

ORDINANCE NO. 91- 799
AN ORDINANCE REGULATING PRIVATE
SEWAGE DISPOSAL SYSTEMS IN ELKHART COUNTY, INDIANA

WHEREAS, Indiana Code §36-1-3-1 et seq. permits any County in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its County or internal affairs, which is not prohibited by the Constitution of the United States or the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Board of Commissioners of the County of Elkhart, Indiana is the County legislative body and is by law authorized to adopt ordinances for the performance of functions in the County of Elkhart, Indiana;

WHEREAS, the Elkhart County Board of Health has conducted a public hearing concerning this Ordinance regulating private sewage disposal systems in Elkhart County, Indiana, and has recommended the adoption of this Ordinance to the Board of Commissioners of the County of Elkhart, Indiana;

WHEREAS, the Board of Commissioners of the County of Elkhart, Indiana deem it to be reasonable, appropriate, and in the best interests for the public health, safety, and general welfare of the citizens of the County of Elkhart, Indiana to adopt an ordinance regulating private sewage disposal systems in Elkhart County, Indiana and establishing minimum standards designed to provide assurances that private sewage disposal systems do not contaminate any drinking water supplies; are not accessible to insects, rodents, or other possible carriers of diseases which may come into contact with human food or drinking water; do not pollute or contaminate the water of any bathing beach or surface waters used for public or domestic water supply or recreational purposes; do not give rise to a nuisance due to odor, discharge, or unsightly appearance; and will not violate any other laws or regulations governing control of sewage disposal;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, AND ESTABLISHED by the Board of Commissioners of the County of Elkhart, Indiana, as follows:

SECTION 1. Title. This Ordinance may be referred to as the Elkhart County Private Sewage Disposal System Ordinance."

SECTION 2. Adoption of Regulations by Reference. The regulations of the Indiana State Board of Health located at 410 IAC 6-8.1-1 et seq. entitled "Residential Sewage Disposal Systems," and 410 IAC 6-10-1 et seq. entitled "Commercial On-Site Wastewater Disposal," as amended from time to time, and as promulgated by the Indiana State Board of Health, are hereby incorporated and adopted by reference. One copy of these regulations shall be on file with the Elkhart County Health Department.

SECTION 3. Definitions. Except as provided below, the terms defined in 410 IAC 6-8.1-1 et seq. and 410 IAC 6-10-1 et seq. shall carry the same definition whenever used in this Ordinance as the definition provided in those regulations. For purposes of this Ordinance, the terms below shall be defined as follows:

(a) "Aerobic Sewage Treatment System" shall mean National Sanitation Foundation (NSF) approved Class I, or its equivalent, equipment or devices for treatment of sewage by the forced addition of air or oxygen.

(b) "Alternative Private Sewage Disposal System" shall mean all systems other than conventional private sewage disposal systems.

(c) "Available" shall mean located within three hundred (300) feet of the property line of the affected property, as measured along accessible easements or right-of-ways, or connectable at a construction cost estimated by the Health Officer not to exceed one hundred fifty percent (150%) of the cost estimated by the Health Officer for installing on-site private sewage disposal systems to serve the affected property were the on-site private sewage disposal systems otherwise acceptable to the Health Officer.

(d) "Bedroom" shall mean a room within a dwelling that might reasonably and regularly be used as a sleeping room and which contains a closet and shares a common hallway with or adjoins a bathroom. A "bedroom" may include but is not limited to those rooms designated as dens, studios, offices, or libraries if such rooms otherwise meet the above definition.

(e) "Component Part" shall mean a septic tank, sewage tank, lift station, pump, distribution box, seepage pit, dry well, pipe, or more than fifty percent (50%) of an absorption field.

(f) "Conventional Private Sewage Disposal System" shall mean only those systems with trenches or beds installed within the top 10 to 36 inches of natural, undisturbed soil and not containing a pumping system, but may or may not include a perimeter drain.

(g) "County" shall mean the County of Elkhart, State of Indiana.

(h) "Facility" shall mean any building, structure, improvement, or other property, other than a dwelling, which is required to have a sewage or wastewater disposal system.

(i) "Health Department" shall mean the Elkhart County Health Department.

(j) "Health Officer" shall mean the Elkhart County Health Officer and his or her duly authorized representative.

(k) "Mottling" shall mean a zone of chemical oxidation and reduction activity that appears in the soil as spotty patches of red, brown, orange, and gray.

(l) "Nuisance" shall mean any condition created by sewage which may transmit, generate, or promote disease, create a health hazard, or cause a distasteful odor or unsightly condition.

(m) "Owner" shall mean the owner of a dwelling, the owner of a facility, or the agent of any such owner.

(n) "Perimeter Drain" shall mean a class of drains installed to intercept lateral movement of surface and shallow subsurface water from the absorption field site.

(o) "Permit" shall mean a written permission to proceed with specified work with respect to a private sewage disposal system which is issued by the Health Officer or the Commissioner of the Indiana State Board of Health.

(p) "Private Sewage Disposal System" shall mean and shall include a residential sewage disposal system as defined in 410 IAC 6-8.1-17, as amended from time to time and as promulgated by the Indiana State Board of Health, or a commercial on-site wastewater disposal facility as defined in 410 IAC 6-10-2, as amended from time to time, and as promulgated by the Indiana State Board of Health.

(q) "Private Sewage Disposal System Failure" shall mean a private sewage disposal system which exhibits one (1) or more of the following conditions:

(i) The system refuses to accept sewage at the rate of design application thereby interfering with the normal use of plumbing fixtures;

(ii) Effluent discharge exceeds the absorptive capacity of the soil, resulting in ponding, seepage, or other discharge of the effluent to the ground surface or to surface waters; or

(iii) Effluent is discharged from the system causing contamination of a potable water supply, groundwater, or surface waters.

A private sewage disposal system failure constitutes a health hazard.

(r) "Privy" shall mean a sanitary, waterless device for the collection and storage of human excreta, but does not include chemical, composting, commode, or other portable receptacles.

(s) "Seasonal High Water Table" shall mean the highest level to which the soil is saturated as may be indicated by mottling Chroma 2 or less.

(t) "Subsurface Drain" shall mean a class of drains installed to lower an existing water table in permeable soils from the absorption field area.

(u) "Water Line" shall mean any buried pipe or conduit used to transport water from the water supply source to its final destination including, but not limited to, waterwell lines, building plumbing, and geothermal heat pump piping.

(v) "Water Table" shall mean the upper limit of the portion of soil which is continuously saturated with water.

(w) "Well" shall mean any excavation, whether drilled, bored, driven, Jetted, or dug for the purposes of obtaining water from the ground, or returning water to the ground, or for the purpose of testing the quantity or quality of such water.

SECTION 4. Private Sewage Disposal Systems: General Requirements.

(a) The design, construction, installation, location, repair, maintenance, replacement, expansion, alteration, and operation of on-site private sewage disposal systems including but not limited to conventional private sewage disposal systems, alternative private sewage disposal systems, aerobic treatment systems, or any parts thereof shall comply with this Ordinance and shall comply with engineering practices acceptable to the Indiana State Board of Health.

(b) All persons owning real estate in areas where a sanitary sewerage system is not available shall comply with the provisions of this Ordinance concerning private sewage disposal systems.

(c) Any dwelling or facility which is not connected to a sanitary sewerage system and which has no sanitary sewerage system available to it shall have its own separate on-site private sewage disposal system which complies with the applicable standards of 410 IAC 6-8.1 and 410 IAC 6-10.

(d) Every commercial on-site wastewater disposal facility shall be designed, constructed, installed, located, maintained and operated in accordance with the requirements of 410 IAC 6-10 et seq.

(e) Every residential sewage disposal system shall be designed, constructed, installed, located, maintained, and operated in accordance with the requirements of 410 IAC 6-8.1 et seq.

(f) Every privy, when approved by the Health Officer, shall be of the sanitary type and shall be designed, constructed, installed, operated, and maintained in a clean condition and in a manner that prevents insects and rodents from entering the vault. Every privy shall be located properly to protect water supplies from contamination and shall be constructed in strict compliance with the requirements of the Indiana State Board of Health Bulletin S.E. 11 entitled "The Sanitary Vault Privy," as amended from time to time, which is hereby incorporated and adopted by reference.

(g) The design, construction, installation, location, maintenance, and operation of any other residential sewage disposal system not described in 410 IAC 6-8.1 may be approved by the Health Officer after the plans, specifications, and requirements for such systems have been approved in writing by the State Board of Health prior to construction and installation. Surface discharges of any type shall not be permitted.

(h) If any condition or defect exists or occurs that violates subsections (a), (b), (c), (d), (e), or (f) above with respect to any private sewage disposal system or privy, or if a private sewage disposal system failure occurs, the owner shall correct the violation or failure within five (5) days of the violation or failure or as otherwise directed by a written order from the Health Officer.

(ii) If a sanitary sewerage system becomes available to any property served by a private sewage disposal system or privy, the owner shall make connection to that sanitary sewerage system as prescribed by the municipality having jurisdiction or in the event of the private sewage disposal system failure. All private sewage disposal systems, privies, and treatment facilities on the property shall be abandoned and filled in a safe and sanitary manner as prescribed by the Health Officer. Permits for private sewage disposal systems shall not be issued where a sanitary sewerage system is available.

(j) Subject to the approval of the municipality having jurisdiction, if a subdivision is approved by the local plan commission and other public agencies with the responsibility therefore after the effective date of this Ordinance in an area where a sanitary sewerage system is available, the subdivision developer shall make connection to that sanitary sewerage system and shall extend or allow the municipality to extend sewer lines throughout the subdivision in order to make the sanitary sewerage system available to all lots in the subdivision.

SECTION 5. Site Investigation. Prior to permit application, an on-site evaluation must be performed by the Health Officer to evaluate each lot's suitability for a private sewage disposal system or privy, to establish minimum sizing requirements, and to outline any special engineering necessary. Before an on-site investigation will be performed, all lot corners must be visibly marked so they can be easily located.

SECTION 6. Permits.

(a) No person shall construct, install, alter, repair, expand, or replace a private sewage disposal system without a valid permit issued pursuant to this Ordinance. The owner of any real estate where a private sewage disposal system or privy is to be constructed or installed or where any alteration, repair, expansion, or replacement of an existing private sewage disposal system is planned shall obtain a written permit before any construction begins. The permit issued by the Health Officer must be obtained prior to application for a building permit. The owner shall apply for a permit on a form provided by the County. The owner shall supplement the application form with plans, specifications, and other information deemed necessary by the Health Officer and as required by the applicable State regulations. The applicant shall pay a permit and

inspection fee as set forth in the Health Department Fee Schedule Ordinance to the Health Department at the time the application is filed. The issuance of a permit shall not be construed as authority to violate, cancel, or set aside any of the provisions of this Ordinance.

(b) The owner shall post the permit in a conspicuous place at or near the dwelling or facility where the private sewage disposal system is under construction. The notice shall be plainly visible from the public thoroughfare nearest this structure.

(c) When a permit has expired or has been revoked, the work on the private sewage disposal system shall not commence or resume unless a new application and fee have been submitted and a new permit has been obtained.

(d) Permit fees are not refundable after work to review the application has begun. Transfer of ownership of the real estate for which a private sewage disposal system permit has been issued shall automatically void the permit for that property; provided, however, the transfer of ownership that occurs as a part of a contractual agreement between builder and/or developer and the buyer shall not void the permit if all other conditions of the permit remain the same.

(e) Permits issued under the provisions of this Ordinance or under any predecessor Ordinance by the Health Officer or the State Board of Health shall be valid for a period of two (2) years from the date of issuance, provided that the work authorized by the permit has commenced within one (1) year from the date of issuance. In the event the work authorized by the permit is not completed within two (2) years from the date of issuance, or in the event the work authorized by the permit has not commenced within one (1) year from date of issuance, the permit shall automatically expire.

SECTION 7. Plot Plans.

(a) The owner shall attach to the application for construction of a private sewage disposal system two (2) plot plans drawn to scale. New construction must be drawn on a recent plat of survey or the survey attached. The application and plot plan must satisfy the following requirements:

- Application must be complete and correct.
- House floor plan (new construction) must be provided.

- Plans must be drawn on a recent plot of survey or other detailed scale drawing.
- Plan must be at a scale of 1:20 to 1:50 inches per foot.
- Accurate two foot contours must be provided.
- Sketch of geographic location is to be included on the plan.
- Legal description or tax number must be on plot plan.
- Lot line dimensions must be provided.
- Proposed or existing location of house and well must be provided. Include other proposed or existing structures, driveways, parking areas, or other improvements on plan even if they will be removed.
 - All trees that are to remain in the proposed absorption areas must be accurately indicated on the plan.
 - Location of all underground service, utility lines, and easements must be provided.
 - Location of soil evaluation sites (IF REQUIRED). If the system is proposed outside the area of test holes, then another soil evaluation may be required for the new area before plans are submitted.
 - All wells, existing and proposed, on the property and within 50 feet outside property lines in case of residential systems and 100 feet outside property lines in case of commercial systems must be accurately indicated on plan.
 - Septic tank location and liquid capacity must be provided on plan.
 - Invert elevation of building sewer must be provided on plot plan unless lift pump is required.
 - Trenches must be shown level and on contour.
 - All water lines within 50 feet of the absorption field in case of residential systems and 100 feet of the absorption field in case of commercial systems must be indicated on plan.
 - Distances between trenches must be indicated on plan.
 - Location of sewer line, absorption trenches, perimeter drains, and distribution boxes.

- Length of sewer lines, header line, absorption lines, and perimeter drains. If perimeter drain is shown, then provide invert elevation at lowest area of field and at the discharge point.

- Distance to septic tank from foundations, lot lines, all wells, and all water lines.
- Distances from private sewage disposal system to all lakes, streams, ponds, marshes, flood plains, swales, drainage ditches or other surface water within 50 feet of system in case of residential systems and 100 feet of system in case of commercial systems must be provided.

- Cross sectional drawing of trenches with detail must be provided.
- Cross sectional drawing of perimeter drain with detail must be provided.
- Flood plain elevation must be provided where property or part thereof is within a flood plain.

- A copy of any recorded easements must be provided.

- Pipe specifications must be provided.

(b) The Health Officer may suspend a permit to construct a private sewage disposal system whenever information on the application or a plot plan is found to be inaccurate. The Health Officer may revoke a permit to construct a private sewage disposal system whenever information on the application or a plot plan is found to be inaccurate and the inaccurate information will preclude or eliminate the ability to lawfully install the system as designed.

SECTION 8. Absorption Field.

(a) The soil absorption field must be located in an area such that the proposed trench bottoms are equal to or higher than the elevation of a 100-year flood.

(b) After a proposed soil absorption field is approved, the area in which it is to be installed shall not be cut, filled, compacted, excavated, altered or disturbed, unless the alterations performed are specified on the permit approved by the Health Officer.

(c) In the event that an approved absorption field area is cut, filled, compacted, excavated, altered or disturbed in a way which is not approved by the Health Officer, the permit shall be void. If the damage can be overcome or another area used, a new application for a permit can be submitted along with a new permit fee which will be required.

(d) The area proposed for the soil absorption field shall be protected from vehicular traffic by roping or fencing prior to permit issuance. Vehicular traffic in the absorption field is permitted only in connection with the installation of the absorption field under the supervision of a registered installer. If the absorption field is damaged, a new soil evaluation will be required. If the soil characteristics have changed, the permit will be void. If the damage can be overcome or another area used, a new application for a permit can be submitted along with a new permit fee which will be required.

(e) Property alterations or additions such as garages, driveways, patios, swimming pools, and like structures or improvements shall not be placed on the soil absorption field area or in any future expansion area.

(f) Drainage from foundation footing drains, air conditioners, dehumidifiers, downspouts, and other clear water drains shall not be discharged into or onto the absorption field or in the area above the absorption field where such would drain across the absorption field.

(g) Where it is necessary to pump sewage from an area below the residential sewer or the facility sewer, a separate leak-proof sump shall be provided for such purposes exclusively.

SECTION 9. Repairs.

The Health Officer by issuing a permit to repair a private sewage disposal system does not thereby approve of the system nor acknowledge that the system meets all requirements of the County or the Indiana State Board of Health. The Health Officer does recognize that a number of older private sewage disposal systems in the County cannot meet current requirements due to site or system limitations and that proposals for repair must make the best use of the available space and system and must meet acceptable standards in the interests of public health.

SECTION 10. Reserve Area.

(a) Absorption fields for all lots in subdivisions whose plots are fully and formally approved by the local plan commission and other public agencies with the responsibility therefore and recorded with the Elkhart County Recorder prior to the effective date of this Ordinance shall be designed and installed in a manner that best utilizes the existing area and maximizes the potential for replacement, expansion, or repair of the

absorption field. No exemptions from the requirements of 410 IAC 6-8.1-1 et seq. shall be granted except in accordance with 410 IAC 6-8.1-33(c) and (d).

(b) Lots in subdivisions that do not qualify under Section 10(a) above shall provide at least two (2) times the required absorption area in suitable soils to allow for the original and one replacement, expansion, or repair of the original leaching system. This area shall be reserved for the installation of the original absorption field and one replacement, expansion, or repair of the absorption field. The use of the reserved area shall be limited to those uses which will not decrease the size of the reserve area and will not decrease the loading rate of the soils.

SECTION 11. Perimeter and Subsurface Drains.

(a) Perimeter drains must be installed at least six (6) inches into the massive clay, glacial till, or fragipan, and a four (4) inch diameter perforated pipe must be used and backfilled to or within two (2) inches of the surface with washed stone not larger than the stone used in the absorption trenches.

(b) Subsurface drains may be employed only where the soils have a loading rate high enough to allow for rapid movement of water to the drain in order to lower and maintain the water table at a depth of twenty-four (24) inches below all absorption field trenches. Soils having a loading rate of less than six-tenths (.6) gallons per day per square foot shall not be suitable for the installation of a subsurface drain to rapidly lower and maintain a water table. Should a person wish to attempt to use a subsurface drain of any description to lower a water table in soils having a loading rate of less than six-tenths (.6) gallons per day per square foot, then such person must demonstrate to the satisfaction of the Health Officer that the proposed subsurface drain can indeed rapidly lower and maintain the water table. To do so, at a minimum, the subsurface drain must be installed at the prescribed-depth and location to potentially allow for the private sewage disposal system installation. Not less than two piezometers will then be installed in the central area of the proposed private sewage disposal system. The piezometers must be constructed of 4-inch schedule 40 PVC with a secure cap. One shall be installed to a depth of at least twelve (12) inches below the level at which the lowered water table is to be maintained. The second piezometer must be installed as directed by the Health Officer in the surface soils and into the first indication of soil

mottling. The piezometers must remain available for review by the Health Officer through at least one high water table period (December through June) to verify that the water table can be lowered and maintained before a permit for the private sewage disposal system will be considered.

(c) A free outfall for the discharge from the perimeter or subsurface drain shall be provided on-lot and shall be equipped with an animal guard approved by the Health Officer. Otherwise, easements for the use and maintenance of any underground drain used or to be used to transport the water from the perimeter drain or subsurface drain to an outfall located off-lot must be obtained from all owners of adjacent properties through which the underground drain runs to the point of discharge. Copies of the recorded easements must be submitted with the application for a permit to install any private sewage disposal system which has a perimeter or subsurface drain as a component that discharges off-lot. The use of a legally established, publicly maintained drainage improvement shall be permitted only after written permission for such use is first obtained from the public agency with jurisdiction over such drainage improvement.

SECTION 12. Inspections.

No person shall cover any private sewage disposal system or any part thereof unless he or she first obtains written approval from the Health Officer. No person shall place a private sewage disposal system into operation without first obtaining written approval for such operation from the Health Officer. The Health Officer shall be allowed to inspect the work at any stage of construction. The applicant for the permit shall notify the Health Officer when the work is ready for final inspection and before any underground portions are covered. The Health Officer shall make the inspection within two (2) working days of the receipt of notice from the applicant. Efforts will be made to inspect on the day requested if the requests are received before 10:00 a.m. the day of inspection and completion will occur during normal Health Department working hours.

SECTION 13. Right of Entry.

The Health Officer shall be permitted to enter upon any property at any reasonable and proper time for the purposes of inspection, observation, measurement, sampling and testing necessary to carry out and assure compliance with the provisions of this Ordinance upon producing proper credentials and identification.

SECTION 14. Notices.

Any person found to be violating any provision of this Ordinance shall be served with a written order stating the nature of the violation and providing a time limit for its satisfactory correction. If a person receives a written order from the Health Officer directing compliance with any provisions of this Ordinance, that person shall comply with the provisions of the Order and perform all acts required by the Order within the time limit set forth in the order. The order shall be served by the County Health Officer and may be served by Certified Mail or personal delivery. An order shall also be deemed served when an inspection tag or report indicating the violation shall be attached to any portion of the private sewage disposal system which is the subject of the order.

SECTION 15. Registration.

(a) Except for a homeowner working on the private sewage disposal system serving the dwelling in which he or she lives, no person shall construct, install, replace, alter, or repair any private sewage disposal system in the County unless the person is registered with the Health Department. Persons required to be registered shall be given six (6) months after the effective date of this Ordinance to register with the Health Department. Application for registration shall be on forms provided by the Health Department.

(b) Every person required to register under this section shall be knowledgeable of all laws, rules, and regulations of both the State of Indiana and the County governing private sewage disposal systems. The applicant for registration must demonstrate knowledge of the applicable laws, rules, and regulations before becoming registered by passing a proficiency exam conducted by the Health Department with a score of eighty (80) or higher. The registration exam shall be reviewed from time to time to determine its applicability to current laws, rules, and regulations. The exam questions shall not be changed except for order or format without review and approval by two designated representatives of the Builders Association of Elkhart County and by two registered private sewage disposal system contractors. A homeowner wishing to install, repair, or otherwise work on the private sewage disposal system serving the dwelling in which he or she lives shall be required to demonstrate knowledge of the applicable laws, rules,

and regulations by completing the same proficiency exam conducted by the Health Department. 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 of professional installers shall be afforded to an applicant upon request but no more frequently than once per month. At the request of the Health Officer, but not more often than once per year, a person registered under this section shall attend a course on sewage disposal conducted by the Health Department or the State of Indiana.

(c) Registrations under this section shall expire annually on June 30.

(d) For a period of six (6) months after the effective date of this Ordinance, registration under this section shall be without fee. After that date, a registration fee will be charged in accordance with the Health Department Fee Schedule Ordinance as amended from time to time.

(e) Whenever the Health Officer determines that there has been a violation of any provision of this Ordinance or the applicable rules and regulations of the Indiana State Board of Health by a person registered under this section, the Health Officer shall give written notice, in person or by certified or registered mail, of the alleged violation to the person to whom registration was granted. Such notice shall include:

(i) A statement of the alleged violation;

(ii) An order allowing a reasonable time, up to fourteen (14) days or as otherwise determined by the Health Officer, for the performance of any act required to correct the violation.

(f) If the violation is not corrected within the designated time, the Health Officer may suspend or revoke the registration subject to the provisions for hearing contained in Section 16 of this Ordinance. If the registration is suspended, the registration can be reinstated by the Health Officer upon correction of all violations. If registration is revoked, the requirements for becoming registered including testing and the payment of the registration fee apply prior to re-registration. Re-registration shall not occur until all outstanding violations are corrected to the satisfaction of the Health Officer.

(g) Any person constructing, installing, replacing, altering, or repairing, any private sewage disposal system who is not registered under the provisions of this

section shall be deemed to be in violation of this Ordinance and subject to all penalties described herein.

SECTION 16. Hearings.

(a) Any person affected by an order or notice in connection with the enforcement of any provision of this Ordinance may request and shall be granted a hearing on the matter before the Elkhart County Board of Health provided that the person files a timely written Request for Hearing with the Health Officer. Written requests for hearing shall clearly state the following:

- (i) The name and address of person affected;
- (ii) The provisions of the Ordinance in question;
- (iii) The reasons for requesting a hearing;
- (iv) The requested relief; and
- (v) The basis for the requested relief.

(b) A hearing requested pursuant to this section shall be conducted within thirty (30) working days of the Health Officer's receipt of the request. The hearing shall be conducted by the Elkhart County Board of Health at a time and place designated by the Health Officer. Written notice of the time and place of hearing shall be delivered by regular U.S. mail to the person requesting the hearing at least ten (10) days prior to the hearing. If the person requesting the hearing so requests, the Health Officer may grant a continuance of the hearing date for a period of not more than thirty (30) days.

(c) A tape recording shall be made of the hearing, and the cost borne by the Health Department; however, a transcript of the hearing will be made only if a person requests it and shall be transcribed at the cost of such person. The Elkhart County Board of Health shall make a ruling based upon the complete hearing record and shall sustain, modify, or rescind any order, suspension, revocation, or ruling challenged in the hearing. A written report of the hearing decision including the reason(s) for such decision shall be furnished to the affected person by the Health Officer within ten (10) days of the hearing.

(d) The Elkhart County Board of Health may in its discretion establish a Hearing Board to conduct sewage disposal hearings in the County. Any such Hearing Board would have three (3) members. The members of the Hearing Board would include the

Health Officer, one representative of the Builders Association of Elkhart County appointed by the Elkhart County Board of Health to serve at its pleasure, and one private sewage disposal system contractor registered under this Ordinance appointed by the Elkhart County Board of Health to serve at its pleasure. In the event that a Hearing Board is established, the procedures indicated above in Sub-sections (a), (b), (c) shall apply with respect to hearings before the Hearing Board. In the event that either the Health Department or the affected person is not satisfied with the decision of the Hearing Board, either party may appeal to the Elkhart County Board of Health for a further hearing on the matter in accordance with and to be conducted under the provisions of Subsections (a), (b), and (c) above. In such event, the Elkhart County Board of Health may affirm, reverse, or modify the decision of the Hearing Board.

(e) In the event the Health Officer elects to instigate prosecution and enforcement action for violation of the provisions of this Ordinance with the assistance of the Elkhart County Prosecutor and/or the Elkhart County Attorney in accordance with Section 17, the hearing provisions contained within this Section 16 shall not apply and shall not be available to the affected person.

SECTION 17. Fines and Penalties.

Any person who violates any provision of this Ordinance shall be deemed to have committed an ordinance violation and, upon conviction, shall be fined not more than Five Hundred Dollars (\$500.00) for the first offense and not more than One Thousand Dollars (\$1,000.00) for the second and each subsequent offense. Each violation of the Ordinance shall constitute a separate Ordinance violation. Each day that an Ordinance violation continues, after the expiration of the time period set forth in any order for corrections, if applicable, shall constitute a separate Ordinance violation. In addition to the specific enforcement mechanisms contained within this Ordinance, the Health Officer may furnish written evidence of any violation of this Ordinance to the Elkhart County Prosecutor and/or the Elkhart County Attorney for appropriate action against the offending person, including prosecution and enforcement action, for violation of the provisions of this Ordinance.

SECTION 18. Construction.

(a) In the event that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to conflict with any provision of 410 IAC 6-8.1-1 et seq. or 410 IAC 6-10-1 et seq., then and in any such event the more strict provision shall govern.

(b) In the event that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to be pre-empted by any state or federal law or regulation, this Ordinance shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.

(c) Each provision of this Ordinance shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

(d) Compliance with the requirements of this Ordinance does not obviate or eliminate the necessity of complying with any other applicable federal, state, or local laws and regulations affecting private sewage disposal systems.

SECTION 19. Authority of Health Officer.

It is hereby acknowledged, understood, and declared by the Board of Commissioners of the County of Elkhart, Indiana, that under this Ordinance the Health Officer is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of the County of Elkhart, Indiana, in regulating private sewage disposal systems. The authority of the Health Officer to issue, deny, suspend, or revoke or fail or refuse to issue, deny, suspend, or revoke any license, approval, order, registration, or similar authorization under this Ordinance is hereby declared to be discretionary.

SECTION 20. Effective Date and Repeal.

This Ordinance shall take effect on the 1st day of September 1991 following publication in accordance with the requirements of law. All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

Approved by the Board of Commissioners of the County of Elkhart, Indiana this 5th day of August 1991.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By: signature

Marsha S. Meyer, President

BY: signature

David L. Hess

By: absent

Patsy Ronzone

Attest:

Signature

Charles R. Miller

Elkhart County Auditor