninspected, is compliant with federal, state or local regulations.”

**SECTION IV. Permit application procedure. Application, plans, application fees.**

- A.** Whenever a new public pool, spa, interactive water feature or fountain is to be constructed or modified or at anytime there is a change of ownership, application for a plan review and public pool, spa, interactive water feature or fountain permit shall be made in writing on the form provided by the Administrator.
- B.** The plans and specifications shall indicate the proposed layout and arrangement of mechanical, plumbing, fencing, electrical, construction materials of work areas, the type and model of proposed fixed equipment and facilities, and all associated buildings and structures. A licensed professional engineer must certify by letter and seal that to the best of his/her knowledge, information and belief the public swimming pool, spa, interactive water feature or fountain was designed to comply and as described complies with present statutes of the Texas Administrative Code, Title 25, Part 1, Chapter 265 and Sections 341.064, 341.0645 and 341.0695 of the Health and Safety Code, Chapter 341. The public pool, spa, interactive water feature or fountain construction shall pass a pregrunite inspection, preplaster inspection, and preoperational inspection by the Administrator prior to issuance of a permit.
- C.** An application fee of \$175.00 must accompany the Application for a Plan Review and Permit for each public pool, spa, interactive water feature or fountain and the included properly prepared plans and specifications.
- D.** A separate application for a permit, submission of plans, and a separate application fee is required for each public pool, spa, interactive water feature or fountain for which a permit is sought.
- E.** After the Administrator reviews the application and plans and conducts an inspection to

insure compliance with standards adopted herein, applicant will be notified and where an application has been approved, permit shall be issued after the owner/operator pays the permit fee.

- F. A person commits an offense if the person makes a false statement on any application, report, or other documentation required to be submitted to the Administrator under the provisions of this article and shall be deemed guilty of a misdemeanor and shall be subject to a fine as provided in this Order.

#### **SECTION V. Payment of fees.**

- A. **Submission of payment.** The requirements for permits and administrative fees of this article shall require the payment to be submitted to the Administrator. All fees ordered herein are non-refundable. Although permits are required, fees will not be charged for pools, spas, interactive water features or fountains owned and operated by the City or by a public school district.

#### **SECTION VI. Inspections.**

- A. **Inspection authority.** The Administrator is authorized to conduct such inspections as the Administrator deems necessary to ensure compliance with all provisions of this Order. The Administrator shall have right of entry at any reasonable hour upon the premises where a public pool, spa, interactive water feature or fountain is located. The Administrator shall have the authority to collect water samples from the public pool, spa, interactive water feature or fountain. The Administrator's authority to inspect public pools, spas, interactive water features or fountains includes, without limitation, the right to access any and all parts of the public pool, spa, interactive water feature or fountain and the right to view and copy any or all of the records relating to the construction or maintenance of the public pool, spa, interactive water feature or fountain.



- B. Permit inspections.** Prior to the issuance of the initial permit, the Administrator shall inspect the public pool, spa, interactive water feature or fountain.
- C. Additional inspections.** Additional inspections shall be performed as often as necessary for the enforcement of this Order. It shall be solely the responsibility of the Administrator to determine the frequency of inspections to be made pursuant to this Order.
- D. Inspection based on complaint.** The Administrator shall have the authority to inspect a public pool or spa based on complaints or other credible information indicating the possibility of a violation of this Order.
- E. Minimum inspection standards for public pools or spas.** At a minimum, any public pool or spa inspected must comply with the following standards in order to pass inspection:
- 1) All pumps, filters, heaters, disinfectant and chemical feeders, drains, ladders, handrails, lighting, ropes and appurtenant equipment used in the operation of all pools or spas shall be maintained in a good state of repair and in compliance with provisions of the Texas Department of State Health Services Standards for Public Swimming Pools and Spas.
  - 2) Every public pool shall contain a disinfectant concentration of a minimum free available chlorine of 1.0 parts per million (ppm) and a maximum free available chlorine of 8.0 ppm. As an alternative to the use of chlorine as a disinfectant, bromine may be used as a disinfectant in a pool. Every public pool using bromine as a disinfectant shall contain a disinfectant concentration of minimum free available bromine of 2.5 ppm and a maximum free available bromine of 12.0 ppm. Use of any disinfectant other than chlorine or bromine must be approved by the Texas Department of State Health Services.

- 3) Every public spa shall contain a disinfectant concentration of minimum free available chlorine of 2.0 ppm and maximum free available chlorine of 8.0 ppm. As an alternative to the use of chlorine as a disinfectant, bromine may be used as a disinfectant in a spa. Every public spa using bromine as a disinfectant shall contain a disinfectant concentration of minimum free available bromine of 4.5 ppm and a maximum free available bromine of 12.0 ppm. Use of any disinfectant other than chlorine or bromine must be approved by the Texas Department of State Health Services.
- 4) Every public pool and spa shall have water with a pH of not less than 7.0 and not more than 7.8.
- 5) A pH test kit, accurate to the nearest 0.2 pH units, shall be provided at each public pool and spa. A test kit for measuring the concentration of the disinfectant, accurate within 0.2 mg/L, shall be provided at each public pool and at each public spa. The test kit must be able to measure between 1.0 ppm to 8 ppm for free chlorine and for bromine between 1ppm to 12 ppm. The owner, operator, and person in charge of each public pool or spa are responsible for providing the required test kits. The test kit for measuring disinfectant concentration must use the DPD (dimethyl-p-phenylenediamine) method. The Administrator may, at the Administrator's discretion, accept a test kit that uses another testing method if the method is approved by the Texas Department of State Health Services.
- 6) When the public pool or spa is in operation, tests must be performed at a minimum once a day for disinfectant residual and pH concentration as listed in this section, except when more frequent testing is required under the provisions of the Texas Department of State Health Services Standards for Public Swimming

Pools and Spas. The results of these tests must be recorded and maintained on-site for at least two years.

- 7)** The maximum temperature of the water in any public pool or spa shall be 104 degrees Fahrenheit. Each public spa shall be required to have an unbreakable thermometer able to accurately measure the temperature in degrees Fahrenheit.
- 8)** If cyanuric acid is used to stabilize the free available chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of the cyanuric acid in the water shall not exceed 100 ppm.
- 9)** The total alkalinity of the public pool or spa water shall be at least 60 ppm, but not greater than 180 ppm.
- 10)** The presence of coliform bacteria in any sample shall be deemed to constitute unacceptable water quality.
- 11)** Every public pool and spa shall have water clarity sufficient for the main drain and/or bottom to be clearly visible. Failure to meet this requirement shall be sufficient cause for immediate closure of the pool or spa.
- 12)** Every public pool and spa shall be free of scum and foreign floating matter, sediment, dirt, slime, algae and all other foreign material that may be conducive to the transmission of disease.
- 13)** The circulation system of a public pool or spa must be in operation and properly maintained at all times in order to maintain the required turn-over rate necessary to maintain water clarity according to this section.
- 14)** All systems for public pools or spas shall be designed and maintained to protect against entrapment, entanglement, or evisceration hazard and not constitute a hazard to users. All suction tests required under the provisions of Texas

Department of State Health Services Standards for Public Swimming Pools and Spas must be performed as described and all reports submitted to the Administrator according to the dates prescribed.

- 15) Every public pool and spa is required to have at least one continuous disinfection system that is capable of precisely introducing a sufficient quantity of approved disinfectant necessary to maintain the minimum standard. Hand broadcasting of chemicals directly on to the pool or spa surface shall not be allowed while the pool or spa is in use.
- 16) Water introduced into the public pool or spa shall be supplied through an approved air gap. Any other method of introducing water into the pool or spa system must comply with the plumbing code of the city.
- 17) Areas surrounding a public pool or spa, including bathhouses, dressing rooms, toilets, shower stalls and lounging areas shall be kept clean and in a state of good repair at all times.
- 18) All chemicals used in public pool or spa water treatment shall be stored in their original containers and kept in a cool, dry and well-ventilated place, out of the reach of children, and should be kept in a locked room.
- 19) All signs required by this article must be posted in accordance with the applicable requirements.
- 20) All public pools and spas must comply with the standards and requirements regarding depth markings.
- 21) All public pools and spas must comply with all applicable requirements regarding safety equipment.
- 22) Main drains and suction outlets, other than skimmers, shall be provided with anti-

entrapment covers or grates. These covers or grates shall be secured in such a way that they can be removed only with the use of a tool.

- 23) All public pool and/or spa enclosures must be maintained in good repair and comply with the applicable state and local construction requirements.
- 24) All gates to public pool or spa enclosures must be self-closing and self-latching and meet any applicable construction requirements imposed under state and or local law, including without limitation any requirement imposed by the Texas Department of State Health Services Standards for Public Swimming Pools and Spas and/or by local ordinances.
- 25) When not in use for an extended period of time such as off-season, the public pool or spa water quality need not be maintained if the gate to the enclosure is properly secured and locked; except that water clarity must be maintained and algae must not be allowed to grow.
- 26) At no time shall a public pool or spa be allowed to give off objectionable odor, become a breeding site for insects, or create any nuisance or safety hazard.
- 27) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from a public swimming pool or spa.

**F. Minimum inspection standards for interactive water features or fountains.** At a minimum, any public interactive water feature or fountain inspected must comply with the following standards in order to pass inspection:

- 1) In this section, "interactive water feature or fountain" means an installation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons and that is maintained for public recreation.

- 2) An owner, manager, operator, or other attendant in charge of a public interactive water feature or fountain shall maintain the public water feature or fountain in a sanitary condition.
- 3) The bacterial content of the water in a public interactive water feature or fountain may not exceed the safe limits prescribed by the standards adopted under this chapter.
- 4) Except as provided by Subsection 6, minimum free residual chlorine of 1.0 part for each one million units of water used in an interactive water feature or fountain must be maintained.
- 5) Water in a public interactive water feature or fountain may not show an acid reaction to a standard pH test.
- 6) The Texas Department of State Health Services may by rule adopt methods other than chlorination for the purpose of disinfecting interactive water features and fountains.
- 7) A public interactive water feature or fountain that is supplied entirely by drinking water that is not recirculated is not subject to Subsections 4 and 5.
- 8) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from a public interactive water feature or fountain.

**SECTION VII. Safety equipment.**

**A. General safety equipment.** The following safety equipment shall be readily accessible, kept in good repair and ready condition at all public pools, excluding spas, interactive water features or fountains, during all times they are open for use:

- 1) A strong, light, non-telescoping reaching pole not less than 12 feet long, including

a body hook or shepherd's crook type of pole, having blunted ends, constructed of fiberglass, or other electrically non-conducting material;

- 2) A 1/4 inch to 3/8 inch diameter throw rope of a length of 2/3 of the maximum width of the pool to which has been firmly attached a United States Coast Guard approved ring buoy with outside diameter of 15 to 24; and
- 3) Class A and B public pools and any public pool which has a diving board and/or slide shall have one or more backboards with a minimum of three tie down straps and head immobilizer for back and neck injuries, and a standard 24-unit first aid kit.

**B. Telephone.** Each public pool and each public spa shall have a telephone or other electronic means capable of immediately summoning emergency service readily accessible within 200 feet unimpeded distance (an unlocked door or gate shall not be considered an impediment) of the pool or spa water. If electronic means other than a telephone are provided, clear instructions regarding their use shall be provided in close proximity to the electronic means of communication and easily legible while using said means of communication.

#### **SECTION VIII. Warning signs.**

- A.** All public pools where no lifeguard service is provided shall post in plain view at each entrance to the pool a warning sign which states, "WARNING - NO LIFEGUARD ON DUTY," with clear, legible letters at least four inches in height. In addition, the sign shall also state in letters at least two inches high, "CHILDREN SHOULD NOT USE POOL WITHOUT ADULT SUPERVISION."
- B.** All public spas shall post in plain view at each entrance to the spa a warning sign which states, "CHILDREN SHOULD NOT USE SPA WITHOUT ADULT SUPERVISION,"

with clear, legible letters at least two inches in height.

- C.** A sign shall be placed in distinct view of swimmers at all public pools and spas giving the emergency 911 telephone number or other appropriate emergency number or action and shall state the location of the nearest telephone.
- D.** The warning words "NO DIVING" and the international symbol for no diving shall be clearly marked on the pool deck with an acceptable contrasting color and letters at least four inches in height.
  - 1)** The warning shall be placed at least every 25 feet or fraction thereof, around the pool where the water depth is six feet or less.
  - 2)** At least two warnings including the "NO DIVING" and the international symbol for no diving, one at the extreme ends of the minimum depth and one at the extreme ends of the maximum depth at six feet, shall be provided on each side of the pool or on each of the longer dimensional sides of the pool.
  - 3)** The warning signs shall be slip resistant and located within 24 inches of the water edge and positioned to be read while standing on the deck facing the water.
- E.** A sign must be posted at all public spas containing the following warning: "Do not use if water temperature is greater than 104° F" in letters at least one inch high.
- F.** All signs shall be clearly visible to the pool or spa user and securely posted.
- G.** Warning and notification signs shall be posted at the entrance of all public interactive water features or fountains, or where the signs are clearly visible to users entering the interactive water feature or fountain area. Signs shall be securely mounted, clearly visible, and provide the following notifications and warnings in letters at least 2 inches in height:
  - 1)** "Non-Service Animals Prohibited;"



- 2) "Changing Diapers Within 6 Feet Of The Water Feature is Prohibited; "
- 3) "Use of the Water Feature If Ill With A Contagious Disease is Prohibited; "
- 4) "Do Not Drink Water From The Water Feature; " and
- 5) "Use Of The Water Feature When Ill With Diarrhea is Prohibited. "

H. At public interactive water features or fountains without an on-site owner or operator a sign shall be posted that provides a contact number to be used in the event of a malfunction, unsanitary condition, or any other non-emergency problem requiring correction at the interactive water feature or fountain. Letters and numbers on the posted sign shall be a minimum of 2 inches in height and the sign shall be clearly visible.

H. A person commits an offense if the person removes, defaces, or makes illegible a sign or posting or any part of a sign or posting required by any provision of this article and shall be deemed guilty of a misdemeanor and shall be subject to a fine as provided in this article.

#### **SECTION IX. Depth markings.**

A. Depth markings on each public pool and spa shall meet the applicable requirements of the Texas Department of State Health Services Standards for Public Swimming Pools and Spas.

B. Depth markings must be permanently applied using contrasting color to the background on which they are applied. Lettering shall spell out "Feet" or "Inches" or abbreviate "Ft." or "In.", as required.

#### **SECTION X. Regulations in public pool, spa, interactive water feature or fountain area.**

A person commits an offense if the person does any one of the following:

A. Allows an animal under his/her control to enter or remain within the area or enclosure of a public pool, spa interactive water feature or fountain, except that service animals may

be allowed in the pool, spa, interactive water feature or fountain area or enclosure and not in the pool, spa, interactive water feature or fountain water;

- B.** Alters or removes safety equipment from a public pool or spa except in an emergency or as part of the regular maintenance of said equipment; or
- C.** Carries a glass container within a public pool, spa, interactive water feature or fountain area or enclosure.

**SECTION XI. Enforcement authority and responsibility.**

- A. Administrator's authority.** The Administrator shall have the authority to enforce this article.
- B. City attorney's authority.** If any person violates the requirements of this Order or any Order of the District issued pursuant to the provisions hereof, the City Attorney or the City Attorney's designee, without further City Council approval, may take any and all legal actions necessary or appropriate to enforce said requirements. The City Attorney or the City Attorney's designee may seek any legal and/or equitable relief necessary or appropriate to prevent, stop, rectify, punish, or in any way obtain redress for any such violation. Such action by the City Attorney or the City Attorney's designee may include, but is not limited to, enforcement in the municipal court, filing of appropriate civil actions in a court or courts of appropriate jurisdiction, or defending the City from suit.
- C. Owner's responsibility.** The owner and the person in charge of every public pool, spa, interactive water feature or fountain shall be responsible for compliance with all parts of this article relating to public pool, spa, interactive water feature or fountain maintenance; public pool, spa, interactive water feature or fountain operation; and the safety of anyone using the public pool, spa, interactive water feature or fountain.
- D. Administrator's responsibility.** Although the Administrator, the Northeast Texas

Public Health District, attempts to inspect public pools, spas, interactive water features or fountains and to enforce applicable Texas Department of State Health Services regulations, a valid Northeast Texas Public Health District pool, spa, interactive water feature or fountain permit does not guarantee that the inspected public pool, spa, interactive water feature or fountain is safe. The Administrator does not warrant that any public pool, spa, interactive water feature or fountain, whether inspected or uninspected, is compliant with federal, state or local regulations, including without limitation the regulations set forth in this Order.

**SECTION XII. Closure of pool, spa, interactive water feature or fountain. Closure Orders.**

- A.** Failure to comply with any permitting, inspection requirements or closure orders pursuant to this Order may result in the denial or suspension of a public pool, spa, interactive water feature or fountain permit, the closure of the public pool, spa, interactive water feature or fountain at a specified time pursuant to a Closure Order issued by the Administrator and/or the initiation of legal action, including but not limited to the filing of criminal charges at appropriate municipal or justice of the peace courts and/or the assessment of civil penalties of not less than \$10.00 or more than \$200.00 for each violation and for each day of a continuing violation.
- B.** Upon determination that a public pool, spa, interactive water feature or fountain does not comply with the provisions of this Order, the Administrator shall notify the owner or person in charge of the pool, spa, interactive water feature or fountain of the existing violations. If the pool, spa, interactive water feature or fountain does not have a permit or is applying for the renewal of an existing permit, the Administrator may deny the issuance of the requested permit until the violations are corrected. If the Administrator determines that the condition of the pool, spa, interactive water feature or fountain is

hazardous to the health or safety of its users or of the general public, the Administrator shall immediately suspend the permit of the public pool, spa, interactive water feature or fountain by issuing a Closure Order until such time as the condition of the pool, spa, interactive water feature or fountain no longer poses a hazard to the health or safety of its users or of the general public. If the pool, spa, interactive water feature or fountain currently possesses a valid permit and the Administrator determines that the condition of the pool, spa, interactive water feature or fountain is not immediately hazardous to the health or safety of its users or of the general public, the Administrator may specify a reasonable time period in which the pool, spa, interactive water feature or fountain must be brought into compliance with the provisions of this article. If the pool, spa, interactive water feature or fountain is not brought into compliance within said time period, the Administrator may suspend the pool, spa, interactive water feature or fountain permit by issuance of a Closure Order until such time as the pool, spa, interactive water feature or fountain is brought into compliance. If a fee required under the provisions of this Order has not been paid, the Administrator may suspend the pool, spa, interactive water feature or fountain permit through issuance of a Closure Order or deny a permit for said pool, spa, interactive water feature or fountain until such time as the appropriate fee is paid.

- C.** Any public pool, spa, interactive water feature or fountain permit suspended for a period of more than thirty (30) days shall be automatically considered revoked. Any public pool, spa, interactive water feature or fountain for which the permit has been revoked must reapply for a new permit pursuant to this Order in order to operate.
- D.** Any public pool, spa, interactive water feature or fountain that does not possess a valid permit must be immediately closed. Any public pool, spa, interactive water feature or fountain with a valid permit which has not been suspended or revoked and for which the

renewal of the pool, spa, interactive water feature or fountain permit has been denied shall be closed immediately upon the expiration of the existing permit.

**E.** Signs shall be posted at all entrances to any public pool, spa, interactive water feature or fountain that has been closed under the provisions of this section. Said signs shall be clearly visible to a reasonably observant person and shall state, "Closed By the Northeast Texas Public Health District. " Signs posted by the Administrator stating "Closed By the Northeast Texas Public Health District" shall not be altered or removed unless authorized by the Administrator.

**F.** A re-inspection of the public pool, spa, interactive water feature or fountain will be conducted during the regular working hours of the Administrator at the request of the owner or the person in charge of the pool, spa, interactive water feature or fountain. A re-inspection fee of \$100.00 is required for each public pool, spa, interactive water feature and fountain. If compliance has been achieved, the Administrator shall notify the owner or person in charge of the pool, spa, interactive water feature or fountain of said compliance. Upon such a determination of compliance and payment of re-inspection fee, the pool, spa, interactive water feature or fountain permit shall be reinstated upon lifting of the Closure Order if it was suspended (without being revoked) and the pool, spa, interactive water feature or fountain shall be allowed to open. If there was not a valid pool, spa, interactive water feature or fountain permit due to any reason other than suspension, then a new permit must be obtained in order to open the public pool, spa, interactive water feature or fountain.

**G.** When a public pool, spa, interactive water feature or fountain does not have a valid permit in effect, the owner and the person in charge of such pool, spa, interactive water feature or fountain shall not knowingly allow the pool, spa, interactive water feature or

fountain to be used for swimming, diving or bathing purposes and shall immediately take every reasonable step to prevent the use of such pool, spa, interactive water feature or fountain for such purposes. By way of example and without limiting such duty, the owner or person in charge of the public pool, spa, interactive water feature or fountain shall (1) immediately post notices reasonably likely to come to the attention of potential users of the pool, spa, interactive water feature or fountain advising of the closure, and (2) immediately lock all gates and doorways in any fence or other enclosure surrounding such pool, spa, interactive water feature or fountain.

- H.** Use of a public pool, spa, interactive water feature or fountain by an individual for swimming, diving or bathing purposes when the public pool, spa, interactive water feature or fountain does not have in effect a valid permit shall be deemed prima facie evidence that the owner and the person in charge of said public pool, spa, interactive water feature or fountain have knowingly allowed the public pool, spa, interactive water feature or fountain to be used for such purposes.
- I.** The Administrator may, based on the nature and extent of the violation(s) present, affix a lock or similar closing mechanism on the gate or gates leading to a public pool, spa, interactive water feature or fountain that does not have in effect a valid permit.
- J.** A person commits an offense if the person uses a public pool, spa, interactive water feature or fountain that does not have in effect a valid permit and shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than \$10.00 nor more than \$200.00.

**SECTION XIII. Criminal penalty.**

A person commits an offense if the person violates this Order or a rule adopted under this Order.

A person commits an offense if the person violates a permitting or inspection requirement or a

Closure Order issued pursuant to this Order. An offense under this section is a misdemeanor punishable by a fine of not less than \$10.00 or more than \$200.00.

- A. If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this Order within a year before the date on which the offense being tried occurred, the defendant shall be punished 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.
- B. Each day of a continuing violation is a separate offense.

**SECTION XIV. Civil enforcement.**

- A. A person may not cause, suffer, allow or permit a violation of this Order or a rule adopted under this Order.
- B. A person who violates this Order or a rule adopted under this Order shall be assessed a civil penalty. A person who violates a permitting or inspection requirement imposed under this Order or a Closure Order issued pursuant to this Order shall be assessed a civil penalty. Civil penalties under this section may not be less than \$10.00 nor more than \$200.00 for each violation and for each day of a continuing violation.
- C. If it is shown on the trial of the defendant that the defendant has previously violated this Order, the defendant shall be assessed a civil penalty of not less than \$10.00 or more than \$1,000.00 for each violation and for each day of a continuing violation.
- D. If it appears that a person has violated, is violating, or is threatening to violate this Order, a rule adopted under this Order, a permitting or inspection requirement, or a Closure Order made pursuant to this Order, the Texas Department of State Health Services, Smith County, a municipality within Smith County, or the Attorney General on request by the District Attorney or County Attorney, or with City Council approval, the City Attorney or his designee may institute a civil suit in a District Court for either/or

injunctive relief and civil penalty.

- E.** The Texas Department of State Health Services is a necessary and indispensable party in a suit brought by a county or municipality under this section.
- F.** On request by the Texas Department of State Health Services, the Attorney General shall institute and conduct a suit in the name of the state for injunctive relief and civil penalty.
- G.** Suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.
- H.** In a suit under this section to enjoin a violation or threat of violation of this Order, a rule adopted under this Order, a permitting or inspection requirement or Closure Order imposed herein, the court shall grant the Administrator, state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant, including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.
- I.** Civil penalties recovered in a suit brought under this section by a county or a municipality through its own attorney shall be equally divided between the state and the Administrator.
- J.** The state is entitled to civil penalties recovered in a suit instituted by the attorney general.

#### **PART 2:**

That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.


#### **PART 3:**

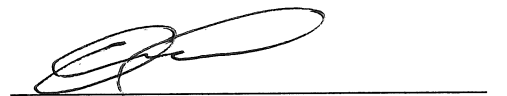
Since this Order has a penalty for violation, it shall not become effective until its publication in the newspaper to provide public notice of same.




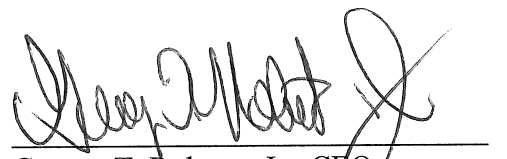
**PASSED AND APPROVED** by the Northeast Texas Public Health District Board of Health this  
24<sup>th</sup> day of January, 2013.

**Approved:**

  
Linda Klotz, Board Secretary  
Northeast Texas Public Health District

  
Danny Cace, Board Chair  
Northeast Texas Public Health District

  
Sharon Roberts, Board Attorney  
Northeast Texas Public Health District

  
George T. Roberts, Jr., CEO  
Northeast Texas Public Health District