

## **CHAPTER 52: WATER REGULATIONS**

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## SURFACE AND GROUNDWATER PROTECTION

### § 52.001 DEFINITIONS.

Except as defined below, the terms of 327 I.A.C. 2-6, as amended from time to time, shall have the same definition whenever used in this subchapter. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BACKFLOW.*** The undesirable reversal of flow from any source into the distribution pipes of the potable water system.

***BIOLOGICAL SUBSTANCE.*** Any material consisting of or containing a living organism that is a human pathogen.

***BOARD OF HEALTH.*** The St. Joseph County Board of Health.

***C.F.R.*** Code of Federal Regulations.

***CONVEYANCE.*** Any structural process for transferring storm water between at least two points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains and roadways.

***CROSS-CONNECTION.*** Any point on a water system where a damaging substance may come in contact with potable waters.

***DAMAGE TO GROUNDWATER.*** Occurs when:

(1) A release of a regulated substance causes or is likely to cause the groundwater to exceed a federal primary or secondary drinking water standard;

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(2) Any release not in compliance with all applicable federal, state and county permits and approvals causes a measurable increase in the concentration of a regulated substance in the groundwater;

(3) A spill or illicit discharge enters the soil or groundwater and is not remediated in compliance with all applicable federal, state or local laws, regulations, rules and lawful orders; or

(4) The Health Department determines that a release of a regulated substance has or is likely to threaten public health.

**DAMAGE TO SURFACE WATER.** Occurs when:

(1) A release of a regulated substance causes or is likely to cause the surface water to exceed any applicable federal or state water standard;

(2) Any release not in compliance with all applicable federal, state and county permits and approvals causes a measurable increase in the concentration of a regulated substance in any surface water;

(3) A spill or illicit discharge enters the surface water and is not remediated in compliance with all applicable federal, state or local laws, regulations, rules and lawful orders; or

(4) The Health Department determines that a release of a regulated substance has or is likely to threaten public health.

**EXTREMELY HAZARDOUS SUBSTANCE.** Any substance identified pursuant to 42 U.S.C. §§ 11002 and 11004.

**FACILITY.** Has the meaning set forth in 42 U.S.C. § 9601(9), which is: “The term ‘facility’ means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, or (b) any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.” **FACILITY** does not include motor vehicle, rolling stock or aircraft.

**GROUNDWATER.** Any water below the surface of the ground within the interstices of the rock or soil.

**HAZARDOUS SUBSTANCE.** Has the meaning set forth in 42 U.S.C. § 9601(14).

**HEALTH DEPARTMENT.** The Health Department of St. Joseph County, Indiana.

**HEALTH OFFICER.** The Health Officer of the Health Department of St. Joseph County, Indiana, or an authorized representative.

**HUMAN WASTE.** Any combination of liquid- and/or water-carried wastes from residence(s), commercial building(s), industry(s), institution(s) or any other facility generated by ordinary living processes.

**I.A.C.** Indiana Administrative Code.

**I.C.** Indiana Code.

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**ILLICIT DISCHARGE.** Any release to a surface water or conveyance of any regulated substance which is not in compliance with all existing applicable federal, state or local permits and approvals. **ILLICIT DISCHARGES** specifically include but are not limited to the release of sanitary wastewater, septic effluent, commercial car wash wastewater, oil, radiator flushing fluids, laundry wastewater, roadway accident spillage and household hazardous waste.

**INJECTION WELL.** Any well, the operation of which includes the subsurface emplacement of fluids through a well.

**MONITORING WELL.** A well installed to obtain hydrogeological information or to monitor the quality or quantity of water in the groundwater or soil.

**MUNICIPALITY.** Any incorporated city or incorporated town.

**OBJECTIONABLE SUBSTANCE.** Has the same meaning as 327 I.A.C. 2-6.1-4, as may be amended from time to time.

**OPERATOR.** Any person in control of, or having responsibility for the operation of, a facility subject to this subchapter.

**OWNER.** Any person who owns a property and/or a facility in whole or in part that is subject to any provision of this subchapter.

**PERSON.** Any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), limited liability company, partnership, copartnership, company, estate, municipal corporation, city, school city, town, school town, school district, school corporation, county, state agency, association, state, municipality, commission, political subdivision of the state, any interstate entity or any other legal entity or their legal representative.

**PETROLEUM.** A naturally occurring complex of hydrocarbons in liquid form in its natural or refined state.

**PETROLEUM BYPRODUCTS.** A liquid- or semi-solid substance derived from petroleum and composed primarily of petroleum or petroleum derivatives.

**POTABLE WATER.** Water intended and suitable for drinking or culinary purposes.

**PRIVATE WATER SUPPLY.** One or more sources of groundwater, including facilities for conveyance thereof, such as wells, springs and pumps other than those serving a public water supply.

**PROPERTY.** Any real estate and any facilities or structures upon the real estate.

**PUBLIC WATER SYSTEM (PWS).** A system for supplying potable water if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The term includes any collection, treatment, storage and distribution facilities under control of the operator of the system, including the operator or administrator of the system, and used primarily in connection with the system, and any collection or pretreatment storage facilities not under the control which are used in this subchapter shall have the same applicability as public water supply system or PWSS as used in 327 I.A.C. 8-4.1, "The Wellhead Protection Rule" and defined at 327 I.A.C. 8-4.1-1(19).

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**REGULATED SUBSTANCE.** Any extremely hazardous substance, hazardous substance, petroleum or petroleum byproduct, human waste, radioactive substance, biological substance or other objectionable substance.

**RELEASE.** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any regulated substance.

**REMIATION.** The act of eliminating, reducing or mitigating any damage to the groundwater or surface water.

**RESPONSIBLE PARTY.** Any person or persons who through his, her or their actions or negligence cause or have caused a spill, an illicit discharge or damage to the groundwater or surface water. When the person or persons that caused the spill, illicit discharge or damage cannot be identified after a due diligence investigation, the owner of the property where the contamination originated shall be the responsible party.

**SANITARY WASTE.** Any combination of liquid- and water-carried wastes from residence(s), commercial building(s), industry(s), institutions or any other facility generated by ordinary living processes.

**SPILL.** Any unexpected, unintended, abnormal or unapproved release of a regulated substance to soils, surface water, groundwater, conveyances or roadways. The term does not include releases to impermeable surfaces, except roadways, when the substance does not contact or enter soils, groundwater, surface water or a conveyance.

**SURFACE WATER.** All natural or constructed waters on the surface of the earth, including but not limited to rivers, streams, lakes, ponds, ditches, surface impoundments, catch basins, retention or detention basins and water within conveyances and drains recognized by the County Drainage Board. The term does not include surface impoundments with a synthetic or equivalent earthen liner that have been installed and maintained pursuant to a federal or state permit.

**THREAT TO GROUNDWATER OR SURFACE WATER.** Any of the following conditions constitutes a threat to groundwater and/or surface water:

- (1) The presence of a regulated substance in the vadose zone, groundwater or surface water in sufficient quantity or concentration to present a reasonable likelihood that it will damage the groundwater or surface water;
- (2) Any illicit discharge as defined in this section;
- (3) Any spill as defined in this section; and/or
- (4) The presence at a facility or property of any of the activities or conditions listed in this division (4) of any regulated substance in a quantity sufficient to present a reasonable likelihood that it has or is likely to damage groundwater or surface water, and stored, transferred or used in a manner either not in compliance with applicable federal, state or local requirements; or in a manner which represents an unreasonable risk of release to the soil, groundwater or surface water (activities described in divisions (4)(b) and (4)(c) below do not represent a threat to groundwater or surface water if they are completely enclosed in a building in an area with no floor drain and an impermeable floor and walls sufficient to contain a release of 100% of the contents):

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- (a) An underground storage tank;
- (b) An above-ground storage tank;
- (c) A drum storage area;
- (d) A waste pile, including one consisting of contaminated soil awaiting removal;
- (e) A surface impoundment;
- (f) A rail or truck-loading or transfer area;
- (g) Auto salvage facility;
- (h) An outdoor storage or disposal area exposed to precipitation; or
- (i) Other activities or conditions as determined by the Health Department on a case-by- case basis that meets the criteria set forth in this division (4).

**TRANSFER.** A change in the ownership of land as described in § 52.011.

**U.S.C.** United States Code.

**WATER SUPPLY WELL.** Any excavation that derives water from the interstices of the rocks or soil it penetrates intended to supply water for any use. **WATER SUPPLY WELLS** do not include dewatering or monitoring wells.

**WELL.** Any artificial excavation that derives water from the interstices of the rock or soil it penetrates.

(Ord. 78-07, passed 9-11-2007)

### **§ 52.002 PURPOSE.**

The purpose of this subchapter is to protect the public health, safety and welfare of persons and property in the county by protecting the groundwater and surface water resources of the county.

(Ord. 78-07, passed 9-11-2007)

### **§ 52.003 CONFLICTING ORDINANCES.**

The provisions of this subchapter shall be deemed as additional requirements to minimum legal requirements of other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

(Ord. 78-07, passed 9-11-2007)

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### **§ 52.004 REPORTING REQUIREMENTS SUBSTITUTION.**

In the case where a report requiring information of the same character must be filed for a federal or state requirement, the report may be copied and submitted to the Health Department in lieu of otherwise applicable reporting requirements under this subchapter. Any of the above information required, not included in the report, must be submitted additionally.

(Ord. 78-07, passed 9-11-2007)

### **§ 52.005 COMPLIANCE WITH OTHER LAWS.**

In addition to the requirements of this subchapter, compliance with the requirements set forth in any applicable federal, state or local law, rule or regulation shall be required. In case of conflicting requirements, the most restrictive shall apply.

(Ord. 78-07, passed 9-11-2007)

### **§ 52.006 CROSS-CONNECTIONS AND BACK SIPHONAGE.**

(A) No device shall be installed or connected to any water supply system when the installation or connection may provide a possibility of damaging a water supply or water system or may provide a cross-connection or back siphonage unless there is provided an approved backflow prevention device in accordance with 320 I.A.C. 3-9.1.

(B) The Health Department may order that a threat of a cross-connection or back siphonage be eliminated when reasonable and necessary to protect a drinking water supply.

(C) Any connection of a water supply to a public water supply shall be performed only with the approval of the public water supply which shall be allowed to establish any reasonable and necessary measures to prevent a cross-connection or back siphonage and shall be allowed to inspect the measures.

(Ord. 78-07, passed 9-11-2007) Penalty, see § 52.999

### **§ 52.007 PROHIBITED ACTIONS.**

(A) *General prohibitions.*

(1) The commencement of any activity with intent or reckless disregard which is likely to result in damage of the groundwater or surface water resources of the county is strictly prohibited.

(2) Any violation of the provisions of this subchapter or any rules, regulations or standards developed pursuant to it shall constitute a public nuisance, and the responsible party shall be subject to the enforcement provisions identified in § 52.012 and all other applicable laws, rules and regulations.

(B) *Specific prohibitions.*

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- (1) The use of an injection well, including dry wells, for disposal, storage or treatment of anything except storm water is prohibited unless properly permitted.
- (2) The use of a surface impoundment for the disposal, storage or treatment of regulated substances is prohibited unless properly permitted.
- (3) The use of a conveyance to transport an illicit discharge is prohibited.
- (4) The disposal of sanitary waste, except in compliance with the following, as applicable, is prohibited:
  - (a) The laws, regulations and rules applicable to on-site septic systems promulgated by the State Department of Health;
  - (b) The County On-Site Septic System Ordinance;
  - (c) The requirements of the County Water and Sewer District; and/or
  - (d) The laws and rules of the State Department of Environmental Management.

(Ord. 78-07, passed 9-11-2007) Penalty, see § 52.999

### **§ 52.008 THREATS TO THE GROUNDWATER AND SURFACE WATER.**

- (A) The Health Department may order any person who is responsible for a threat to the groundwater or surface water to take any reasonable and necessary corrective action to prevent the threat from damaging the groundwater or surface water or to protect public health.
- (B) If a facility or property is found to have a condition which represents a threat to groundwater, or surface water, the Health Department may require the responsible party to conduct an investigation, which may include but shall not be limited to installing soil borings or groundwater monitoring wells or sampling and analyzing the soil, groundwater or surface water. The cost of any and all of the requirements shall be borne by the responsible party.
- (C) Any and all data or other relevant information collected pursuant to division (B) above shall be provided to the Health Department within 30 days of obtaining or generating the data or information.
- (D) If the Health Department determines there is a threat to the safety of groundwater or surface water for use by humans in drinking, food preparation, washing or other direct human contact, from a release of a regulatory substance, the following requirement shall apply. If a community public water system is available within 300 feet of the property line of any property, and within 900 feet of a residence(s) located on the property, upon order of the Health Officer, a direct connection shall be made to the public water main and its water shall be used exclusively. Any water supply serving the property shall be abandoned in accordance with this code in a safe and sanitary manner. The cost for the connection shall be the responsibility of any responsible party(s).

(Ord. 78-07, passed 9-11-2007) Penalty, see § 52.999



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### § 52.009 DAMAGE TO THE GROUNDWATER AND SURFACE WATER.

#### (A) *General requirements.*

(1) The Health Department may defer enforcement action or enter into a joint enforcement action with a federal or state agency with jurisdiction over the damage for all requirements related to damage to the groundwater or surface water.

(2) Irrespective of any deferred or joint enforcement action described in division (A)(1) above, the responsible party shall perform the notification and reporting requirements listed in divisions (B) and (C) below.

#### (B) *Notification requirements.*

(1) *General notification requirement.* Any property owner or operator, or his or her authorized agent, upon receiving information that indicates that a spill, illicit discharge or other release of a regulated substance has or is likely to damage the groundwater or surface water, shall report the information to the Health Department during normal office hours by the end of the next business day.

#### (2) *Spill notification.*

(a) Whenever a spill is required to be reported in accordance with the “Spills; Reporting, Containment and Response Rule”, 327 I.A.C. 2-6.1, the spill report shall be provided to the Health Department during normal office hours by the end of the next business day. The reporting shall in no way alleviate other local, state and federal obligations as required by law.

(b) Failure to provide a notification required by this division (B) shall be a violation of this subchapter.

#### (C) *Reporting requirements.*

(1) All written reports required to be filed under any local, state and federal laws, rules and regulations regarding damage to the groundwater or surface water shall be provided to the Health Department at the same time they are provided to any federal, state and local agency.

(2) When damage to the groundwater or surface water has occurred, the responsible party shall document and maintain any reasonable and necessary information and analysis required by the Health Department to assess the need for corrective action and to protect public health. The responsible party shall provide a copy of all the records to the Health Department within 30 days of their creation and shall keep copies of all the records for five years.

(3) In the event of a transfer of the property, a copy of the records shall be furnished to the transferee by the property owner.

(4) The responsible party for damage to the groundwater or surface water shall submit an annual report to the Health Department by April 1 of each year which accurately reflects the circumstances related to the release, the damage to the groundwater or surface water, the remediation of the damage and any remaining contamination in the soil, groundwater or surface water.

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(a) In the case of damage to groundwater or surface water involving multiple properties, a representative for all responsible parties may submit the report for each individual property.

(b) After the report for the first year, subsequent reports may include only any changes in information from the first report and any additional information obtained. If information has not changed, the report may so state and no other information needs to be submitted.

(c) The reports shall be provided each year until the damage has been completely remediated or the Health Department determines that the reports are no longer necessary.

(D) *Containment requirements.*

(1) The responsible party shall contain any release of a regulated substance that may damage the groundwater or surface water in accordance with all federal, state and local requirements at all times and to the extent reasonable and practical to prevent, stop or minimize the migration of the release.

(2) The Health Department may order the responsible party to perform any reasonable and necessary measure to prevent, stop or minimize the migration of a release that has or is likely to damage the groundwater or surface water.

(E) *Investigation of damage to groundwater or surface water.*

(1) Any responsible party who damages the groundwater or surface water shall investigate the damage in compliance with all federal and state requirements and the requirements of this subchapter.

(2) If the Health Department determines that the groundwater or surface water has been damaged, the Health Department may require the responsible party to conduct an investigation of the damage which may include but shall not be limited to installing soil borings and groundwater monitoring wells and sampling and analyzing the soil, groundwater or surface water.

(F) *Remediating damage to the groundwater or surface water.*

(1) Any responsible party who damages the groundwater or surface water shall remediate the damage in compliance with all federal and state requirements and the requirements of this subchapter.

(2) The Health Department may order a responsible party to take any and all reasonable and necessary measures to remediate the damage to the groundwater or surface water.

(3) If the damage to groundwater or surface water does not present an immediate threat to public health or public safety:

(a) The Health Department may order the responsible party to remediate the damage to groundwater or surface water or take whatever actions the Health Department deems reasonable and necessary within the time frame established by the Health Department; and

(b) If the responsible party fails to comply with the Health Department orders or cannot be identified or found, the Health Department may remediate the damage to groundwater or surface water.

(4) If the damage to groundwater or surface water does present an immediate threat to public health

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or public safety:

(a) The Health Department may order the responsible party to immediately take whatever actions the Health Department deems reasonable and necessary within the time frame established by the Health Department to protect public health; and

(b) If the responsible party fails to comply with the emergency orders of the Health Department or cannot be immediately identified or found, the Health Department may take whatever actions the Health Department deems reasonable and necessary to protect public health.

(G) *Monitoring requirements.* The responsible party shall perform the actions necessary to accurately and completely monitor any damage to the groundwater or surface water during and after remediation as determined by the Health Department until the damage is entirely eliminated or the Health Department has determined that monitoring is no longer necessary.

(H) *Costs.*

(1) The costs for implementing any and all notifications, reporting, containment, investigations, remedial action and monitoring required by the provisions of this section shall be borne by the responsible party.

(2) The responsible party shall reimburse the Health Department for all costs incurred by the Health Department associated with an enforcement action issued pursuant to this section within 60 days of receiving a statement itemizing the expenses.

(3) If the responsible party fails to reimburse the Health Department within 60 days of receiving a statement itemizing the expenses, the Health Department may take appropriate steps to secure an order from a court of competent jurisdiction for the reimbursement of the expenses or place a judgment lien against property and/or facility.

(Ord. 78-07, passed 9-11-2007) Penalty, see § 52.999

### **§ 52.010 BOTTLED WATER RULES AND REGULATIONS.**

Bottled water and water used for potable ice shall meet the requirements of the Food and Drug Administration (FDA), Department of Health and Human Services, 21 C.F.R. pt. 103. All bottled water and potable ice may be sampled and tested by the Health Officer pursuant to I.C. 16-41-24-3.

(Ord. 78-07, passed 9-11-2007) Penalty, see § 52.999

### **§ 52.011 PROPERTY TRANSFER; MANDATORY INSPECTIONS, CERTIFICATIONS AND TESTING.**

(A) In order to protect the health and welfare of the citizens of the county, ensure the water quality of potable water supply wells and provide information to the Health Department and prospective buyer(s) regarding potential groundwater damage, inspections of septic systems and water tests shall be performed

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prior to the time of transfer of the ownership of any property in the county.

(B) Standards and requirements establishing the requirements for complying with this section shall be issued by the Board of Health pursuant to § 52.012.

(C) A fee for the receipt and statement of compliance, as determined by the County Board of Commissioners, shall be paid to the Health Department at the time of the request for the receipt and statement of compliance.

(D) As used in this section, **TRANSFER** means a change in the ownership of land by any of the following:

- (1) A deed or other instrument transferring fee title to property;
- (2) A lease whose term, if all options were exercised, would be more than 40 years;
- (3) An assignment of more than 25% of the beneficial interest in a land trust;
- (4) A collateral assignment of a beneficial interest in a land trust;
- (5) An installment contract for the sale of property; and/or
- (6) A lease of any duration that includes an option to purchase.

(E) As used in this section, **TRANSFER** does not include a change in the ownership of a property by any of the following:

- (1) A deed or trust document, which without additional consideration, confirms, corrects, modifies or supplements a deed or trust document that was previously recorded;
- (2) A deed or trust document that, without additional consideration, changes title to property without changing beneficial interest;
- (3) A tax deed or a deed from a county transferring property the county received under I.C. 6-1.1-25-5.5;
- (4) An instrument or release of an interest in property that is security for a debt or other obligation;
- (5) A deed of partition;
- (6) As a result of the foreclosure of a mortgage or other lien on real property;
- (7) An easement;
- (8) A transfer of an interest in minerals, gas or oil (including a lease);
- (9) A transfer by operation of law upon the death of a joint tenant with right of survivorship;
- (10) An inheritance;

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- (11) A deed in lieu of foreclosure;
- (12) A Uniform Commercial Code sale or other foreclosure of a collateral assignment of a beneficial interest in a land trust;
- (13) A deed that conveys fee title under an installment contract for the sale of property;
- (14) A deed that conveys fee title under an exercise of an option to purchase contained in a lease of property;
- (15) A mortgage or trust deed;
- (16) A transfer of vacant land containing no structures, walls or on-site wastewater disposal systems; and/or
- (17) Deeds ordered by a court arising from a property settlement agreement in a dissolution of marriage proceeding.

(Ord. 78-07, passed 9-11-2007)

### **§ 52.012 ENFORCEMENT.**

(A) *Authority to adopt rules and regulations.* The County Board of Health may adopt, amend or rescind any rules and regulations and standards as deemed necessary for proper enforcement and to carry out the purposes and intent of this subchapter. This shall be accomplished using public comment periods, public meetings and public hearings, as appropriate, in accordance with state law and in consultation with the County Water Resources Advisory Board.

(B) *Right of entry upon premises.*

(1) The Health Officer, or an authorized representative, bearing proper credentials and identification, may enter upon and inspect private property for the purposes as inspecting, observing, measuring, sampling, testing and examining records necessary to carry out the provisions of this subchapter.

(2) In the event a person who has common ownership over a building, structure or land does not permit an inspection for the purposes described in division (B)(1) above, the inspection may be rescheduled and shall be notified by United States certified mail. Failure of the person to thereafter permit an inspection will be sufficient grounds and probable cause for a court of competent jurisdiction to issue an administrative warrant for the purpose of inspecting, observing, measuring, sampling, testing or examining records necessary to carry out the provisions of this subchapter.

(3) In the event a building, structure or land appears to be vacant or abandoned and the property owner cannot be readily contacted in order to obtain consent for an inspection, the Health Officer or an authorized representative may enter into or upon any open or unsecured portion of the premises, for such purposes as inspecting, observing, measuring, sampling, testing and examining records necessary to carry out the provisions of this subchapter.

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### (C) *Issuance of notice of violation.*

(1) Whenever the Health Department determines there are reasonable grounds to believe that there has been a violation of any provision of this subchapter, the Health Department shall give notice in writing of the violation to the person or persons responsible thereof, and to any known agent of the person. The notice shall:

(a) Include a statement of reasons why the notice of violation is being issued;

(b) Allow a reasonable time for the performance of any act it requires;

(c) Be served upon the owner or his or her agent, or the operator, as the case may require; provided that the notice shall be deemed to be properly served upon the owner or agent, or upon the operator, if a copy thereof is served upon him or her personally, or if a copy thereof is sent by certified mail to his or her last known address, or if a copy thereof is posted in a conspicuous place on or about the property affected by the notice, or if he or she is served with the notice by any other method authorized or required under the laws of this state;

(d) Contain an outline of required remedial action; and

(e) Describe the penalty that is imposed for noncompliance.

(2) Any person receiving a notice pursuant to this division (C) shall comply with the requirements in the notice or he or she shall be in violation of this subchapter.

### (D) *Appealing an order by the Health Department.*

(1) Any person affected by an abatement order or any decision issued by the Health Department may petition for and shall be granted a hearing on the matter before the Health Officer, provided that the person shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within 15 days after service of an order of abatement or issuance of the decision. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.

(2) Upon receipt of the petition, the Health Officer shall arrange a time and place for the hearing and shall give the petitioner written notice thereof. The hearing shall be held as soon as practicable after the receipt of a petition but in no case shall the hearing be more than 30 days after receipt of the petition. At the hearing, the petitioner shall be given an opportunity to be heard and to show cause why the notice should not be complied with.

(3) The Health Officer shall sustain, modify or withdraw the notice to the petitioner as soon as practical and in no case later than 15 days following the hearing. The decision shall be final subject only to review by a court of competent jurisdiction.

(E) *Issuance of emergency orders.* Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public health, the Health Officer may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that action be taken as the Health Officer deems necessary to meet the emergency. Notwithstanding any other provisions of this subchapter, the order shall be effective immediately. Any person receiving such an order may seek a hearing under division (D) above and this division (E) while carrying out the order, and shall have the right to recover any

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of its response costs to the extent that the order or any portion thereof is found to have been arbitrary or capricious or not otherwise in accordance with law.

(Ord. 78-07, passed 9-11-2007) Penalty, see § 52.999

### § 52.013 VARIANCES.

(A) Any person affected by any provision of this subchapter may petition for a variance of any provision by the Health Officer, provided that the person shall file a petition with the office of the Health Officer by mail postmarked or hand delivered.

(1) The variance request shall be written and shall set forth a brief statement of the grounds thereof.

(2) Upon receipt of the petition, the Health Officer shall arrange a time and place for a hearing and shall give the petitioner written notice thereof. The hearing shall be held as soon as practicable after the receipt of a petition but in no case shall the hearing be more than 30 days after receipt of the petition. At the hearing, the petitioner shall be given an opportunity to be heard.

(3) The Health Officer shall sustain, modify or withdraw the notice to the petitioner as soon as practical and in no case later than 15 days following the hearing.

(B) A decision by the Health Officer to approve, amend or disapprove a variance may be appealed to the County Board of Health by filing a petition with the office of the Health Officer by mail postmarked or hand delivered within 15 days of the decision by the Health Officer.

(1) The petition shall be written and shall set forth a brief statement of the grounds thereof.

(2) Upon receipt of the petition, the Board of Health or a committee appointed by the Board of Health shall arrange a time and place for a hearing and shall give the petitioner written notice thereof. The hearing shall be held as soon as practicable after the receipt of a petition but in no case shall the hearing be more than 60 days after receipt of the petition. At the hearing, the petitioner shall be given an opportunity to be heard.

(3) The Board of Health shall sustain, modify or withdraw the notice to the petitioner as soon as practical and in no case later than 30 days following the hearing. The decision shall be final subject only to review by a court of competent jurisdiction.

(C) Neither the Health Officer nor the Board of Health may approve a variance that:

(1) Materially threatens public health; or

(2) Would result in a material violation of any applicable federal, state or county law, regulation or rule.

(Ord. 78-07, passed 9-11-2007)

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### § 52.014 DISCLAIMER OF LIABILITY.

(A) This subchapter shall not create liability on the part of the Health Department or any officer, employee or agent thereof for any damage that may result from reliance on this subchapter or on any administrative decision lawfully made thereunder.

(B) All inspections shall be at the discretion of the Health Department and nothing in this subchapter shall be construed as requiring the Health Department to conduct any inspection, nor shall any inspection imply a duty to conduct any other inspection. Nothing in this subchapter shall be construed to hold the Health Department responsible for any damage to persons or property by any failure to make an inspection or reinspection or for inspections that failed to identify unacceptable conditions or procedures.

(Ord. 78-07, passed 9-11-2007)



## Water Regulations

### WELL DRILLING AND WATER SUPPLY SYSTEM

#### **§ 52.030 SHORT TITLE.**

The ordinance codified in this subchapter shall be known and amended as the “St. Joseph County Well Drilling Ordinance”.

(Ord. 38-05, passed 4-12-2005)

#### **§ 52.031 PURPOSE.**

The purpose of this subchapter is to establish requirements for the installation, use and abandonment of water wells in the county to protect public health, safety, welfare and property.

(Ord. 38-05, passed 4-12-2005)

#### **§ 52.032 CONFLICTING ORDINANCES.**

The provisions of this subchapter shall be deemed as additional requirements to the minimum legal requirements of other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

(Ord. 38-05, passed 4-12-2005)

#### **§ 52.033 INCORPORATION BY REFERENCE.**

All rules and regulations of 312 I.A.C. 13, as amended from time to time, are hereby incorporated by reference and the copies are available at the County Health Department.

(Ord. 38-05, passed 4-12-2005)

#### **§ 52.034 DEFINITIONS.**

Except as defined below, the terms of 312 I.A.C. 13, as amended from time to time, shall have the same definition whenever used in this subchapter. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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**ABANDONMENT.** To terminate operation of a well and to restore the site of the well according to the requirements established in this subchapter and the state.

**ADMINISTRATIVE CONTROL AREA.** A geographic area established by the Health Officer within or near an area of known or suspected groundwater contamination for which the Health Officer may establish restrictions on the installation and use of water wells to protect public health and safety or the groundwater.

**AQUIFER.** A geologic formation, group of formations or part of a formation that yields economically significant quantities of water to wells.

**BOARD OF HEALTH.** The St. Joseph County Board of Health.

**CASING.** Steel or wrought iron pipe, Type “K” copper, PVC or other material approved by the Health Department, to exclude unwanted solids or liquids from the interior of a well.

**C.F.R.** Code of Federal Regulations.

**CLOSURE.** The termination of any nonresidential land use or activity regulated by this subchapter.

**DEWATERING WELLS.** A well installed to remove water from one or more geologic units to allow the installation, construction or repair of foundations and other subsurface structures and equipment.

**DRY WELL.** Any human-made structure beneath the ground surface designed or used for disposal of storm water.

**EMERGENCY CONDITIONS.** A condition that is an immediate threat to public health, safety or welfare or damage to livestock or property. The failure of a well to yield water is not in and of itself an **EMERGENCY CONDITION**.

**EPA.** United States Environmental Protection Agency.

**GEOTHERMAL WELL.** A well that supplies water for use solely to heat and/or cool a structure.

**HEALTH DEPARTMENT.** The Health Department of St. Joseph County, Indiana.

**HEALTH OFFICER.** The Health Officer of the St. Joseph County Health Department or a duly authorized representative.

**HIGH CAPACITY WELL.** A well that has the capability of producing 70 gallons of water or more per minute.

**I.A.C.** Indiana Administrative Code.

**I.C.** Indiana Code.

**IDEM.** Indiana Department of Environmental Management.

**INJECTION WELL.** Any well, designed or used for the subsurface emplacement of fluids through the well.

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**IRRIGATION WELL.** A well that supplies water primarily for the purpose of providing water to vegetation and/or livestock.

**ISDH.** Indiana State Department of Health.

**MAXIMUM CONTAMINANT LEVEL (MCL).** The maximum permissible level of a contaminant in potable water as determined by EPA or IDEM, whichever is more restrictive.

**MONITORING WELL.** A well installed to obtain hydrogeological information or to monitor the quality or quantity of groundwater.

**MOTOR VEHICLE WASTE RECOVERY WELL.** A shallow waste disposal system that receives or has received fluids from vehicular repair or maintenance activities, such as auto body or automotive repair, car dealerships or other vehicular repair facilities.

**MUNICIPAL WATER.** Water obtained from a municipal water system.

**MUNICIPAL WATER SYSTEM.** A water system operated by a city, town or county.

**NON-COMMUNITY PUBLIC WATER SYSTEM.** A public water system that pipes water for human consumption to at least 15 service connections used by individuals other than year-round residents for at least 60 days a year or one that regularly serves 25 or more people at least 60 days a year.

**NONPOTABLE WATER WELL.** A well used to supply water for irrigation, geothermal systems, hydrogeologic monitoring, dewatering, fire suppression, waterscapes or any other purpose except for drinking or culinary purposes.

**NONRESIDENTIAL/NON-PUBLIC WELL.** Any well used to supply potable water that is not a public well or a residential well. Usually these are wells at commercial facilities where the water is used by less than 25 people or less than 60 days per year.

**OIL.** Oil of any kind or in any form including but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with nonregulated wastes.

**OPERATOR.** Any person in control of, or having responsibility for, the operation of a facility subject to this subchapter.

**OWNER.** Any person who owns a property or part of a property or a facility or part of a facility subject to the requirements of this subchapter.

**PERSON.** Any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), limited liability company, partnership, copartnership, company, estate, municipal corporation, city, school city, town, school town, school district, school corporation, county, state agency, association, state, municipality, commission, political subdivision of the state, any interstate entity or any other legal entity or their legal representative.

**POTABLE WATER.** Water intended and suitable for drinking or culinary purposes.

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**POTENTIAL POLLUTION SOURCE.** A facility, site, practice or activity that possesses the ability to damage groundwater.

**PRIVATE WATER SUPPLY.** One or more sources of water, including facilities for conveyance thereof, such as wells, springs and pumps other than those serving a public water supply.

**PUBLIC OWNED TREATMENT WORKS (POTW).** Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as such device or system is defined by § 502(4) of the Clean Water Act. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a **POTW** providing treatment.

**PUBLIC WATER SUPPLY.** Any wells, reservoirs, lakes, rivers, sources of supply, pumps, mains, pipes, facilities and structures through which water is obtained, treated as may be required and provided to the public through a water distribution system and that serves at least 25 persons per day for at least 60 days per year for drinking, domestic use or other purposes, including state-owned facilities, or that has at least 15 service connections.

**PUBLIC WATER SYSTEM (PWS).** Any collection, treatment, storage or distribution facilities used primarily to provide water to a public water supply. **PUBLIC WATER SYSTEM** as used in this subchapter shall have the same meaning as “public water supply system” in 327 I.A.C. 8-4.1, “The Wellhead Protection Rule”, and defined at 327 I.A.C. 8-4.1-1(19).

**PUBLIC WELL.** Any well serving a public water system.

**PUMP INSTALLER.** Any person that installs a pump for a well or services a pump for a well.

**REGULATED SUBSTANCE.** Any hazardous or toxic substance, petroleum, special waste, objectionable material or other substance:

- (1) Regulated under rules adopted by the State Solid Waste Management Board under I.C. 13-23-1-2;
- (2) Included under § 101 of the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601);
- (3) Included under Subtitle C of the Solid Waste Disposal Act, as amended (42 U.S.C. §§ 6921 through 6939); or
- (4) Petroleum or petroleum byproducts.

**RESIDENTIAL WELL.** Any privately owned well intended to be used for potable water in either a one- or two-family dwelling.

**SEEPAGE PIT.** A leaching pit, dry well or any other cavity in the ground that receives wastewater.

**SEPTAGE.** The liquid and/or solid material in or removed from a septic tank, seepage pit, portable toilet, cesspool, wastewater lift station, holding tank or similar wastewater disposal system when the system is cleaned or maintained.

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**SITING.** The process of selecting an appropriate location for the installation of a well based on the requirements contained in this subchapter.

**SURFACE IMPOUNDMENTS.** A facility or part of a facility which is a natural topographic depression, human-made excavation or diked area formed primarily of earthen materials (although it may be lined with human-made materials), which is designed to hold an accumulation of wastes or wastes containing free liquids, and which is not an injection well.

**TANK.** A stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel and plastic) that provide structural support.

**TEMPORARY WELL.** A well installed to monitor or collect hydrogeologic or engineering data that is abandoned according to the requirements of this subchapter within 30 days of installation.

**U.S.C.** United States Code.

**WASTEWATER.** A combination of liquid- and water-carried wastes from residence(s), commercial building(s), industry(s) and/or institutions, or any other facility together with any groundwater, surface water or storm water that may be present.

**WASTEWATER DISPOSAL SYSTEM.** All equipment and devices necessary for conveyance, collection, storage, treatment and disposal of wastewater. This does not include land application equipment.

**WATERSCAPE WELL.** A nonpotable well that supplies water for the maintenance of water features.

**WATER WELL.** Any artificial excavation that derives water from the interstices of the rocks or soil it penetrates and is intended to supply water for potable or nonpotable uses.

**WATER WELL PERMIT.** A permit obtained from the Health Department for the installation of a water well for either potable or nonpotable uses, excluding temporary wells, as defined herein.

**WELL.** Any artificial excavation that penetrates or derives water from the interstices of the rocks or soil it penetrates including wells for potable or nonpotable purposes.

**WELL DRILLER.** A person or business that operates well drilling or driving equipment or engages in the drilling or driving of wells for hire.

**WELL DRILLING.** Any operation that produces or attempts to produce a well.

**WELLHEAD.** The entire well assembly.

**WELL OWNER.** The legal owner of the real estate containing the well site.

**WELL REPAIR OR REPLACEMENT.** For purposes of this subchapter a well repair is defined as any action, other than drilling or abandoning a well, that includes the alteration of the well casing or well screen.

**WELL SEAL.** A removable arrangement or device used to cap a well or to establish and maintain a watertight junction between the casing or curbing of a well and the piping or equipment installed therein, so as to prevent unwanted water, or other damaging material, from entering the well at the upper level.

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**WELL VENT.** An opening or outlet at the upper end of the well casing to allow equalization of air pressure in the well.

**YIELD.** The quantity of water per unit of time, which may flow or be pumped from a well, when the pumping water level has remained stabilized for one hour or longer.

(Ord. 38-05, passed 4-12-2005)

### § 52.035 APPLICABILITY.

(A) This subchapter applies to the following types of water wells:

(1) *Potable wells.* Wells used for drinking water or culinary purposes. Under this subchapter, there are the following three types of potable water wells:

- (a) Residential wells;
- (b) Nonresidential/non-public wells; and
- (c) Public wells.

(2) *Nonpotable wells.* All wells that are not to be used for drinking or culinary purposes including but not limited to irrigation wells, geothermal wells, monitoring wells, dewatering wells, waterscape wells and fire suppression wells; and

(B) This subchapter does not apply to wells installed to monitor or collect hydrogeologic or engineering data that are abandoned according to the requirements of this subchapter within 30 days of installation.

(Ord. 38-05, passed 4-12-2005)

### § 52.036 LICENSING AND REGISTRATION OF WELL DRILLERS.

(A) *State license.* Any person that installs or abandons a potable or nonpotable water well or performs a well repair or replacement in the county shall first be licensed by the state in accordance with I.C. 25-39 *et seq.*

(B) *County registration.* Any person that installs or abandons a potable or nonpotable water well in the county shall first obtain an annual registration from the Health Officer. A copy of the applicant's state license shall be provided when applying for a registration. The application shall be on a form provided by the Health Officer and shall include the information deemed necessary by the Health Officer. The registration shall expire on January 31 of each year. A licensed well driller shall be present during all well drilling or well abandonment activities.

(C) *Exam.* To be eligible for a registration, applicants shall be required to pass an exam prepared and

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administered by the Health Officer on the requirements of this subchapter. The exam shall be an open book exam with a passing score of 80%. Persons who fail the test will be provided with the correct answers and shall be allowed to retake the exam one week after failing the exam. There shall be no fee for the exam.

(D) *Surety bond.* Each person applying for a well driller registration shall provide a surety bond payable to the County Health Department in the penal sum of \$10,000, conditioned upon faithful compliance with the provisions of this subchapter as it relates to work performed by the applicant, and agreeing to pay all damages, costs, expenses and penalties caused by the applicant through failure to comply with the provisions. All the bonds shall expire and be renewed on January 31 of each year.

(E) *Fees.* A nonrefundable registration fee, as prescribed by the County Board of Commissioners, shall be paid annually to the Health Department by any person applying for a registration to perform well drilling or abandonment in the county.

(F) *Suspension.* The Health Officer may suspend, repeal or withhold a registration from any person who is more than 30 days late in making full payment of a penalty prescribed in §§ 52.049 and 52.999.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### **§ 52.037 LICENSING AND CERTIFICATION OF WATER LABORATORIES.**

(A) *State/EPA license or certification.* Any laboratory that analyzes a water sample required by this subchapter shall first be licensed or certified to perform the analysis by the state in which its laboratory is located or by the U.S. Environmental Protection Agency (EPA) and shall provide a copy of the current license or certification to the Health Officer.

(B) *Suspension.* If the Health Officer determines that water analysis from a laboratory is unreliable, the Health Officer may exclude that laboratory from submitting water analyses and may reject all analyses from that laboratory for a period of up to one year from the date of the determination.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### **§ 52.038 PERMITS.**

(A) *Potable water well permits.*

(1) The owner of the real estate on which a water well is to be installed or his or her authorized agent shall obtain a water well permit for any well installed for potable water.

(2) No person shall install a well until and unless a permit is first obtained from the Health Officer and posted in a conspicuous place on the premises, except under emergency conditions as provided in division (B) below.

(3) Any person who installs or abandons a potable well shall meet all of the requirements of § 52.036.

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(4) Any person applying for a permit to install a potable water well shall submit an application to the Health Officer. The application shall:

- (a) Be on a form provided by the Health Officer;
- (b) Include the information deemed appropriate by the Health Officer;

(c) Include a drawing made to scale by a registered well driller, licensed surveyor, professional engineer, professional geologist, registered soil scientist or architect that contains the information specified by the Health Officer; and

(d) Include a nonrefundable permit fee, as prescribed by the County Board of Commissioners, made payable to the Health Department.

(5) The proposed location of the well shall be clearly and accurately marked on the property where it is to be installed in the field with a stake at the time of the onsite inspection by the Health Officer or the permit application may be denied.

(6) The Health Officer will review the application and conduct an on-site inspection of the proposed location of the well.

(a) If the Health Officer finds the application and the proposed well location to be in full compliance with this subchapter, the Health Officer may issue a water well permit.

(b) If the Health Officer finds the application or the proposed well location not to be in full compliance with this subchapter, the Health Officer shall advise the applicant why the application is being denied and the measures necessary to bring the application into full compliance with this subchapter.

(7) If a permit is neither issued nor denied in writing within ten working days of the date of the application, the permit shall be considered issued and all other requirements of this subchapter shall still apply.

(8) The requirements of the water well permit shall not be considered fulfilled until the work meets all applicable portions of this subchapter to the satisfaction of the Health Officer. Noncompliance shall be grounds for revocation of a water well permit, an order from the Health Officer to abandon the well and the assignment of penalties by the Health Officer as described herein.

(9) A permit shall be void if the installation is not completed within one year of permit approval.

(10) All public water wells shall be registered with the Health Officer and the owners shall report all sampling and test results to the Health Officer.

(B) *Emergency conditions.*

(1) In rare instances where there is an immediate threat to public health, safety or welfare or damage to livestock or other property, a registered well driller may take the appropriate action without first obtaining any permits required by this subchapter, provided the well driller takes the following actions:

- (a) Takes the steps necessary to ensure that the action complies with all requirements of this



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subchapter, including all applicable separation distance listed in §§ 52.040 through 52.042;

(b) Accepts full responsibility for the proper placement and construction of the well and agrees to make any appropriate and necessary corrective actions required by the Health Officer if the well is not properly located or installed; and

(c) Applies for a water well permit for the well within two business days after installing the well.

(2) The failure of a well to yield water is not in and of itself an emergency condition.

(3) Any party who falsely claims that an emergency condition exists shall be in violation of this subchapter and subject to the enforcement provisions contained in §§ 52.049 and 52.999.

(C) *Nonpotable well permit.*

(1) The owner of the real estate on which a nonpotable water well is to be constructed or his or her authorized agent shall obtain a water well permit.

(2) No person shall install a well until and unless a permit is first obtained from the Health Officer and posted in a conspicuous place on the premises, except as provided in division (B) above.

(3) Any person that installs or abandons a nonpotable well shall meet all of the requirements of § 52.036.

(4) Any person applying for a permit to install a nonpotable well shall submit an application to the Health Officer. The application shall:

(a) Be on a form provided by the Health Officer;

(b) Include the information deemed appropriate by the Health Officer;

(c) Include a drawing made to scale by a registered well driller, registered surveyor, or professional engineer, professional geologist, licensed soil scientist or architect that includes the information specified by the Health Officer; and

(d) Include a nonrefundable permit fee, as prescribed by the County Board of Commissioners, made payable to the Health Department.

(5) The proposed location of a nonpotable well shall be clearly and accurately marked on the property where it is to be installed with a stake at the time of the on-site inspection by the Health Officer or the permit application may be denied.

(6) The Health Officer will review the application and the proposed well location and may conduct an on-site inspection of the proposed location of the well.

(a) If the Health Officer finds the application and the proposed well location to be in full compliance with this subchapter, the Health Officer may issue the water well permit.

(b) If the Health Officer determines that the application or the proposed well location not to be in

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full compliance with this subchapter, the Health Officer shall advise the applicant why the application is being denied and the measures necessary to bring the application into full compliance with this subchapter.

(7) If a permit is neither issued nor denied in writing within ten working days of the application, the permit shall be considered issued and all other requirements of this subchapter shall still apply.

(8) The requirements of the water well permit shall not be considered fulfilled until the work meets all applicable portions of this subchapter to the satisfaction of the Health Officer. Noncompliance shall be grounds for revocation of a water well permit, an order from the Health Officer to abandon the well, and the penalties prescribed by the Health Officer as described herein.

(9) A permit shall be void if the installation is not completed within one year of permit approval.

(D) *Well abandonment permits.*

(1) No person shall abandon a well until and unless a well abandonment permit is first obtained from the Health Officer and posted in a conspicuous place on the premises.

(2) Any person who abandons any type of water well listed in § 52.035 shall have a current well drilling license.

(3) No person shall disconnect a potable or nonpotable well to connect to a public water supply unless a permit has been issued by the Health Officer to abandon the well being disconnected.

(4) When a party applies for a permit to replace an existing water supply well, an application to abandon the existing well shall be made at the same time, except as provided below. The existing well shall be abandoned on the same day and by the same licensed well driller that installed the replacement well.

(5) The Health Department may approve an application to not abandon a well that has been replaced if the following conditions are met:

(a) The well is immediately put to a productive use. The use shall be defined on the abandonment permit and shall be subject to the approval of the Health Officer;

(b) The existing well cannot be located after due diligence has been made to locate the well. Due diligence shall, at a minimum, include excavating to a depth of five feet in the most likely locations of the existing well;

(c) The Health Officer grants approval to not abandon the well; and

(d) The applicable permit fee as prescribed by the County Board of Commissioners has been paid to the Health Department.

(6) The licensed well driller performing the well abandonment shall be responsible for properly abandoning the well for which a well abandonment permit has been issued. No one shall take any action to prevent a well driller from properly abandoning a well.

(7) There shall be no fee to abandon a well.

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(8) Any well driller who abandons a well under a permit issued pursuant to this subchapter shall notify the Health Officer by telephone of the time and date the well will be abandoned at least two hours prior to abandoning the well. No one shall abandon a well prior to the specified time.

(9) Upon the abandonment of a well, the well driller shall clearly and accurately mark the location of the abandoned well with a stake if the well is outside of a structure. No person shall remove the stake until the Health Officer has inspected the abandoned well.

(10) Any potable or nonpotable well not in use for more than one year shall be abandoned according to the requirements of the Health Officer.

(11) The Health Officer may order the abandonment of any water well constructed without a valid permit or a well whose continued existence poses a threat to human health or the groundwater. Upon receipt of an order to abandon a well, the property owner shall contract with a licensed well driller who shall obtain a well abandonment permit and abandon the well according to the schedule established by the Health Officer.

(E) *Water system repair.* There shall be no permit for repairs to water systems that do not involve altering the well casing or screen. However, whenever the sanitary seal is broken, the equipment and well must be disinfected consistent with the requirements of § 52.045.

(F) *Temporary wells.* There shall be no permit for installing temporary wells. However, if a temporary well is not abandoned according to the requirements in § 52.046, the well shall lose its status as a temporary well and will be subject to all applicable requirements of this subchapter.

(G) *Development of rules and regulations for land application sites, water vending machines and bottled water plants.*

(1) The County Board of Health may develop and implement rules and regulations for the permitting of:

- (a) Sites for the land application of septic waste;
- (b) Distribution of water from water vending machines; and
- (c) Operation of plants to bottle water.

(2) A permit and inspection fee, as determined by the County Board of Commissioners, shall be paid to the Health Department at the time an application for a permit is filed for land application sites, distribution of water from vending machines and operation of plants to bottle water.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### **§ 52.039 SUBMISSION OF REPORTS AND WELL LOGS.**

(A) *Water quality report.*

- (1) The owner of any potable water well installed under a permit issued pursuant to this subchapter

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shall have the water analyzed as defined in § 52.045 and will submit the analysis results to the Health Department within 30 days of the installation of the well.

(2) Any laboratory performing a water analysis for a water well installed under a permit issued pursuant to this subchapter will submit the results of the analysis to the owner and the Health Officer within ten days of the completion of the analysis.

(3) The water quality report shall include:

- (a) The address of the property where the sample was taken;
- (b) The results of the analysis;
- (c) The detection limits of the analytical methods used;
- (d) The date of the analysis;
- (e) An identification of any constituent that exceeded an EPA or state maximum contaminant level (MCL); and
- (f) The signature of the person responsible for the analysis.

(B) *Well log.*

(1) Within 30 days of the completion of the well, the well driller shall submit a complete and accurate copy of the State Department of Natural Resources Well Log, Record of Water Well, State Form 35680 (R4/4-92) to the Health Officer. The well log shall also contain the county water well permit number.

(2) Each well driller shall also submit to the Division of Water of the State Department of Natural Resources accurate records of each well drilled in accordance with the provisions of I.C. 25-39. The well drillers shall provide the State Department of Natural Resources with the appropriate county water well permit number for each well drilled.

(3) The well driller shall also furnish, upon request, any additional well construction information deemed necessary by the Health Officer to protect public health and safety or the groundwater.

(C) *Well abandonment log.*

(1) The well driller shall provide a well abandonment log to the Health Officer for any water well abandoned in county. The well abandonment log shall:

- (a) Be on a form provided by the Health Officer;
- (b) Contain the information required by the Health Officer;
- (c) Include a drawing made to scale showing the location of the abandoned well;
- (d) Be received by the Health Officer within 30 days of abandoning the well.

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(2) Complete accurate records shall be kept of the entire abandonment procedure to provide detailed records for future reference and to demonstrate to the Health Officer that the well was properly abandoned.

(D) *Failure to submit reports or logs.* Any party who fails to submit complete and accurate reports as specified in divisions (A) and (B) above shall be in violation of this subchapter.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### § 52.040 SITING OF POTABLE WATER WELLS.

#### (A) *General requirements.*

(1) All new potable water wells shall be located at the highest point on the premises consistent with the general layout and surroundings, but in any case protected against surface drainage, ponding and flooding and as far removed from any known or potential pollution source as the general layout of the premises and the surroundings permit.

(2) All new potable water wells shall, in no case, be closer than the applicable minimum distance specified in division (B) below.

(3) When possible, a water supply well shall be installed hydraulically up-gradient from any known or potential pollution source.

#### (B) *Separation distances.*

(1) Potable water wells and pump suction lines, except for municipal water supply wells, shall maintain the following minimum separation distances from potential pollution sources.

(2) Any and all potential pollution sources shall have and be maintained at the following minimum separation distances from potable water wells. No known or potential pollution source listed shall be located within the specified distance.

(3) These distances are minimums and do not ensure safety.

(4) The minimum separation distances for high capacity wells shall be the same as listed for public wells.

(5) The Health Officer may increase the minimum separation distances for any proposed well location or deny an application where there is a source of known or potential groundwater contamination that is a potential threat to public health and safety.

(6) The Health Officer may decrease the minimum separation distance if the Health Officer determines that the separation distances can not be reasonably met and that public health and safety would not be threatened.

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| <b>Minimum Separation Distances</b>  |                                    |                                  |                                   |
|--|------------------------------------|----------------------------------|-----------------------------------|
| <i>Potential Pollution Source</i>  | <i>Type of Potable Water Wells</i> |                                  |                                   |
|  | <i>Residential Wells</i>           | <i>Nonresidential Non-Public</i> | <i>Public<sup>(1)</sup> Wells</i> |
| Any building overhang to the horizontal center of the well   | 5 feet                             | 5 feet                           | 5 feet                            |
| Building foundation  | 10 feet                            | 10 feet                          | 10 feet                           |
| Independent gear water drain, rainwater downspout, foundation drain, and sump pump pit                                       | 10 feet                            | 10 feet                          | 10 feet                           |
| Sanitary sewer connected to foundation drain   | 15 feet                            | 15 feet                          | 15 feet                           |
| Storm sewer connected to foundation drain  | 15 feet                            | 15 feet                          | 15 feet                           |
| Property lines(2); also maintain minimum required distance from any source of contamination on adjoining properties          | 15 feet                            | 25 feet                          | 200 feet                          |
| Private residential underground fuel oil tanks   | 100 feet                           | 100 feet                         | 200 feet                          |
| Stream, lake, pond or ditch, river, shoreline or drainage tile   | 25 feet                            | 50 feet                          | 50 feet                           |
| Sanitary sewers, force mains and drains  | 50 feet                            | 100 feet(3, 4)                   | 200 feet(5, 6)                    |
| Subsoil drain (absorption field perimeter drain), sewer pump and lift station  | 50 feet                            | 50 feet                          | 200 feet                          |
| Privies and outhouses (to be constructed and maintained in accordance with ISBH Bulletin No. S.E. 11 - "The Sanitary Privy") | 100 feet                           | 100 feet                         | 200 feet                          |
| Storm sewers   | 25 feet                            | 100 feet                         | 200 feet                          |
| Septic and aerobic digestion tanks and absorption fields   | 50 feet                            | 100 feet                         | 200 feet(6)                       |
| Seepage pits   | 100 feet                           | 100 feet                         | 200 feet(6)                       |
| Stables, feeding pens, livestock runs, manure piles and the like   | 100 feet                           | 100 feet                         | 200 feet                          |

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| <b>Minimum Separation Distances</b>   |                                    |                                  |                                   |
|---|------------------------------------|----------------------------------|-----------------------------------|
| <i>Potential Pollution Source</i>   | <i>Type of Potable Water Wells</i> |                                  |                                   |
|   | <i>Residential Wells</i>           | <i>Nonresidential Non-Public</i> | <i>Public<sup>(1)</sup> Wells</i> |
| Confined feeding operation  | 200 feet                           | 200 feet                         | 200 feet                          |
| Geothermal heat pump system diffusion well for a system using less than 25,000 gallons per day (17.4 gpm) | 50 feet                            | 100 feet                         | 200 feet                          |
| Geothermal heat pump system diffusion well for a system using more than 25,000 gallons per day (17.4 gpm) | 100 feet                           | 100 feet                         | 200 feet                          |
| Minimum separation distance between geothermal heat pump systems and sewers/septic tanks                  | 100 feet                           | 100 feet                         | 200 feet                          |
| Above-ground storage, handling, delivery or packaging areas for regulated substances                      | 100 feet                           | 100 feet                         | 200 feet                          |
| Underground storage of regulated substances   | 100 feet                           | 100 feet                         | 200 feet                          |
| Concrete or membrane-lined agricultural waste pits  | 50 feet                            | 100 feet                         | 200 feet                          |
| Earthen agricultural waste pits, lagoons and holding ponds  | 500 feet                           | 500 feet                         | 500 feet                          |
| Composting facility active area   | 200 feet                           | 200 feet                         | 200 feet                          |
| Land application of manure  | 200 feet                           | 200 feet                         | 200 feet                          |
| Land application of final treated wastewater treatment plant effluent                                     | 200 feet                           | 200 feet                         | 200 feet                          |
| Land application of domestic septage disposal   | 500 feet                           | 500 feet                         | 500 feet                          |
| Ridge and furrow waste disposal site  | 500 feet                           | 500 feet                         | 500 feet                          |
| Injection wells   | 50 feet                            | 100 feet                         | 200 feet                          |
| Septage or treated sludge disposal area   | 500 feet                           | 500 feet                         | 500 feet                          |
| Sewage treatment lagoons or wastewater treatment facility   | 500 feet                           | 500 feet                         | 500 feet                          |

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| <b>Minimum Separation Distances</b>   |                                    |                                      |                                   |
|---|------------------------------------|--------------------------------------|-----------------------------------|
| <i>Potential Pollution Source</i>   | <i>Type of Potable Water Wells</i> |                                      |                                   |
|   | <i>Residential Wells</i>           | <i>Nonresidential<br/>Non-Public</i> | <i>Public<sup>(1)</sup> Wells</i> |
| Existing, closed or abandoned solid or hazardous waste disposal facility (dumps/landfills)  | 1,000 feet                         | 1,000 feet                           | 1,000 feet                        |
| Construction/demolition sites and IDEM restricted waste site Types 1, 2 and 3, as defined at 329 I.A.C. 2-2-54 and 329 I.A.C. 2-10  | 600 feet                           | 600 feet                             | 1,000 feet                        |
| <b>NOTES TO TABLE:</b>  |                                    |                                      |                                   |
| <p>(1) The separation distances listed above for public wells are the maximum distances required. These distances may be reduced for a number of reasons including the type of facility serviced by the well, the number of people to use the system and whether the water produced by the well is automatically disinfected prior to use. The installation and use of public wells is regulated by the Indiana Department of Environmental Management (IDEM) and the required separation distances are contained in 327 I.A.C. 8.3.4. Any person applying for a county permit to install a public well shall provide documentation that he or she has first applied to IDEM to install the well. The separation distances determined by IDEM shall be adopted by the County Health Department permit unless a waiver is granted by the Health Officer.</p> |                                    |                                      |                                   |
| <p>(2) The clearance between a water well and the property line may include the right-of-way width of a road or street adjacent to the property if the required clearance is not otherwise available. Additional separation distance may also be obtained by easement from the adjacent property owner. The minimum required separation distance from any potential pollution source on any adjoining property shall be maintained.</p>   |                                    |                                      |                                   |
| <p>(3) If it is necessary to locate sewer or drains closer than 200 feet to a potable water well or pump suction line in a mobile home park with 25 or more lots, water works grade ductile iron pipe with mechanical joints or SDR 26 PVC pressure sewer pipe with compression fittings shall be used.</p>   |                                    |                                      |                                   |
| <p>(4) If it is necessary to locate sewer, force mains or drains closer than 100 feet to a well or pump suction line, water works grade ductile iron pipe with mechanical joints, or SDR 26 PVC pressure sewer pipe with compression fittings must be used. The piping shall not be constructed closer than 30 feet to water sources.</p>   |                                    |                                      |                                   |
| <p>(5) No wastewater treatment facility, sewer, force main or drain shall be closer than 200 feet to a public or municipal water supply well. In unprotected water-bearing formations, greater separation distances and other precautions may be necessary to minimize potential water contamination.</p>   |                                    |                                      |                                   |
| <p>(6) The minimum separation distance between a residential well and/or an absorption field system may be reduced to not less than 50 feet by the Health Department if the parcel in question was buildable as of January 1, 1999. However, it is highly desirable that this separation distance be greater than 50 feet. This distances enumerated may be doubled for soil absorption systems, septic tanks, sewers, force mains, drains and other sources of contamination where there exist horizons, layers or strata within 34 inches of the ground surface with a loading rate greater than 0.75 gallons per day per square foot as determined from Table V of § 49(4) of 410 I.A.C. 6-8.1, unless that hazard can be overcome through system design.</p>  |                                    |                                      |                                   |



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(C) *Accessibility of wells.* Every new well shall be located so that it will be reasonably accessible with proper equipment for cleaning, repair, treatment, testing, inspection and any other attention as may be necessary. With the exception of permitted public wells with well houses, wells shall be at least five feet outside of any existing building overhang and at least ten feet from any building foundation.

(D) *Relationship to buildings.* No well shall be located so that the top of the well will be within the basement of any building nor under a building having no basement. Excluding pump houses, no well, after its construction, shall be allowed to be covered or made inaccessible by any building, permanent structure, earthen material, vegetation, concrete or other material.

(E) *Relationship to ground.* Wellheads, well casing, pumps, pumping machinery, exposed pressure tanks or suction piping shall not be located in any pit, room or space extending below the established ground surface, or in any room or space above the ground which is walled in or otherwise enclosed so that it does not have free drainage by gravity to the surface of the ground at all times, except when permitted by the Health Officer and under any conditions as the Health Officer prescribes.

(F) *Prohibition against interference.* No property owner shall construct or install anything, including landscaping, near a water well that will interfere with the inspection, maintenance or abandonment of the well.

(G) *Additional requirements.* The Health Officer may place additional requirements on the installation of new wells or the abandonment of existing wells to address specific conditions relative to public health and safety or protection of the groundwater. Any such conditions shall be attached to the well drilling or well abandonment permit.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### **§ 52.041 SITING OF NONPOTABLE WATER WELLS.**

(A) *General requirements.* All nonpotable water wells shall be installed at the highest point on the premises consistent with the general layout and surroundings and the technical requirements of the project, but in any case protected against surface drainage, ponding and flooding.

(B) *Separation from pollution sources.* All nonpotable wells, except monitoring wells, shall be located as far removed from any known or potential pollution source as the general layout of the premises.

(C) *Hydraulically up-gradient.* When possible, all wells, except monitoring wells, shall be installed hydraulically up-gradient from any known or potential pollution source.

(D) *Accessibility of wells.* A new well shall be located so that it will be reasonably accessible with proper equipment for cleaning, repair, treatment, testing, inspection and any other attention as may be necessary. Wells shall be at least five feet outside of any existing building overhang and at least ten feet from any building foundation except geothermal, dewatering, fire suppression and monitoring wells.

(E) *Relationship to buildings.* No well, except monitoring wells, shall be located so that the top of the well will be within the basement of any building or under a building having no basement. Excluding pump

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houses, no well, after its construction, shall be allowed to be covered or made inaccessible by any building, permanent structure, earthen material, concrete or other material.

(F) *Relationship to ground.* Wellheads, well casing, pumps, pump machinery, exposed pressure tanks or suction piping shall not be located in any pit, room or space extending below the established ground surface, or in any room or space above the ground which is walled in or otherwise enclosed so that it does not have free drainage by gravity to the surface of the ground at all times, except when permitted by the Health Officer and under any conditions as the Health Officer prescribes.

(G) *Prohibition against interference.* No property owner shall construct or install anything, including landscaping, that will interfere with the inspection, maintenance or abandonment of the well.

(H) *Additional requirements.* The Health Officer may place additional reasonable and necessary requirements on the location of wells regulated under this subchapter on a case-by-case basis to protect the public health or safety of the groundwater. Any such requirements shall be attached to the well drilling permit.

(I) *Separation distances.* The separation distances identified in § 52.039 for residential wells shall apply to all irrigation wells.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### **§ 52.042 SITING OF WELLS WHERE MUNICIPAL WATER IS AVAILABLE.**

(A) *Potable wells.*

(1) The Area Plan Commission shall determine when connection to municipal potable water systems shall be required for newly proposed major and minor subdivisions.

(2) New or replacement potable water wells shall not be installed within a municipality unless the Health Department receives a written notification from the appropriate municipal water system that it has no objection to the installation of the well.

(3) The Health Department shall consult with a municipality prior to issuing a well permit for any potable well proposed within the municipality's master planning area. The Health Department shall also consult with the all municipalities at least semi-annually to solicit revisions to master planning areas.

(4) No potable water well permit shall be issued for a residential well for a property outside of a municipality if a municipal water line exists immediately adjacent to a property boundary.

(5) For a nonresidential/non-public or public well, if the total cost of engineering, materials and installation of municipal water service to a business, less available public funding, does not exceed 150% of the total cost of engineering, materials and installation of an on-site well based on the average well depth of recent wells installed in the area where the facility is located, the extension of public water service to the facility is required and shall be paid by the property owner.

(6) The Health Department may issue a variance from the requirements listed above when there are

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circumstances that, in the opinion of the Health Department, make the connection to municipal water system unreasonable. Requests for variances shall be processed according to the procedures identified in § 52.050.

(7) If a municipal public water system is or becomes available within 300 feet of a residential, nonresidential/non-public or public water system, the residential, nonresidential/non-public or public system may be required to make a connection to the municipal public water system, and use its water exclusively as a potable water source if the Health Officer determines it is necessary to protect public health or the groundwater. Upon the connection, the existing water system shall properly disconnect and the well shall be properly abandoned unless the well has been approved for other uses by the Health Officer.

(B) *Nonpotable wells.*

(1) New or replacement nonpotable wells (except monitoring, geothermal and dewatering wells) shall not be installed within a municipality unless the Health Department receives a written notification from the appropriate municipal water system that it has no objection to the installation of the well.

(2) Nonpotable wells (except monitoring, geothermal and dewatering wells) shall not be installed unless the following conditions are met.

(a) Siting of the nonpotable well shall meet all requirements contained in § 52.041 for the installation of residential water wells.

(b) A permanent sticker shall be placed on the wellhead identifying the well as not suitable for human consumption.

(c) A permanent sticker or sign shall be placed on any point of use and any piping that extends into a building identifying the water line as not suitable for human consumption.

(d) No portion of the nonpotable water system may be connected to any portion of a potable water system.

(e) The owner shall allow an inspector designated by the Health Department to inspect the well and associated piping. If the property is served by municipal water, the inspector and the frequency of inspections shall be determined by the municipality, and the costs of the inspection(s) shall be paid by the owner.

(f) If the Health Department determines there is a potential cross-connection between a potable and nonpotable water system, the owner shall install and maintain a backflow prevention device approved by the Health Department on the nonpotable water system or take other actions required by the Health Department to prevent a cross-connection.

(3) The Health Department may deny an application for a nonpotable well if the Health Department determines that the well will adversely impact the quality of the groundwater or an existing water user.

(C) *Inadequate water supply systems.* If the Health Officer determines that a well serving a water system is inadequate to provide a safe source of drinking water, the Health Officer may order the owner of the well to bring the well into compliance with this subchapter.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

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### § 52.043 ADMINISTRATIVE CONTROL AREAS.

(A) To protect the health and welfare of persons residing in the county and to protect the integrity of any aquifer within the county, the Health Officer may establish administrative control areas to control the installation and use of wells in and near areas of known, suspected or potential contamination in the soil or groundwater. The Health Officer may administer controls through the following measures:

- (1) Denying an application to install a new well;
- (2) Requiring that water treatment systems be installed and maintained by the property owner;
- (3) Requiring surface water and groundwater sampling;
- (4) Requiring the abandonment of wells;
- (5) Requiring the installation of monitoring of wells;
- (6) Requiring property owners to connect to public water supplies when there is a threat to human health; and
- (7) Other measures deemed appropriate by the Health Officer.

(B) The Health Officer shall provide public notice through the local media upon the creation of any administrative control area and shall make maps of the administrative control areas available to the public.

(Ord. 38-05, passed 4-12-2005)

### § 52.044 WATER WELL INSTALLATION REQUIREMENTS.

(A) *Construction requirements for potable water wells.*

(1) The construction of all potable wells within the county shall be in accordance with the applicable requirements of 312 I.A.C. 13, the ISDH Bulletin S.E. 13, "On-Site Water Supply and Wastewater Disposal for Public and Commercial Establishments" and ISDH Bulletin P.W.S.2, "Standards for Construction of Private Water Wells and Water Systems".

(2) All wells that will supply, in whole or in part, potable water shall:

- (a) Have a minimum casing diameter of four inches nominal inside diameter if to be used for drinking water;
- (b) Have a casing which will extend to the well screen;
- (c) Have a minimum depth of 35 feet as measured from the ground surface to the top of the well screen; and

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(d) Have an available drawdown of at least 20 feet, as measured from the static water level to the top of the pump;

(e) The minimum depths feet and the minimum available drawdown identified in divisions (A)(2)(c) and (A)(2)(d) above need not be met if a basal shale or clay is encountered during the drilling of the well that prevents the well from being completed consistent with these requirements. In those circumstances, the well will be completed with the maximum depth and available drawdown practical; and

(f) Dug wells may not be installed in the county, except for dewatering wells.

(3) Upon the completion of drilling a well, the well driller shall place a permanent identification on the well casing at least six inches above the ground that clearly states the name and state license number of the company that drilled the well.

(4) No more than one residence may be connected to a residential water supply well unless the well is registered with and meets the requirements of the state for a public well.

(B) *Water well yield.* After development and pumping at capacity for a minimum of one hour, residential wells shall have a stabilized yield of at least five gallons per minute and all other potable water supply wells shall have a stabilized yield at least equal to the pumping rate desired from the potable water supply well during normal usage.

(C) *Sand and/or clay.*

(1) The potable water supply well shall be properly developed and screened so that when it is released for others to use and for 90 days thereafter no sand or clay shall be present in the water which may cause damage to the plumbing or appliances attached thereto.

(2) If sand or clay is present, the well driller or pump installer shall eliminate the production of sand or clay. In failing in such attempts, the well driller or pump installer shall provide equipment to remove the sand and/or clay so that the collection of same will not thereafter develop in the plumbing. If, after additional equipment is installed, the potable water supply well continues to result in an accumulation of sand and/or clay, a new potable water well shall be installed.

(3) Nothing herein shall be construed to make the well driller or pump installer liable for the cost of the aforesaid changes, but, instead, the same shall remain a matter of contract.

(D) *Pump installation.* The pump installation shall comply with the requirements as stated in the most current ISDH Bulletin, P.W.S.2, "Standards for Construction of Private Water Wells and Water Systems".

(E) *Hand pumps.* All hand pumps, stands or similar devices shall be installed so that no unprotected opening connected with the interior of the pump exists. The pump spout shall be of the closed downward-directed type. All hand pumps shall be bolted to a mounting flange securely fastened to the well casing. The top of the casing shall extend at least one foot above the face of the flange or at least two feet above any known floodwater level.

(F) *Power-driven pumps.* All power-driven pumps located over wells shall be mounted on the well casing, a pump foundation, or a pump stand, so as to provide an effective well seal at the top of the well. Extension of the casing at least one foot into the pump base will be considered an effective seal, provided the

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pump is mounted on a base plate or foundation, in such manner to exclude dust and insects, and the top of the well casing is at an elevation at least two feet above the 100-year flood level. Where the pump unit is not located over the well and the pump delivery or suction pipe emerges from the top thereof, a watertight expanding gasket or equivalent well seal shall be provided between the well casing and piping. A similar watertight seal shall be provided at the terminal of a conduit containing a cable for a submersible pump.

(G) *Check valve.* All submersible pumps shall have one check valve located in the discharge line above the pump and inside the casing.

(H) *Pump bearing lubrication.*

(1) Bearings of pumps shall be lubricated with water or oil of food-grade quality.

(2) If a pump delivering potable water is provided with a water lubrication tank, the tank shall be so designed, installed and maintained as to prevent damage of the water therein.

(3) The oil reservoir shall be constructed to protect the water from damage. The lubrication system shall be designed, installed and maintained to minimize leakage of oil into the water. The oil shall be of food-grade quality.

(I) *Pumphouses.* Unless the power-driven pump installation is of weatherproof and frost-proof construction, a weatherproof and frost-proof structure housing the pump shall be constructed permitting access to the pump for maintenance and repair work. The pumphouse floor shall be constructed of concrete and shall slope away in all directions from the well or suction pipe.

(J) *Protection against freezing.* Discharge lines and vacuum lines from the well to the foundation of any buildings shall be protected against freezing.

(K) *Well vents.* This section shall also apply to remediation wells. All well vents shall be piped watertight to a point not less than 24 inches above the 100-year flood level and, to the top of the well casing. The vent opening and piping shall be of sufficient size to prevent clogging by frost and in no case be less than one-fourth inch in diameter. The terminals of vent pipes shall be shielded and screened to prevent the entrance of foreign matter and preferably turned down. If toxic or flammable gases or regulated substances are vented from the well, they shall be treated as required by the Health Officer, and all necessary permits shall be obtained, and the vent shall extend to the outside atmosphere at a point where the gases will not produce a health hazard or safety hazard. Openings in pump bases shall be sealed watertight.

(L) *Suction or non-pressure lines.* All buried suction pipe or non-pressure lines are prohibited with the exception of well points used temporarily during construction.

(M) *Materials prohibited.* No material will be used in the well or pump installation that will result in the delivered water being toxic or having an objectionable taste or odor as defined by the American Water Works Association Standards (AWWA). All metallic and nonmetallic materials shall have sufficient structural strength and other properties to accomplish the purpose for which installed. Flexible or non-rigid plastic pipe shall not be used for suspending submersible pumps, unless having the physical properties to withstand the torque and load to which it is subjected. Plastic pipe shall not be used unless bearing the approval of the National Sanitation Foundation and unless having the physical properties to withstand the torque and load to which it is subjected. Materials with lead or asbestos are prohibited.

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(N) *Offset pumps and sampling faucet location.* Offset pumps and sampling faucets shall be located where they are readily accessible. They shall not be located in a crawl space unless the crawl space is drained to the ground surface beyond the crawl space either by gravity or by means of a sump pump, and a minimum of four feet of clear working space is provided between the floor of the crawl space and the floor joist in the pump area. If located in a crawl space, the pump shall be located within five feet of the point of entry. The access opening should be at least two feet high and two feet wide. Any part or accessory to the water system which requires routine maintenance shall not be installed in a crawl space unless that crawl space meets the requirements of the provisions of this subchapter.

(O) *Pressure tanks.* Pressure tanks or approved substitutes, used as part of the water system, shall be of a size as to prevent excessive wear of the pump due to frequency of starting or stopping.

(P) *Wellhead height.* All wellheads shall extend above the ground surface for a minimum of one foot and two feet above the 100-year flood level.

(Q) *Nonpotable well installation requirements.*

(1) All nonpotable water systems shall be clearly labeled as nonpotable at each point of use, on the wellhead, and on any piping located inside of any structure. The nonpotable labels shall be maintained and replaced as necessary to ensure the well and piping is labeled until the well is abandoned.

(2) The piping for nonpotable wells shall not be connected to any potable water system.

(3) Upon the completion of drilling a well, the well driller shall place a permanent identification on the well casing at least six inches above the ground that clearly states the name and state license number of the company that drilled the well.

(4) All wellheads shall extend above the ground surface for a minimum of one foot and two feet above the 100-year flood level.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### **§ 52.045 DISINFECTION AND SAMPLING PROCEDURES.**

(A) *Disinfection of drilling and maintenance equipment.*

(1) Before installation of a potable water well or breaking the sanitary seal on an existing well, all well construction, and maintenance equipment and applicable materials shall be thoroughly disinfected with a solution adequate to kill any pathogens present. Pumping equipment and gravel used in gravel wall wells shall be disinfected before being placed in service for general use.

(2) To prevent damage of the potable water well or aquifer, it is desirable to maintain a chlorine residual of 100 parts per million in the well hole during the drilling process.

(3) The casing pipe shall be thoroughly swabbed to remove oil, grease and joint dope, using alkalis as necessary to obtain clean surfaces.

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### (B) *Disinfection of water system.*

(1) The well and appurtenances thereto shall be disinfected according to the specifications of the Health Officer. The treatment shall be performed prior to any use of water from the system when the potable water supply well work is finished and when a pump is installed or reinstalled. If the two operations are performed on the same day, only the latter disinfection shall be required.

(2) The disinfection of the water system shall include the water in the well pipe, gravel used in gravel well construction, well pipe, pumping equipment, water storage tank(s) and all in-house plumbing including any existing water heater, clothes washing machine and dishwasher.

(3) If, after the water in the system has been analyzed according to the requirements of this subchapter, the water in a potable water well exceeds maximum contaminant levels (MCL) for coliforms or *E. coli* bacteria, it shall be disinfected again by the well driller or pump installer, sampled and analyzed according to the requirements of this subchapter.

(4) The well driller or pump installer who performed work on the system shall be responsible for properly disinfecting the water system and for repeating the disinfection once, if the water exceeds MCLs. The costs and responsibility of any further disinfecting shall be borne by the owner of the water system unless the water system was not properly disinfected by the well driller.

(5) Disinfection of water systems shall be performed only by a well driller with a current county well drillers registration or a plumber licensed to perform work in the county. The Health Officer recommends that owners not attempt to disinfect their wells.

(6) The Health Department shall issue and revise, as deemed necessary, procedures for disinfecting water systems. All parties disinfecting water systems pursuant to this subchapter shall follow the procedures issued by the Health Officer.

### (C) *Water sampling.* All potable and irrigation wells shall be sampled as described below.

(1) After the water system has been disinfected the water system shall be pumped to remove all the disinfectant and sampled.

(2) All water samples shall be properly collected from an appropriate sampling faucet and analyzed using the analytical methods listed in 40 C.F.R. pt. 141 or pt. 143 or otherwise approved by the Health Officer.

(3) For public wells, the water analysis must demonstrate the water to be of satisfactory bacteriological and applicable chemical water quality before the well may be placed in service.

(4) All water samples shall be collected in accordance with procedures provided by the Health Officer.

(5) A copy of any required laboratory and field analysis shall be submitted to both the Health Officer and the potable water supply well owner by the laboratory performing the analysis.

(6) If the first sample does not provide satisfactory results the water supply well shall be either disinfected or decontaminated until the test results are satisfactory or the well is abandoned.



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(7) For the purposes of this subchapter, any potable water well is contaminated when the water withdrawn from it is found to contain any contaminant or pollutant which is present in a concentration exceeding any MCL or when the Health Officer determines that the water provided by the well is a health hazard.

(8) Each new or replacement potable water supply well shall be analyzed. The analysis shall include the following and any other tests as deemed reasonable and ordered by the Health Officer to the extent that the tests protect against a health threat:

- (a) Total coliform;
- (b) *E. coli*;
- (c) Nitrates (NO<sub>3</sub>);
- (d) Arsenic;
- (e) Residual chlorine;
- (f) Temperature (laboratory); and
- (g) pH (laboratory).

(9) If a well tests positive for residual chlorine, it shall be flushed, resampled and reanalyzed for coliforms and *E. coli*.

(10) The Health Officer may order that no water shall be used for any purpose from a potable water well if the Health Officer has information indicating that the water exceeds an MCL. In that case, no person shall use the water until testing demonstrates that the water meets all MCLs.

(11) The costs of the laboratory tests shall be paid by the owner.

(Ord. 38-05, passed 4-12-2005; Ord. 16-09, passed 2-10-2009) Penalty, see § 52.999

### **§ 52.046 WELL ABANDONMENT PROCEDURES.**

(A) Unsealed or unplugged abandoned wells constitute a health hazard to public health, safety, welfare and to the preservation of the groundwater resource because an improperly abandoned well might series as an intentional or unintentional source of contamination.

(B) All wells shall be abandoned in a manner that restricts the movement of water within the well casing and annular space surrounding the well casing to the zone in which it originated and in a manner determined by the Health Officer.

(C) The preferred method of abandoning wells is to remove the well casing and fill the well with a bentonite slurry or, at a minimum, bentonite pellets.

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(D) Any well existing or determined to be existing without a proper well seal shall be abandoned upon an order from the Health Officer to do so. Wells shall be abandoned as specified by the Health Officer and in accordance with 312 I.A.C. 13. Any additional requirements may be approved by the Health Officer.

(E) Any well not in use for over one year may be required to be properly abandoned by the Health Officer.

(Ord. 38-05, passed 4-12-2005)

### **§ 52.047 WELL MAINTENANCE PROCEDURES.**

(A) It shall be the responsibility of the owner of a well to maintain a water well on his or her property in accordance with the provisions of this subchapter. Any defect that exists or occurs in any well or abandoned well that could cause damage to the well water or the aquifer shall be corrected immediately by the owner upon the order of the Health Department.

(B) All water wells shall be protected against breakage through accident and secured from vandalism. The owner of a well shall be responsible for corrective action caused by contamination that enters a water system or the groundwater through his or her well.

(C) Any well deemed by the Health Officer to be in a vulnerable location shall be protected against breakage through accident. Means to protect the well may include guard posts, locking caps, fences, installation in an invulnerable location and any other means to protect the well from undesired intrusion as directed by the Health Officer.

(D) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, cover, deface or tamper with any structure, appurtenance, property or equipment which is a part of or used in conjunction with a public or private water supply or which could result in damage to the soil or groundwater (unless the activity has been approved or permitted by the Health Officer). Any such action shall be a violation of this subchapter.

(E) All wells requiring permits shall be tagged with a Health Department well identification number. Either this tag or a replacement tag shall remain on the well until its abandonment. It shall be a violation of this subchapter to remove the tag.

(Ord. 38-05, passed 4-12-2005) Penalty, see § 52.999

### **§ 52.048 REPORTING REQUIREMENTS SUBSTITUTION.**

In the case where a report requiring information of the same character must be filed to meet a state or federal requirement, the report may be copied and submitted to the Health Officer in lieu of otherwise applicable reporting requirements under this subchapter. Any of the above information required, not included in the report, must be submitted additionally.

(Ord. 38-05, passed 4-12-2005)

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### § 52.049 ENFORCEMENT.

(A) *Authority to adopt rules and regulations.* The County Board of Health may adopt, amend or rescind any rules and regulations and standards as deemed necessary for proper enforcement and to carry out the purposes and intent of this subchapter. This shall be accomplished using public comment periods, public meetings and public hearings, as appropriate, in accordance with state law and in consultation with the Water Resources Advisory Board.

(B) *Right of entry upon premises.* The Health Officer or an authorized representative, bearing proper credential and identification, may enter upon and inspect private property, after due notice, for the purposes as inspections, observation, measurement, sampling, testing and records examination necessary to carry out the provisions of this subchapter.

(1) Upon the receipt of an application to install a well, the Health Officer shall be permitted to inspect the location, installation, condition and sampling of the wells at any stage.

(2) In the event a person who has common ownership over a building, structure or land does not permit an inspection while work is being performed pursuant to a permit issued through this subchapter, the permit shall be immediately cancelled and all the work shall be immediately suspended. The work may only commence upon the issuance of a new permit and a notification by the Health Officer that the work can continue.

(3) In the event a person who has common ownership over a building, structure or land does not permit an inspection, the inspection may be rescheduled and the person shall be notified by United States certified mail. Failure of the person to thereafter permit an inspection will be sufficient grounds and probable cause for a court of competent jurisdiction to issue an administrative warrant for such purpose of inspecting, observing, measuring, sampling, testing or examining records necessary to carry out the provisions of this subchapter.

(4) In the event a building, structure or land appears to be vacant or abandoned and the property owner cannot be readily contacted in order to obtain consent for an inspection, the Health Officer may enter into or upon any open or unsecured portion of the premises in order to conduct an inspection.

(C) *Reimbursement of Health Department expenses.* Any person violating any provision of this subchapter shall become liable to the Health Department for any expense, loss or damage occasioned it by reason of the violation.

(D) *Issuance of notice of violations.* Whenever the Health Officer determines there are reasonable grounds to believe that there has been a violation of any provision of this subchapter; the Health Officer shall give notice in writing of the violation to the person or persons responsible thereof, and to any known agent of that person. The notice shall:

(1) Include a statement of reasons why the notice of violation is being issued;

(2) Allow a reasonable time for the performance of any act it requires;

(3) Be served upon the owner or his or her agent, or the operator, as the case may require; provided, that the notice shall be deemed to be properly served upon the owner or agent, or upon the operator, if a copy

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thereof is served upon him or her personally, or if a copy thereof is sent by certified mail to his or her last known address, or if a copy thereof is posted in a conspicuous place in or about the dwelling affected by the notice, or if he or she is served with the notice by any other method authorized or required under the laws of this state;

- (4) Contain an outline of required remedial action; and
- (5) Describe the penalty that is imposed for noncompliance.

(E) *Request for hearing.* Any person affected by a notice of violation of this subchapter issued by the Health Officer may request and shall be granted a hearing on the matter before the Health Officer, provided that the person shall file with the office of the Health Officer by mail postmarked or hand delivered, within 15 days after service of the notice. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof. Upon receipt of the petition, the Health Officer shall arrange a time and place for the hearing and shall give the petitioner written notice thereof. The hearing shall be held as soon as practicable after the receipt of a request thereof. At the hearing, the petitioner shall be given an opportunity to be heard and to show cause why the notice should not be complied with. The Health Officer shall sustain, modify or withdraw the notice to the petitioner as soon as practical and in no case later than 15 days following the hearing.

(F) *Appeals of Health Officer's determination.*

(1) Any decision rendered by the Health Officer pursuant to a hearing may be appealed to the County Board of Health, provided that an appeal is filed with the Health Officer by mail postmarked or hand delivered, within 15 days after a decision is issued by the Health Officer. The appeal shall contain a written request for a hearing and a brief statement of the grounds thereof. Upon receipt of the petition, the Health Officer shall arrange a time and place for a hearing with the County Board of Health and shall give the petitioner written notice thereof. The hearing shall be held as soon as practicable after the receipt of a request thereof. At the hearing, the petitioner shall be given an opportunity to be heard and to show cause why the notice should not be complied with.

(2) After a hearing, the County Board of Health shall sustain, modify or withdraw the decision of the Health Officer as soon as practical but in no case more than 30 days after the hearing. If the Board of Health sustains or modifies the notice, it shall be deemed to be an order. Any notice properly served shall automatically become an order.

(G) *Issuance of emergency orders.* Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public health, the Health Officer may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that action be taken as the Health Officer deems necessary to meet the emergency. Notwithstanding any other provisions of this subchapter, the order shall be effective immediately. Any person receiving such an order may seek a hearing under divisions (E) and (F) above while carrying out the order, and shall have the right to recover any of its response costs to the extent that the order or any portion thereof is found to have been arbitrary or capricious or not otherwise in accordance with law. After the consideration, depending upon the finding as to whether the provisions of this subchapter have been complied with, the Health Officer shall continue the order in effect, modify it or revoke it.

(Ord. 38-05, passed 4-12-2005)

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### § 52.050 VARIANCE.

The Health Officer shall approve, amend or disapprove a written petition for a variance, exemption or exception from provisions of this subchapter, as soon as practical after receiving the request and in no case later than 30 days after the petition is filed. A decision by the Health Officer may be appealed to the County Board of Health for consideration at their next regularly scheduled meeting. The County Board of Health shall render a decision in the matter as soon as practical and, in no case, later than 30 days after the meeting date.

(Ord. 38-05, passed 4-12-2005)

### § 52.051 DISCLAIMER OF LIABILITY.

(A) *Health Department liability.* This subchapter shall not create liability on the part of the Health Department or any officer, employee or agent thereof for any damage that may result from reliance on this subchapter or on any administrative decision lawfully made thereunder.

(B) *Inspections.* All inspections shall be at the discretion of the Health Officer, and nothing in this subchapter shall be construed as requiring the Health Officer to conduct any inspection nor shall any inspection imply a duty to conduct any other inspection. Nothing in this subchapter shall be construed to hold the Health Officer responsible for any damage to persons or property by any failure to make an inspection or reinspection or for inspections that failed to identify unacceptable conditions or procedures.

(Ord. 38-05, passed 4-12-2005)

## WELLHEAD PROTECTION

### § 52.065 CONFLICTING ORDINANCES.

The provisions of this subchapter shall be deemed as additional requirements to minimum legal requirements of other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

(Ord. 103-98, passed 10-14-1997)

### § 52.066 COMPLIANCE WITH OTHER ORDINANCES AND LAWS.

In addition to the requirements of this subchapter, compliance with the requirements set forth in the local, federal and state statutes, rules, regulations and ordinances shall be required. In case of conflicting requirements, the most restrictive shall apply.

(Ord. 103-98, passed 10-14-1997)

### § 52.067 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BEST MANAGEMENT PRACTICES.** Schedules of activities, prohibitions of practice, treatment requirements, operation and maintenance procedures, use of containment facilities and other management practices to prevent or reduce the damage of the waters and soil of the county.

**COMMUNITY PUBLIC WATER SYSTEM (CPWS).** A public water system that pipes water for human consumption to at least 15 service connections used by year-round residents or one that regularly serves at least 25 year-round residents.

**COUNTY BOARD OF HEALTH.** The St. Joseph County Board of Health.

**DAMAGE.** Has the meaning set forth in 327 I.A.C. 2-6.1-4.

**DRY WELL.** A subsurface facility used for the dissipation of storm water into the ground. A **DRY WELL** is a type of injection well.

**FACILITY.** Has the meaning set forth in 42 U.S.C. § 9601(9), which means “any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or

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otherwise come to be located; but does not include any consumer product in consumer use or any vessel". **FACILITY** does not include motor vehicle, rolling stock or aircraft.

**GROUNDWATER.** Any water below the surface of the ground within the interstices of the rock or soil.

**HAZARDOUS SUBSTANCE.** Any substance as set forth in 42 U.S.C. § 9601(14) as presently existing or subsequently amended. The Health Officer may add substances to be included as a **HAZARDOUS SUBSTANCE** in this subchapter including the minimum quantity by appropriate rulemaking.

**HEALTH DEPARTMENT.** The Health Department of St. Joseph County, Indiana.

**HEALTH OFFICER.** The Health Officer of the Health Department of St. Joseph County, Indiana.

**HIGH CAPACITY WELL.** A well, in accordance with 310 I.A.C. 16-1-14, which has the capability of withdrawing 100,000 gallons of groundwater or more in one day.

**I.A.C.** Indiana Administrative Code.

**I.C.** Indiana Code.

**OPERATOR.** Any person in control of, or having responsibility for, the operation of a facility subject to this subchapter.

**OWNER.** Any person who owns property and/or a facility or part of a facility subject to this subchapter.

**PERSON.** Any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), limited liability company, partnership, copartnership, company, estate, municipal corporation, city, school city, town, school town, school district, school corporation, county, state agency, association, state, commission, political subdivision of the state, any interstate entity or any other legal entity or their legal representative.

**POTABLE WATER.** Water intended and suitable for drinking or culinary purposes.

### **POTENTIAL SOURCE OF CONTAMINATION.**

(1) Any of the following conditions constitutes a potential source of contamination for purposes of this subchapter:

(a) The presence of a hazardous substance or regulated substance in the vadose zone in sufficient quantity or concentration to present a reasonable likelihood that it will damage groundwater; and/or

(b) The presence at a facility of any of the following activities or conditions, involving hazardous or regulated substances:

1. An underground storage tank;
2. An above-ground storage tank;
3. A drum storage area;

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4. A waste pile, including one consisting of contaminated soil awaiting removal;
5. A surface impoundment;
6. A rail or truck-loading or transfer area;
7. An outdoor storage or disposal area exposed to precipitation; and
8. A facility containing 600 gallons or more of a regulated substance in a single container, including electrical transformers.

(2) Activities described in divisions (1)(b)2. and (1)(b)3. above do not represent a potential source of contamination if they are completely enclosed in a building in an area with no floor drain and an impermeable floor and walls sufficient to contain a release of 100% of the contents.

**PUBLIC WATER SUPPLY.** Any wells, reservoirs, lakes, rivers, sources of supply, pumps, mains, pipes, facilities and structures through which water is obtained, treated as may be required and provided to the public through a water distribution system that serves at least 25 persons per day for drinking, domestic use or other purposes, including state-owned facilities, or that has at least 15 service connections.

**PUBLIC WATER SYSTEM (PWS).** A system for supplying potable water if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The term includes any collection, treatment, storage and distribution facilities under control of the operator of the system, including the operator or administrator of the system, and used primarily in connection with the system and any collection or pretreatment storage facilities not under the control which are used primarily in connection with the system. **PUBLIC WATER SYSTEM** as used in this subchapter shall have the same applicability as “public water supply system” or PWSS as used in 327 I.A.C. 8-4.1, and defined at 327 I.A.C. 8-4.1-1(20).

**SIC.** The Standard Industrial Classification applicable to a particular industrial activity in accordance with the Standard Industrial Classification Manual, published by the Office of Management and Budget of the Executive Office of the President of the United States.

**SPILL.** Has the meaning set forth in 327 I.A.C. 2-6.1-4, which is “any unexpected, unintended, abnormal or unapproved dumping, leakage, drainage, seepage, discharge or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. The term does not include releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.”

**THREAT TO GROUNDWATER.** Any of the following conditions constitutes a **THREAT TO GROUNDWATER** for the purposes of this subchapter:

- (1) The presence of a hazardous substance or regulated substance in the vadose zone in sufficient quantity or concentration to present a reasonable likelihood that it will damage groundwater; and/or
- (2) The presence at a facility of any of the following activities or conditions involving hazardous or regulated substances in a manner either not in compliance with applicable federal, state or local requirements, or in a manner which represents an unreasonable risk of release to groundwater, or to soil in a quantity sufficient to present a reasonable likelihood that it will damage groundwater:



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- (a) An underground storage tank;
- (b) An above-ground storage tank;
- (c) A drum storage area;
- (d) A waste pile, including one consisting of contaminated soil awaiting removal;
- (e) A surface impoundment;
- (f) A rail or truck-loading or transfer area; and/or
- (g) An outdoor storage or disposal area exposed to precipitation.

**TIME-OF-TRAVEL (TOT).** The time required for groundwater to move from a specified point to a well.

**UNDERGROUND STORAGE TANK (UST).** Any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of hazardous substances or petroleum, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground.

(1) This term does not include any:

- (a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) Tank used for storing heating oil for consumptive use on the premises where stored;
- (c) Septic tank;
- (d) Pipeline facility (including gathering lines) regulated under:
  - 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 *et seq.*);
  - 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 *et seq.*); or
  - 3. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in divisions (1)(d)1. or (1)(d)2. of this definition.
- (e) Surface impoundment, pit, pond or lagoon;
- (f) Storm water or wastewater collection system;
- (g) Flow-through process tank;
- (h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift,

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shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

(2) The term **UNDERGROUND STORAGE TANK** or **UST** does not include any pipes connected to any tank which is described in division (1) above.

**U.S.C.** United States Code.

**WASTEWATER.** A combination of liquid- and water-carried wastes from residence(s), commercial building(s), industry(s) and/or institution(s), or any other facility together with any groundwater, surface water or storm water that may be present.

**WASTEWATER DISPOSAL SYSTEM.** All equipment and devices necessary for conveyance, collection, storage, treatment and disposal of wastewater.

**WELL.** Any artificial excavation that derives water from the interstices of the rocks or soil it penetrates.

**WELLHEAD PROTECTION AREA (WHPA).** The surface and subsurface area, delineated by fixed radius, hydrogeological mapping, analytical, semianalytical or numerical flow/solute transport methods, or any other method approved by the Health Officer, which contributes water to a public water system well or well field, and through which contaminants are likely to move through and reach the well within a specified period.

**WELL OWNER.** The legal owner of the real estate containing the well site.

(Ord. 103-98, passed 10-14-1997)

### **§ 52.068 WATER RESOURCES ADVISORY BOARD.**

(A) *Generally.* A Water Resources Advisory Board (Board) shall be established and appointed by the County Board of Health, as well as various governmental units. The term of appointments for all Board members, except for the members appointed automatically, shall be three years. The Board shall consist of the following voting members:

- (1) *Appointed by the Board of Health.*
  - (a) One biologist;
  - (b) One chemist;
  - (c) One geologist or hydrologist competent in hydrogeology; and
  - (d) One person competent in hazardous substances management.
- (2) *Appointed by the Board of Commissioners.*
  - (a) One representative of industry; and

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(b) One representative from the home building or land development industry.

(3) *Appointed by the County Council.*

(a) One active farmer in the county;

(b) One member of the general public;

(c) One realtor; and

(d) One representative of commerce.

(4) *Appointed by the Mayor of Mishawaka.* One municipal water system representative of the Mishawaka water treatment facility;

(5) *Appointed by the Mayor of South Bend.*

(a) One municipal water system representative of the South Bend water treatment facility; and

(b) One civil engineer licensed to practice in the state, competent in water resources.

(6) *Appointed automatically.*

(a) The County Extension Educator, Agriculture and Natural Resources; and

(b) The County Health Department Environmental Health Manager.

(B) *Business of the Board.* The Board shall elect its own Chairperson and Vice-Chairperson annually. The Board shall meet not less frequently than every calendar quarter. A majority of the appointed members shall be present to constitute a quorum. Any member may assign a proxy to another member. The Water Resources Advisory Board shall adopt bylaws governing the meetings and business of the Board.

(C) *Responsibility of the Board.* The role of the Board shall be:

(1) Act as advisor to the County Board of Health making specific recommendations concerning safeguards to reduce the risk of damage in a WHPA;

(2) Review this subchapter and any other ordinances regarding groundwater protection/management, as necessary, at least once every four years as required by § 52.071;

(3) Generally advise the Health Officer and County Board of Health on all matters concerning this subchapter and any other ordinances and regulations regarding groundwater protection/management; and

(4) Generally advise the Health Officer and County Board of Health on matters concerning the protection of groundwater resources and drinking water supplies, and their impact on public health.

(Ord. 103-98, passed 10-14-1997; Ord. 50-08, passed 7-8-2008)

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### § 52.069 WELLHEAD PROTECTION.

A community public water system may request the Health Department to provide the following wellhead protection program.

(A) *Wellhead Protection Area.*

(1) *Purpose.* The Wellhead Protection Area (WHPA) is designed to safeguard the public health, safety and welfare of the people served by a CPWS by regulating the storage, handling, use and/or production of potential sources of contamination within the areas. The intent of a WHPA is to protect the community's potable water supply against damage. All regulated activities within the WHPA shall be in conformance with the requirements of the County Board of Health, the State Wellhead Protection Program adopted by the State Department of Environmental Management, and 327 I.A.C. 8-4.1.

(2) *Determination of WHPA.*

(a) WHPAs shall be delineated by the CPWSs in accordance with criteria established in 327 I.A.C. 8-4-1-5. Each WHPA delineated in accordance with requirements of 327 I.A.C. 8-4.1 includes two zones, Zone 1 and Zone 2. Zone 1 is the 200-foot minimum horizontal radius at the ground line surrounding each well. Zone 2 is the five-year TOT less Zone 1.

(b) In case of multiple wells in a single well field, defined as having wells at less than 1,000-foot separation distance, the PWS will delineate the entire well field as one WHPA. After approval of Zones 1 and 2, as defined above, by IDEM, the CPWS may submit the delineations to the Health Department for inclusion in this program. Additionally, each individual WHPA will be shown on a map accessible to the public at the location or proposed location of any existing or proposed CPWS according to the specifications of the Health Officer. However, provisions of this subchapter shall not apply if the subject well field is not operating within 18 months of the approval.

(c) The WHPA maps shall be amended from time to time as necessary. The maps shall be supplemented by the CPWS with documentation to substantiate the delineations, if requested by the Health Officer.

(3) *Determination of applicability.* The provisions of this section shall apply to all of the land within WHPAs as shown on the appropriate maps.

(4) *Posting of WHPA.* The WHPA shall be posted by the appropriate CPWS, as directed by the Health Officer, on major thoroughfares with appropriate signs at the borders of the designated areas.

(B) *Wellhead Protection Area (WHPA) permit.*

(1) *Exemptions from WHPA permit.* Properties that have no activities or have only activities which are limited to the following SIC codes are exempt from the requirements of this subchapter except as provided in division (B)(1)(b) below. The word **PROPERTY**, as used herein, means a single contiguous property. Additional properties, as determined by the Water Resources Advisory Board and listed by the Health Department, shall be exempt from the requirements of this rule.

(a) *General exemptions.*

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| <i><b>SIC</b></i> | <i><b>Property</b></i>   |
|-------------------|--|
| 53                | General Merchandise Stores   |
| 54                | Food Stores  |
| 56                | Apparel and Accessory Stores                                       |
| 57                | Home Furniture, Furnishings and Equipment Stores                   |
| 58                | Eating and Drinking Places   |
| 59                | Miscellaneous Retail   |
| 60                | Depository Institutions  |
| 61                | Nondepository Credit Institutions                                  |
| 62                | Security and Commodity Brokers, Dealers, Exchanges and Services    |
| 63                | Insurance Carriers   |
| 64                | Insurance Agents, Brokers and Services                             |
| 65                | Real Estate  |
| 67                | Holding and Other Investment Offices                               |
| 70                | Hotels, Rooming Houses, Camps and Other Lodging Places             |
| 72                | Personal Services  |
| 73                | Business Services  |
| 78                | Motion Pictures  |
| 82                | Educational Services   |
| 83                | Social Services  |
| 86                | Membership Organizations   |
| 87                | Engineering, Accounting, Research, Management and Related Services |
| 88                | Private Households   |

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| <i>SIC</i> | <i>Property</i>   |
|------------|---|
| 89         | Miscellaneous Services  |
| 91         | Executive, Legislative and General Government, Except Finance |
| 92         | Justice, Public Order and Safety                              |
| 93         | Public Finance, Taxation and Monetary Policy                  |
| 94         | Administration of Human Resource Programs                     |
| 95         | Administration of Environmental Quality and Housing Programs  |
| 96         | Administration of Economic Programs                           |

(b) *Exceptions to exemptions.*

1. Properties that possess one or more dry well or any underground storage tank shall not be exempted from the requirements of this subchapter.

2. Properties that the Health Department expressly determines to contain a potential source of contamination shall not be exempted from the requirements of this subchapter.

(2) *Applicability for WHPA permit.* Property owners, except for those exempted in division (B)(1) above, containing one or more potential sources of contamination within the WHPA shall obtain a WHPA permit. Utilities or local units of government with multiple facilities on several properties may apply for a single permit for all or a portion of their facilities in a single WHPA. Property owners on whose property such a facility exists and is covered by this type of permit shall not be required to obtain a permit for these facilities.

(3) *WHPA permit application requirements.*

(a) A WHPA permit application shall be on an appropriate form, developed by the Health Department, based on divisions (B)(3)(b) below.

(b) The initial applications shall be submitted by the later of two years of adoption of this subchapter or one year after approval of the WHPA by the Health Department. Initial applications and renewal applications shall include but not be limited to the following information:

1. Name of property owner making application (including specific division), number and any other distinguishing titles specific to that property;
2. Complete address, telephone number and responsible person of the property;
3. Means of water supply and wastewater disposal at the property, and any permit or permit application numbers;

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4. Description of operations within the property;

5. Property tax identification number;

6. An inventory list giving a general description of potential source(s) of contamination, location of the potential source(s) of contamination on the property, storage capacity or volume and approximate land area that is associated with each potential source of contamination. (For storm water sources, this shall not include storm water from offsite.) The list shall also include all formerly used, but presently out-of-service, potential sources of contamination and the date each such potential source of contamination was taken out of service. In the case of utilities and local units of government with multiple facilities, however, a general description of potential source(s) of contamination only is required;

7. Description of existing and proposed zones of engineering control and best management practices to protect soil from contamination posing a threat to groundwater; and

8. Any other information as is needed to show that compliance with this subchapter will be achieved or as the Health Officer may require by regulation or otherwise to properly review the application.

(c) Prior to making an application for any construction permits for any structure which will or may contain any threat to groundwater, a property shall submit an application for the WHPA permit within the WHPA. No other permits shall be issued under this subchapter until the WHPA permit has been issued.

(4) *Requirements applicable to all WHPA permits.* The following requirements apply to all WHPA permits:

(a) Sampling, testing and monitoring of dry wells and potential sources of contamination at such locations, times and in such a manner as the Health Department may reasonably prescribe if a threat to groundwater exists;

(b) Use of zones of engineering control and best management practices for all potential sources of contamination at such locations, times and in such a manner as the Health Department may reasonably prescribe if a threat to groundwater exists;

(c) Posting of an emergency contact list in a conspicuous manner;

(d) Notification of any substantial changes in a facility with regard to storage, handling, production or use of potential groundwater contaminants;

(e) Posting of information for employees concerning name, address and phone number of applicable CPWS personnel for notification purposes; and

(f) Notification to appropriate CPWS whenever a spill is required to be reported in accordance with 327 I.A.C. 2-6.1. The notification shall be within 24 hours of state notification.

(5) *Issuance of WHPA permit.*

(a) Upon review of application, along with consideration of the WRAB recommendations and upon determination that the application facility meets all requirements of this subchapter, the Health Officer shall issue a WHPA permit for the facility making application within a specified WHPA.

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(b) A permit fee and inspection fee, as prescribed by the County Council, shall be paid to the County Health Department at the time the application is filed. The permit shall be valid not more than five years and may be issued on a staggered basis. Renewal applications must be filed no later than six months prior to the expiration of an existing permit. If a permit is neither issued or denied in writing within 60 days of the application, the permit shall be considered issued with all general requirements assigned.

(6) *Denial of application for WHPA permit.*

(a) If it is determined by the Health Officer that a facility shall not be issued a WHPA permit, the following must be included in the written denial notice:

1. Name of property, number or other distinguishing titles specific to that property;
2. Address of property;
3. Effective date of denial;
4. Reason for denial;
5. Date property shall cease operation, if an existing facility; and
6. Notification of requirements for appeals procedure according to division (B)(7) below.

(b) Permits may be denied for the following reasons:

1. Failing to meet requirements of WHPA permits;
2. Activities that, based on credible evidence, pose a threat to groundwater; and/or
3. Presence of unlawful activity on the property.

(7) *Appeals procedure for denial of application for WHPA permit.* Within 15 days of receipt of a denial to issue a WHPA permit within a WHPA, the property owner may submit an appeal to the County Health Board. The request must include:

- (a) Name of property owner;
- (b) Address of property owner;
- (c) Address of property in question;
- (d) Telephone number;
- (e) Description of the nature of the appeal; and
- (f) Any pertinent documentation regarding the appeal.

(8) *Non-transferability of WHPA permit.* Unless formally denied, a WHPA permit shall be issued for each facility operating within the WHPA; the permit may be transferred upon application to and after



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review by the Health Department. The permit shall not be transferable if the permitted property is vacant or unoccupied for a period of six months.

(C) *Restrictions in WHPA.*

(1) *Zone 1.* Only those activities and land uses necessary for the operation and maintenance of a community public water system shall be allowed within Zone 1 of the WHPA of a new, non-replacement community public water system water well or well field.

(2) *All zones.* Use or installation of new, non-replacement residential on-site wastewater disposal systems is prohibited unless land area for two systems that meet 410 I.A.C. 6-8.1 requirements is provided.

(D) *Authority.* The administration of this subchapter shall be under the authority of the Health Officer. The County Board of Health shall be responsible for the following:

(1) Updating all appropriate maps to include delineated WHPAs and to amend, as necessary, for changes in pumping rates;

(2) Set development standards and requirements;

(3) Maintain record files on all decisions made by Water Resources Advisory Board, Health Department and Health Officer;

(4) Review final documentation necessary to ensure compliance with regulations;

(5) Issuance of WHPA permits, review all WHPA permits issued to ensure compliance with regulations and monitor compliance with all WHPA permits; and

(6) Issue notice of violations as appropriate.

(E) *Violations.* A person shall be in violation of this section if the person:

(1) Fails to apply for a WHPA permit for the property within a WHPA;

(2) Fails to comply with requirements and restrictions within designated WHPAs;

(3) Fails to report spills to the Health Department and/or the community public water system within an appropriate time as required by this subchapter;

(4) Falsifies statements or documents pertinent to compliance with this subchapter; and/or

(5) Fails to comply with any other provision of this subchapter.

(F) *Limitations of jurisdiction liability.* Nothing in this subchapter shall be construed to imply that the Health Officer, County Board of Health or Health Department by issuing a WHPA permit, has accepted any liability if a permitted development or facility damages groundwater within the WHPA.

(Ord. 103-98, passed 10-14-1997) Penalty, see § 52.999

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### § 52.070 REPORTING REQUIREMENTS SUBSTITUTION.

In the case where a report requiring information of the same character must be filed to meet a state or federal requirement, the report may be copied and submitted to the Health Officer in lieu of otherwise applicable reporting requirements under this subchapter. Any of the above information required, not included in the report, must be submitted additionally.

(Ord. 103-98, passed 10-14-1997)

### § 52.071 ENFORCEMENT.

(A) *Authority to adopt rules and regulations.* The County Board of Health may adopt, amend or rescind any such rules and regulations and standards as deemed necessary for proper enforcement and to carry out the purposes and intent of this subchapter. This shall be accomplished using public comment periods, public meetings, public hearings in accordance with state law and upon the advice of the Water Resources Advisory Board.

(B) *Right of entry upon premises.*

(1) The Health Officer or an authorized representative, bearing proper credential and identification, may enter upon and inspect private property, at proper times after due notice, for the purposes as inspections, observation, measurement, sampling, testing and records examination necessary to carry out the provisions of this subchapter.

(2) In the event a person who has common ownership over a building, structure or land does not permit an inspection, the inspection may be rescheduled and shall be noticed by United States certified mail. Failure of the person to thereafter permit an inspection will be sufficient grounds and probable cause for a court of competent jurisdiction to issue an administrative warrant for the purpose of inspecting, observing, measuring, sampling, testing or records examination necessary to carry out the provisions of this subchapter.

(3) In the event a building, structure or land appear to be vacant or abandoned and the property owner cannot be readily contacted in order to obtain consent for an inspection, the Health Officer may enter into or upon any open or unsecured portion of the premises in order to conduct an inspection.

(4) Any person violating any provisions of this subchapter shall become liable to the County Health Department for any expense, loss or damage occasioned it by reason of the violation.

(C) *Issuance of notice of alleged violation.* Whenever the Health Officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this subchapter, he or she shall give notice in writing of the alleged violation to the person or persons responsible therefor, and to any known agent of the person. The notice shall:

- (1) Include a statement of reasons why it is being issued;
- (2) Allow a reasonable time for the performance of any act it requires;

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(3) Be served upon the owner or his or her agent, or the operator, as the case may require; provided that the notice shall be deemed to be properly served upon the owner or agent, or upon the operator, if a copy thereof is served upon him or her personally, or if a copy thereof is sent by certified mail to his or her last known address, or if a copy thereof is posted in a conspicuous place in or about the dwelling affected by the notice, or if he or she is served with the notice by any other method authorized or required under the laws of this state;

(4) Contain an outline of required remedial action; and

(5) Describe the penalty which is imposed for noncompliance.

(D) *Request for hearing.* Any person affected by any such notice issued by the Health Officer may request and shall be granted a hearing on the matter before the County Board of Health, provided that the person shall file with the office of the Health Officer by mail postmarked or hand delivered, within 15 days after service of the notice, a written petition requesting the hearing and setting forth a brief statement of the grounds therefor. Upon receipt of the petition, the Health Officer shall arrange a time and place for the hearing and shall give the petitioner written notice thereof. The hearing shall be held as soon as practicable after the receipt of a request therefor. At the hearing the petitioner shall be given an opportunity to be heard and to show cause why the notice should not be complied with.

(E) *Issuance of order; revocation of permit.* After the hearing, the County Board of Health shall sustain, modify or withdraw the notice, depending upon his or her findings as to whether the provisions of this subchapter have been complied with. If the Health Officer shall sustain or modify the notice in writing, it shall be deemed to be an order. Any notice properly served shall automatically become an order if a written petition for a hearing is not filed in the office of the Health Officer within the 15 days after the notice is served. After a hearing in the case of any notice suspending any permit required by this subchapter, when the notice has been sustained by the County Board of Health, the permit shall be deemed to have been revoked. Any such permit which has been suspended by a notice shall be deemed to be automatically revoked if a petition for hearing is not filed in the office of the Health Officer within 15 days after the notice is served.

(F) *Issuance of emergency orders and permits.* Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public health, the Health Officer may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that the action be taken as the Health Officer deems necessary to meet the emergency. Notwithstanding any other provisions of this subchapter, the order shall be effective immediately. Any person receiving such an order may seek a hearing under divisions (D) and (E) above while carrying out the order and shall have the right to recover any of its response costs to the extent that the order or any portion thereof is found to have been arbitrary or capricious or not otherwise in accordance with law. After such consideration, depending upon the finding as to whether the provisions of this subchapter have been complied with, the Health Officer shall continue the order in effect, modify it or revoke it.

(Ord. 103-98, passed 10-14-1997)

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### **§ 52.072 ORDINANCE REVIEW.**

The Water Resources Advisory Board shall formally review this subchapter as necessary, but at least every four years. This review shall assess the performance of this subchapter as it fulfills its statement of purpose and intent. Additionally, the review shall identify new federal, state and local laws and regulations, new technologies and new best management practices that apply to this subchapter. The results of the review along with any recommendations shall be submitted in writing to the County Board of Health.

(Ord. 103-98, passed 10-14-1997)

### **§ 52.073 VARIANCES.**

The County Board of Health shall consider a petition for variances, exemptions and exceptions from provisions of this subchapter, the Well Drilling and Water Supply Systems Ordinance as set forth in §§ 52.030 through 52.051, and the Source Water Supply Ordinance as set forth in §§ 52.001 through 52.014, after review by the Water Resources Advisory Board, and in no case later than 60 days after the petition is filed. An adverse decision by the Health Board is a final order and is appealable.

(Ord. 103-98, passed 10-14-1997)

### **§ 52.074 DISCLAIMER OF LIABILITY.**

(A) This subchapter shall not create liability on the part of the Health Department or any officer, employee or agent thereof for any damage which may result from reliance on this subchapter or on any administrative decision lawfully made thereunder.

(B) All inspections shall be at the discretion of the Health Officer, and nothing in this subchapter shall be construed as requiring the Health Officer to conduct any inspection nor shall any inspection imply a duty to conduct any other inspection. Nothing in this subchapter shall be construed to hold the Health Officer responsible for any damage to persons or property by any failure to make an inspection or re-inspection.

(Ord. 103-98, passed 10-14-1997)

### **§ 52.075 EFFECTIVE DATE.**

This subchapter shall become effective January 1, 1999, and after its final passage, approval and publication as required by law.

(Ord. 103-98, passed 10-14-1997)

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### § 52.076 REFERENCED STANDARDS.

Any standard, bulletin, rule or regulation referenced shall include any revisions or amendments made to the instrument. All sampling and testing shall be accomplished according to standards set by the Health Officer.

(Ord. 103-98, passed 10-14-1997)

### § 52.077 COUNTY HEALTH FUND.

All moneys collected pursuant to this subchapter shall be deposited in the County Health Fund. Expenditures for this Fund shall be in accordance with all applicable laws.

(Ord. 103-98, passed 10-14-1997; Ord. 69-01, passed 6-12-2001)

### § 52.999 PENALTY.

(A) *Sections 52.001 through 52.014.*

(1) *Penalties.* Any person determined by the Health Officer to be in violation of §§ 52.001 through 52.014 shall be punished for each offense by a penalty established by the Health Officer for the first, second and each subsequent offense as set forth in the Appendix: Schedule of Fines and Fees. Each day after receiving a notice of violation from the Health Officer shall constitute a distinct and separate offense.

(2) *Liability for Health Department costs.* Any person violating any provisions of §§ 52.001 through 52.014 shall become liable to the Health Department for any expense, loss or damage occasioned it by reason of the violation, including the costs for labor, supplies, equipment and services.

(B) *Sections 52.030 through 52.051.*

(1) *Notice of violation.* Any person found to be in violation of any provision of §§ 52.030 through 52.051 shall be served by the Health Officer with a written order stating the nature of the violation, remedies for correcting the violation and a time limit for satisfactory correcting the violation, and the fines, if any, imposed for the violation.

(2) *Penalties.* Any person determined by the Health Officer to be in violation of §§ 52.030 through 52.051 shall be punished for each offense by a penalty established by the Health Officer for the first, second and each subsequent offense as set forth in the Appendix: Schedule of Fines and Fees. Each day after receiving a notice of violation from the Health Officer shall constitute a distinct and separate offense.

(3) *Liability for Health Department costs.* Any person violating any provision of §§ 52.030 through 52.051 shall become liable to the Health Department for any expense, loss or damage occasioned it by reason of the violation, including the costs for labor, supplies, equipment and services.

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(C) *Sections 52.065 through 52.077.*

(1) Any person found to be violating any provision of §§ 52.065 through 52.077 shall be served by the Health Department with a written order stating the nature of the violation and providing a time limit for satisfactory correction.

(2) Any person who shall continue any violation of §§ 52.065 through 52.077 beyond the time limit provided for above shall, upon conviction, be punished for each offense by a penalty for the first, second and each subsequent offense as set forth in the Appendix: Schedule of Fines and Fees. Each day after the expiration of the time limit for abating the violation shall constitute a distinct and separate offense.

(3) Any person violating any provisions of §§ 52.065 through 52.077 shall become liable to the Health Department for any expense, loss or damage occasioned it by reason of the violation.

(Ord. 103-98, passed 10-14-1997; Ord. 38-05, passed 4-12-2005; Ord. 78-07, passed 9-11-2007)