

ORDINANCE 2012-13

AN ORDINANCE OF THE MONTGOMERY COUNTY BOARD OF COMMISSIONERS ESTABLISHING REGULATIONS FOR PRIVATE SEWAGE DISPOSAL

WHEREAS, Indiana law requires that sanitary sewage be disposed either by way of connection to a public sanitary system within 300 feet of a residential or commercial building or by way of a private disposal system;

AND WHEREAS, the Director of Public Health for the Montgomery County Health Department has the responsibility of enforcing Indiana's law regarding sanitary sewage disposal and establishing rules for the administration of the regulations;

AND WHEREAS, the Health Department has requested that its rules and regulations for sanitary sewage disposal be added to the County Code;

AND WHEREAS, the Board of Commissioners now finds that these rules and regulations should be added to a new chapter, Chapter 157, in Title XV of the County Code;

IT IS, THEREFORE, ORDAINED that a new chapter, Chapter 157, is added to Title XV of the Montgomery County Code, and this chapter shall read as follows:

"CHAPTER 157: PRIVATE SEWAGE DISPOSAL

Section

157.01	Definitions
157.02	Sewage Disposal
157.03	Construction Requirements
157.04	Construction Permits
157.05	Registration of Installers
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§157.01 Definitions

The following definitions apply to this Chapter:

(A) **State Definition** means all definitions set forth in 410 IAC 6-8.2, as amended from time to time, from the Indiana State Department of Health are hereby incorporated by reference;

(B) **Board** means the Montgomery County Board of Public Health, Montgomery County, Indiana;

(C) **Building** means a structure having a roof supported by columns or walls built or used for the enclosure, shelter, protection or occupancy of persons, fixtures or personal property, and from which there emanates any sewage;

(D) **Commercial** means any building which is not a one or two family dwelling;

(E) **Department** means the Montgomery County Health Department, and/or its employees;

(F) **Dwelling** means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used;

(G) **Environmental Health Specialist** means an individual as defined in Indiana Code § 25-32-1-1(B);

(H) **Health Officer** means the Director of Public Health for the Montgomery County Health Department, Montgomery County, Indiana, or his/her authorized representative.

(I) **Installer** means any person who constructs, installs, replaces, alters, modifies or repairs any residential or commercial sewage disposal system subject to the provisions of this Chapter, other than one which services his/her/its building. In the event that the person is any association of two or more people, then said association shall designate one individual who shall be designated as the installer and responsible for compliance with all provisions hereunder;

(J) **Legal Drain** means any tile or drainage-way regulated by the Montgomery County Surveyor;

(K) **Permit** means a certificate of a size and style approved by the Health Officer or his/her designee;

(L) **Permittee** means the person who is the owner of the real estate, his/her/its authorized representative, who is responsible for the application of a construction permit and who shall be responsible for the acceptance of notices at the address listed on the permit applications;

(M) **Public Sewer** means any sanitary sewer constructed, installed, maintained, operated or owned by a municipality, sewage district or utility company. A county legal drain, mutual drain or private drain installed for the sole purpose of carrying surface water runoff and subsoil drainage shall not be considered a public sewer under this definition;

(N) **Residential** means a building used or intended to be used as a one or two-family dwelling.

(O) **Sewage** means all water-carried waste derived from ordinary living processes. This does include grey-water discharge;

(P) **Soil Scientist** means an individual who is a Specialist or Classifier of soils, certified by the Indiana Registry of Soil Scientists.

§157.02 Sewage Disposal

(A) **State Rules:** All rules and regulations of 410 IAC 6-8.2, as amended from time to time, of the Indiana State Department of Health are hereby incorporated by reference.

(B) **Public/Municipal Sewer Available:** Whenever a public sewer is or becomes available within 300 feet of a residential or commercial building, a direct connection shall be made to said public sewer as defined under IC 36-9-23-30 subsection (b), provided direct access is reasonably available via easement or other appropriate means. All existing septic tanks, sewage pits, outhouses, privy pits and similar sewage disposal systems or treatment facilities shall be abandoned and filled in a safe and sanitary manner. Permittee shall have ninety (90) days from the date that the public sewer becomes available to make a direct connection to the public sewer and to abandon and fill in the existing sewage disposal system.

(C) **Public/Municipal Sewer Not Available:** All residential and commercial buildings which are not connected to a public sewer shall be connected to a private sewage disposal system which shall comply with the standards set forth herein.

(D) **Construction of Privy:** Sanitary vault privies constructed and maintained pursuant to Bulletin SE-11 (1986) must be approved by the Health Commissioner and maintained in accordance with this Chapter and Indiana law.

(E) **Correction of Defects:** Should any defect exist or occur in any private sewage disposal system or privy which would cause the sewage disposal system or privy to fail to meet the requirements of this Chapter, then the defect shall be corrected by the owner/permittee pursuant to the time table established by the Health Officer or his/her designee. Failure to correct the defect within the time table established by the Health Officer or his/her designee shall be considered a violation of this Chapter and shall subject the owner/permittee to the sanctions set forth in Section 157.10, subject, however, to the provisions of Section 157.09.

(F) **Adaptation of Residential System:** Whenever there is any alteration of the structure or significant change in the use or occupancy of a residential building which would affect the functioning of the existing private sewage disposal system, including the addition of a bedroom or bedroom equivalent, then the system shall be modified, enlarged or replaced in accordance with the requirements of this article. Plans for any such changes shall be submitted to the Montgomery County Health Department.

(G) **Adaptation of Commercial System:** Whenever there is any alteration of the structure or significant change in the use or occupancy of a commercial building which would affect the functioning of the existing private sewage disposal system, including but not limited to the addition of bathrooms, kitchens or other related water disposal mechanisms, then the system

shall be modified, enlarged or replaced in accordance with the requirements of this Chapter. Any such changes will require Indiana State Department of Health approval and/or waiver.

§157.03 Construction Requirements of Private Sewage Disposal Systems

(A) Indiana State Department of Health Requirements: All rules and regulations of 410 IAC 6-8.2 as amended from time to time, of the Indiana State Department of Health are hereby incorporated by reference.

(B) Lot Dimensions: Lots or tracts of real estate on which residential or commercial sewage disposal systems are to be installed and which are rated slight or moderate for septic tank absorption fields by the U.S. Department of Agriculture Soil Conservation Service, shall contain a minimum of one (1.0) acre or 43,560 square feet as per Montgomery County Code Section 152.52 (Lots; A;2) and suitable soils and topography to permit compliance with this Chapter.

(C) On Site Evaluation: At least three borings from the proposed septic disposal system location. One boring shall be done with a soil auger. The second sample from the proposed septic disposal system location, and any additional confirmation samples, may be taken with a push probe. Additional borings shall be required if the original proposed septic area soils are disturbed.

(D) Requirements for Septic Tanks: Residential tanks shall be of concrete construction. Residential septic tanks shall have the following capacity in gallons:

Number of Bedrooms	Size of tank (gallons)
1, 2 or 3	1,000
4	1,250
5	1,500
6 or more	1,500 + 150 for each bedroom greater than 5

(E) Distribution Boxes: All distribution boxes shall be of concrete construction.

(F) Access Openings: All septic tanks shall have at least one (1) access opening per tank (or per compartment in two compartment tanks) of at least eighteen (18) inches in diameter, with a riser that extends to ground level for inspection and cleaning purposes. Such access opening shall be fitted with a safely secured, child proof, gas tight cover.

(G) Abandoned Septic Tanks: Abandoned septic tanks must be pumped, can have the top crushed in and shall be filled with sand or pea-gravel, as not to hold water or shall be removed.

§157.04 Construction Permit

(A) **Construction Permit Required:** An owner or permittee shall first obtain a construction permit (new, repair) from the Health Department prior to the commencement of any excavation, construction, modification or addition to any existing or new private sewage disposal system.

(B) **Permit to be Posted:** No person shall perform any work on a private sewage disposal system project unless a valid construction permit is first obtained and is properly posted in a conspicuous place at or near the building where the private sewage disposal system is to be constructed. The permit shall be plainly visible from the public thoroughfare serving the building until the project is completed.

(C) **Application for Permit:** The application for such permit shall be submitted to the Health Department on a form provided by the Health Department and shall be supplemented by any building plans, specifications and other information deemed necessary by the Health Department or as required by 410 IAC 6-8.2.

(D) **Permit Fees:** Prior to the issuance of any permit, each owner/permittee shall first tender to the Montgomery County Health Department, a fee or fees, which shall be deposited into the County Health Fund, for each system being constructed, modified, altered or repaired in accordance with the following schedule:

Type of Permit	Fee
Construction – new or replacement	\$150.00
Construction – repair or alteration	\$100.00
Construction – re-inspection	\$25.00
Construction – renewal	\$25.00
Abandonment – inspection	\$25.00

(E) **Term and Renewal:** A construction permit shall be valid for two (2) years from the date of issuance. If the permit is renewed, the permittee shall comply with any changes in the rules, standards or requirements which may have come into effect subsequent to the original date of issuance. The construction permit is not transferable.

§157.05 Registration of Installers

(A) **Registration Requirements:** Except for a person working on his/her own private sewage disposal system which serves as the dwelling in which he/she resides, no person shall construct, install, replace, alter, modify or repair any private sewage disposal system unless that person has first registered with the Montgomery County Health Department as an installer. Application for registration shall be on forms provided by the Health Department.

(B) Conditions for Registration: Every person required to register under this section shall be knowledgeable of all laws, rules and regulations of both the state and county governing private sewage disposal systems. Prior to registration, the applicant must demonstrate knowledge of the applicable laws, rules and regulation by passing a proficiency exam conducted by the Health Department with a score of eighty percent (80%) or higher. The registration exam shall be reviewed from time to time to determine its applicability to current laws, rules and regulations. Where taking a written exam is not feasible, due to language or reading difficulties, arrangements will be made to allow for an oral examination to assure proficiency. Opportunity for re-examination shall be afforded to an applicant upon request, but not more than frequently than once per month.

(C) Seminar: At the request of the Local Board of Health, but not more often than once per year, a person registered under this section shall attend a seminar on sewage disposal conducted by the Montgomery County Health Department, Indiana State Department of Health, or IOWPA.

(D) Expiration: Registrations under this section shall expire annually on December 31. Each installer shall be required to re-register annually on or before January 15, 2012 and on or before January 15th of each succeeding year.

(E) Annual Fee: An annual registration fee of twenty-five dollars (\$25.00) will be charged which shall be paid no later than January 31 of each year. If the annual fee is not paid on or before January 31 of each year, the fee will be fifty dollars (\$50.00).

(F) Notice of Violation: Whenever the Health Department determines that there has been a violation of any provision of this Ordinance or the applicable rules and regulations of the Indiana State Department of Health by an installer, the Health Department shall give written notice, in person or by certified mail, of the alleged violation to the installer. Such notice shall include the following:

- (1) A statement of the alleged violation; and
- (b) An order allowing a reasonable time for the performance of any act required to correct the violation.

(G) Suspension or Revocation: If the violation is not corrected within the designated time, the Health Department may suspend or revoke the installer's registration subject to the provisions contained in Sections 157.02, 157.03, 157.04 or 157.09 of this Chapter.

- (1) If the registration is suspended, the installer may be reinstated by the Health Department upon correction of all violations.
- (2) If the registration is revoked, the Health Department shall require, at a minimum, that the installer:
 - (a) be retested;
 - (b) pay registration fee; and
 - (c) correct all outstanding violations to the satisfaction of the Health Department prior to being re-registered.

(H) Not Registered: Any person constructing, installing, replacing, altering or repairing, any private sewage disposal system who is not registered as an installer under this section shall be deemed to be in violation of this Chapter and shall be subject to all penalties set forth in this Chapter.

(I) **Testing Fees:** The testing fee is twenty-five dollars (\$25.00). If the installer is IOWPA certified, this fee is waived.

§157.06 Inspections

(A) **Commencement of Construction:** Upon issuance of a construction permit under Indiana Code §16-41 et seq. and Section 157.04 of this Chapter, the permittee may commence installation and construction of the private sewage disposal system. The Health Department may inspect the work at any state of construction.

(B) **Substantial Completion:** Upon substantial completion of the installation, the permittee shall notify the Health Department that the work is ready for inspection. No portion of the installation shall be covered until the inspection is made.

(1) No portion of the installation shall be used and, when the system serves a new building, no person shall be permitted to use the building or buildings until the inspection has been completed and the system is found to be in full compliance.

(2) The inspection shall be made within two (2) working days of the Health Department's receipt of notice that the system is ready for inspection.

(C) **Abandoned Tanks:** Upon substantial completion of the work required for abandonment of a septic tank, and prior to covering the tank, the owner/permittee/installer shall notify the Health Department that the work is ready for inspection and pay the inspection fee.

§157.07 Maintenance and Sampling

(A) **Sanitary Condition Mandatory:** Every private sewage disposal system will be constructed and maintained so that the effluent leaving the Permittee's system will be sanitary.

(B) **Inspection and Sampling:** The Health Department will be permitted to enter upon any property at any reasonable time to inspect and take samples from a private sewage disposal system. If said test results should indicate a residential or commercial sewage disposal system failure, said failure will constitute a violation of Indiana Code §16-20 et seq.

§157.08 Economic Hardship

(A) **Economic Hardship:** In the event an owner/permittee is unable to comply with the provisions of Section 157.02 of this Chapter due to the economic hardship that might be imposed, then the Health Officer may, upon application and proof of inability to pay the cost of compliance, extend the period within which said owner/permittee shall be required to make the hook-up provided the owner/permittee has an existing private sewage disposal system which is operating properly. No extension or extensions may exceed 12 months in length.

§157.09 Denial, Suspension, Revocation

(A) Denial and Approval of Permit

(1) In the event the Health Department determines that the application for the Construction Permit does not meet the standards set forth in this article, then the Health Department shall be required to notify the Permittee of such denial in person and/or in writing, within thirty (30) days of the original application, stating the specific reasons for the denial of the permit.

(2) In the event the Health Department issues written directives regarding corrective actions, then the Permittee shall have a reasonable amount of time to address and comply with the items set forth in the directives in order to be able to obtain the Construction Permit.

(B) Suspension of Permit/Registration: The Health Department may order the suspension of a Construction Permit or Installer Registration. The Health Department may order the suspension of a permit or registration for any of the following reasons:

(1) Failure to meet any of the standards of any of the provisions of this Chapter or violations of any of provisions of this Chapter.

(2) Interference with Health Department personnel in the performance of his/her duties. Interference shall be defined as the process of obstructing, hampering or preventing the Health Department personnel in the performance of his/her duties.

(C) Revocation of Permit/Registration: Any Permit and/or registration issued hereunder may be revoked by the Health Department as the result of the willful or continued violation of any provision of this Chapter.

(D) Immediate Revocation: Notwithstanding any of the other provisions of this Chapter, whenever the Health Department finds insanitary or other conditions, which, in its opinion constitute an imminent health hazard, the Health Department may, without notice or hearing, issue and serve a written order on the owner/permittee/installer requiring the immediate cessation of operation/installation. Said written order shall state the existence of the imminent health hazard and shall specify the corrective action to be taken. Such order shall be effective immediately.

(E) Appeal

(1) Any owner/permittee/installer aggrieved by any final order of the Health Officer or designee is entitled to a review of the final order before the Commissioners of Montgomery County, Indiana by filing a written request therefor with the Secretary for the Board of Commissioners of Montgomery County within fifteen (15) days of the Health Officer or designee's final order.

(2) The Board of Commissioners shall conduct a hearing on the appeal within 30 days of the receipt of the appeal. The Board shall provide notice to the owner/permittee/installer at least 10 days prior to the hearing. The owner/permittee/installer is entitled to present evidence and be represented by an attorney at the hearing. Within 10

days of the hearing, the Board will make written findings of fact and enter its final order or determination of the matter in writing in its permanent records and mail a copy of its findings and final order or determination to the owner/permittee/installer.

§157.10 Penalties

(A) Enforcement: It shall be the duty of the Health Officer or his/her designee to enforce the provisions of this Chapter. Any Permit or registration issued in conflict with the provisions of this Chapter shall be null and void. A violation of an order issued by the Health Officer or designee or Health Board shall be considered to be a violation of this Chapter.

(B) Violations: Whenever the Health Officer or his/her designee determines that any owner, permittee, installer or any other person, is in willful violation of any of the provisions of this Ordinance, the Health Officer or his/her designee shall furnish evidence of said willful violation to the Prosecuting Attorney of Montgomery County, Indiana or the attorney for the Board who shall seek all appropriate legal remedies against the person(s).

(C) Penalty: Any person who willfully violates any of the provisions of this Chapter shall be subject to a fine of not more than \$500.00 for each violation. Each day of the existence of any violation of this Chapter shall be considered to be a separate offense.

(D) Injunction : The Health Officer or designee may bring an action for an injunction in the Circuit or Superior Court of Montgomery County, Indiana to restrain any person from violating the provisions of this Chapter, or to cause such violation to be prevented, abated or removed.

(E) Expense: Any person violating any of the provisions of this Chapter shall be liable to the Department for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and court costs.

(F) Cumulative: The remedies provided in this section shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law."

IT IS FURTHER ORDAINED that Chapter 150.06(A)(3) of Title XV of the County Code is hereby amended to read as follows:

"(3) No permits shall be issued for structures with sanitary facilities or required to have sanitary facilities unless a permit or waiver is issued by the Montgomery County Health Department pursuant to Chapter 157 of Title XV."

IT IS FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith are hereby repealed. Any provisions of Title XV of the County Code which are not expressly amended, revised or replaced by this ordinance shall remain in full force and effect.

IT IS FURTHER ORDAINED that invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

IT IS FURTHER ORDAINED that this Ordinance shall become effective as of January 1, 2013.

Adopted this 24 day of Sept, 2012.

BOARD OF COMMISSIONERS OF
MONTGOMERY COUNTY, INDIANA

Phil Bane
Phil Bane, President

Terry Hockersmith, Vice President

James D. Fulwider
James D. Fulwider, Member

ATTEST:

Michelle Cash
Michelle Cash, Auditor