



St. Joseph County Department of Health

"Promoting physical and mental health and facilitating the prevention of disease, injury and disability for all St. Joseph County residents"

Source Water Protection Ordinance Standards & Requirements For Property Transfers

Issued Pursuant to:
County Code 24.22, Section 24.22.11

Issued by the St. Joseph County Board of Health

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1.0 Purpose

1.1 Background

In passing the St. Joseph County Source Water Protection Ordinance (Ordinance) the St. Joseph County Council, Board of Commissioners and Board of Health recognized that; “1) residents of St. Joseph County rely exclusively on groundwater for a safe drinking water supply; 2) that St. Joseph County is provided with several productive aquifers which are susceptible to groundwater contamination; 3) that a majority of the population of St. Joseph County is served by the St. Joseph Aquifer System, an aquifer which is highly susceptible to groundwater contamination and the only Sole Source Aquifer designated by the EPA in Indiana; and 4) that several areas of St. Joseph County have experienced groundwater contamination.”

The St. Joseph County Council recognized the need to protect the health, welfare, and property of the residents of St. Joseph County by ensuring appropriate information is provided to prospective buyers concerning the quality of the drinking water and the status of the septic system prior to the acquisition of properties. To ensure that appropriate information is provided, the St. Joseph County Council passed the “Property Transfer: Mandatory Inspections, Certifications and Testing” provisions of the Source Water Protection Ordinance, Ordinance 78-07 effective September 2007.

The St. Joseph County Council provided the St. Joseph Board of Health with the authority to prepare standards and requirements for property transfers in the Source Water Protection Ordinance. The Ordinance states “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 Ordinance.”

1.2 Purpose

The purpose of the Source Water Protection Ordinance (Ordinance) is stated in Ordinance to be:

“To protect the public health, safety, and welfare of persons and property in St. Joseph County....through procedures which will provide for the management of activities and conditions which may result in the degradation of the groundwater resources in St. Joseph County”

The purpose of the Property Transfer Section of the Ordinance as stated in Section 24.22.07 of the Ordinance is:

“To protect the health and welfare of the citizens of St. Joseph County, to ensure the water quality of potable water supply wells, and to provide information to the Health Department and prospective buyer(s) regarding potential groundwater damage.”

The purpose of these Standards and Requirements is:

To define the policy for inspecting septic systems and potable water wells and testing drinking water quality prior to the transfer of properties consistent with the Ordinance.

2.0 Definitions

The following are definitions of key terms and phrases as they apply to the implementation of the Ordinance and these Standards and Requirements.

Authorized Agent: Any person who collects a fee or other compensation to represent a seller during a transfer of ownership in a property, including, but not limited to any real estate company, title company, or law firm, or their authorized employee or agent.

Buyer: A person who has made a written offer to purchase a property.

Closing: The act of transferring ownership in a property from one person to another involving the signing of final documents for the transfer.

County Board of Health: The St. Joseph County Board of Health.

Effluent or Wastewater: Any human excrement or water-carried waste derived from ordinary living processes.

Groundwater: Any water below the surface of the ground within the interstices of the rock and soil. This includes water in both the unsaturated near-surface soils and the underlying saturated soils and rock.

Health Department: The Health Department of St. Joseph County Indiana.

Health Officer: The St. Joseph County Health Officer or a duly authorized representative.

Ordinance: The St. Joseph County Source Water Protection Ordinance.

Person: Any individual, trust, 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 a state, any interstate entity or any other legal entity or their legal representative.

Potable Water System: The well and distribution system of a residential or commercial water system used or intended for use for drinking or culinary purposes.

Primary Point of Use: The most commonly used source(s) of drinking water. For residences, the primary point of use is usually the kitchen faucet.

Property: A single continuous property within St. Joseph County, Indiana.

Property Transfer: The conveyance of an interest in a property by any of the following:

- A deed or other instrument of conveyance of fee title to property.
- A lease whose term, if all options were exercised, would be more than forty (40) years.
- An assignment of more than twenty-five percent (25%) of the beneficial interest in a land trust.
- A collateral assignment of a beneficial interest in a land trust.
- An installment contract for the sale of a property.
- A lease of any duration that includes an option to purchase.

Has the same meaning as included in the Source Water Protection Ordinance. Reference Section 24.22.11 of the Ordinance for a list of property conveyance instruments that are not considered property transfers under this Ordinance.

Reportable Quantity: The amount of a hazardous substance or extremely hazardous substance that is required to be reported under 42 U.S.C. 9602 (a) and (b) and 9603 (a) or 40 CFR 355 Appendix A or 100 pounds, whichever is less, or fifty five (55) gallons of petroleum or petroleum products.

Seller: The owner of the property being sold or their authorized agent.

Septic Inspector: An independent third party who performs septic inspections for a fee and who has sufficient experience and training to correctly assess the conditions specified in these Standards and Requirements. Any person who performs inspections for property transfers pursuant to these Standards and Requirements shall be licensed by the Health Department under County Code 24.04.

3.0 Applicability

These Standards and Requirements apply to the transfer (see definition of property transfer) of any property in St. Joseph County including all residential and commercial properties.

4.0 General Requirements:

- 4.1 It shall be a violation of the Ordinance for any seller or their authorized agent to participate in the closing of a property transfer unless the requirements of the Ordinance and these Standards and Requirements have been met.
- 4.2 It shall be a violation of the Ordinance for any person or their authorized agent to participate in the closing of a property transfer to provide false information to the Health Department concerning the transfer of the ownership of a property.
- 4.3 If a property has an on site septic system or a potable water well, the seller or their authorized agent shall have the septic system inspected and potable water tested prior to closing the property transfer and shall provide the results of the inspection and tests to the buyer and the Health Department according to the requirements and schedules established in these Standards and Requirements.
- 4.4 If the property is served by a municipal sewer or water system, the seller or their authorized agent shall provide a copy of a sewer or water utility bill not more than 60 days old or a letter from the appropriate municipal sewer or water system certifying that the property is served by municipal sewer or water to the buyer and the Health Department according to the requirements and schedules established in these Standards and Requirements.
- 4.5 The Health Department may refuse to accept data or information from any party found to repeatedly violate this Ordinance or these Standards and Requirements.
- 4.6 The seller or their authorized agent shall notify the buyer or their authorized agent at least twenty four (24) hours prior to performing any tests or inspections required by these Standards and Requirements and shall allow the prospective buyer to be present at the time of the tests or inspections.
- 4.7 The seller or their authorized agent shall have the inspection and tests described herein performed and shall submit a Property Transfer Application form and all applicable fees to the Health Department according to the schedule established in Section 7.0.

4.8 Any septic inspections and tests performed to comply with the provisions of these Standards and Requirements shall be accepted for a period of six (6) months from the date of the inspection or test. After six (6) months the systems shall be re-inspected and re-tested to comply with the requirements of these Standards and Requirements.

4.9 Nothing in these Standards and Requirements shall be construed to define who shall pay for the inspections and tests required herein but rather payment shall be a matter for the buyer and seller to resolve.

5.0 Septic System Inspections

5.1 All septic inspections performed to meet the requirements of these Standards and Requirements shall be conducted by a qualified septic inspector (see definition of septic inspector).

5.2 If the septic tank(s) is pumped prior to an inspection, the tank shall be filled to the outlet pipe prior to conducting the inspection. A septic tank shall not be pumped to mislead the buyer or the Health Department about the condition of the septic system.

5.3 A septic inspection shall be performed according to the procedures established by the Health Department to observe and document the condition of the septic system to the extent the condition can be assessed by the procedures established by the Health Department. The septic inspection shall, include an inspection to assess if:

- A water tight and safety secured seal exists on the tank lid;
- The tank(s) is structurally sound, sufficiently level, and holds effluent;
- The baffle(s) is in place and functioning correctly;
- The level of solids or floatable in the tank are impairing its use;
- Any existing effluent filter is functioning correctly;
- Any existing pump or alarm are functioning correctly;
- Effluent flows freely into and out of the tank;
- The absorption area has normal liquid levels and biomat;
- Effluent is not rising above the outlet pipe, the top of the tank, to the ground surface, or into a surface water; and
- Other items deemed reasonable and necessary by the Health Department.

5.4 A visual inspection of the wellhead shall be performed to determine:

- The approximate distance from any potable water well on the property to the septic tank;
- If the potable water well(s) on the property has a water-tight cap;
- If the wellhead(s) casing is intact: and
- If the wellhead(s) are protected from surface runoff.

5.5 The inspector shall obtain a copy of the most recent drawing of the existing septic system from the Health Department and shall attach the drawing to the inspection report. The inspector shall also prepare a sketch showing the location of the septic system if the conditions observed in the field are different than the drawing obtained from the Health Department or if the Health Department does not have a current drawing of the septic system.

5.6 The results of the septic inspection shall be documented on a form(s) provided by the Health Department.

5.7 System Failure, Repair, and Cleaning

5.7.1 The Health Department may issue an appropriate order to repair, replace, or clean any system or part of a system that has failed, is in violation of applicable public health codes, or is a threat to the groundwater or public health as determined by the Health Officer.

5.7.2 Any person repairing or replacing a septic system or part of a system shall obtain the appropriate permit from the Health Department.

6.0 Water Well Testing

6.1 The analysis of all water samples collected to meet the provisions of these Standards and Requirements shall be performed by a laboratory that is certified to perform the analysis by the U.S. Environmental Protection Agency or the Indiana State Department of Health.

6.2 Any person collecting a sample to meet the provisions of these Standards and Requirements shall follow the procedures specified by the laboratory that will analyze the sample.

6.3 All water samples collected to meet the provisions of these Standards and Requirements shall be collected from the primary point of use for the drinking water. For residential properties, the primary point of use is usually the kitchen faucet.

6.4 A water sample from each potable water well on the property to be transferred shall be collected and analyzed for the following constituents.

- Coliforms,
- E. coli,
- Arsenic,
- Sulfate,
- Residual chlorine, and
- Other constituents deemed reasonable and necessary by the Health Officer on a case by case basis to protect public health.

6.5 The laboratory shall report the results of the water analysis along with the U.S. Environmental Protection Agency Drinking Water Standards so that it is clear to the lay person whether the water meets standards.

6.6 If any constituent listed in Section 6.4 exceeds a U.S. Environmental Protection Agency National Primary Drinking Water Standard, the well may be retested once. If both samples exceed National Primary Drinking Water Standard, the property owner may be required by the Health Department to disinfect the water system or install a suitable water treatment device at the primary point(s) of use.

6.8 Except as provide below, the effluent in the septic tank shall be tested for volatiles and semi-volatiles for any property being transferred that; 1) is a non-residential facility, 2) has an on site septic system, and 3) has had more than the Reportable Quantity of a hazardous substance, extremely hazardous substance, or petroleum or petroleum product on site at one time during the past 12 months.

6.8.1 The results of these tests shall become part of the septic inspection report submitted to the buyer and the Health Department.

- 6.8.2 Depending on the results of the analytical testing, the Health Department may inspect the facility and/or require subsurface investigations at the site to evaluate soil and groundwater for contamination.
- 6.8.3 Petroleum and petroleum products used for on site heating shall be exempt from the calculation of the Reportable Quantity.
- 6.8.4 The property shall be exempt from testing effluent if the hazardous material, extremely hazardous material, petroleum, or petroleum product has been maintained in secondary containment that is impermeable and of sufficient size to contain all materials stored in it.
- 6.8.5 Any party may request a full or partial waiver of the requirements of Section 6.8 from the Health Department if they have information indicating that there is a low probability that the septic system has received hazardous, extremely hazardous, petroleum, or petroleum products.

7.0 Reporting

Septic system inspections and water tests should be performed as early as possible in the property transfer process.

7.1 The following must be received by the prospective buyer(s) at least three (3) days prior to closing:

7.1.1 A copy of all water analyses as defined in Section 6.0 or a copy of the water bill or a letter from the municipality as defined in Section 4.4.

7.1.2 A copy of the septic inspection on the Health Department form or a copy of the sewer bill or a letter from the municipality as defined in Section 4.4.

7.2 The following information must be received by the Health Department not later than five (5) days after the date of closing.

7.2.1 A copy of all water analysis as defined in section 6.0 or a copy of the water bill or a letter from the municipality as defined in Section 4.4.

7.2.2 A copy of the septic inspection report on the Health Department form or a copy of the sewer bill or a letter from the municipality as defined in Section 4.4.

7.2.3 A completed Property Transfer Application form.

7.2.4 The fee designated by the County Commissioners.

7.3 Health Department Statement of Compliance

7.3.1 Upon receipt of all required information and the completion of all required actions by the seller, the Health Department shall issue a receipt for the tests and inspections and a statement of compliance or non-compliance with the requirements of the Ordinance and the Standards and Requirements to the seller or their authorized agent.

7.3.2 The issuance of a statement of compliance means that, based on the information received by the Health Department, it appears that the seller or their authorized agent followed the procedural requirements of the Ordinance and the Standards and Requirements. The statement of compliance shall not be interpreted to mean that the septic or water systems at the property are in good working order, or that the Health Department approves, accepts, or endorses, any inspections or test results.

7.4 The receipt of an acceptable inspection report or water analysis does not guarantee the systems to be free of defect or in good working order. Buyers shall be allowed to hire their own experts to investigate any concerns they might have relative to the septic or water systems.

8.0 Enforcement

8.1 The penalty for failing to comply with the provisions of the Ordinance or these Standards and Requirements may be up to \$1500 per day per violation as specified in Section 24.22.14 of the Ordinance.

8.2 Any person adversely affected by a decision of the Health Department pursuant to enforcement of the Ordinance or these Standards and Requirements may have certain rights to appeal the decision as defined in Section 24.22.12.d and 13.b of the Ordinance.

8.3 If any provision of these Standards and Requirements are found to be in conflict with the Ordinance, the provisions of the Ordinance shall apply.

9.0 Effective Date

These Standards and Requirements shall become effective 30 days after approval by the Board of Health.

Approved this _____ day of _____, 2009 by the St. Joseph County Board of Health.

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