

ORDINANCE NO. 09-172

ELKHART COUNTY
GROUND WATER PROTECTION ORDINANCE

May 1, 2009

WHEREAS Indiana Code Sections 36-1-3-1 et seq. permit any county in the State of Indiana to exercise any power or 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 of 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 and the Elkhart County Board of Health find that it is in the public interest of Elkhart County to re-establish, reconfirm, and continue a ground water protection program;

WHEREAS it is desired that the ground water of Elkhart County be reasonably protected from the improper storage and discharge of toxic or hazardous substances;

WHEREAS the Elkhart County Board of Health is directed to enforce and observe all state laws and legally promulgated regulations pertaining to the preservation of health and is authorized to adopt such rules and regulations as may be deemed necessary or desirable to protect, promote, or improve public health by Indiana Code Sections 16-20-1 et seq.,

WHEREAS the Board of Commissioners of the County of Elkhart, Indiana and the Elkhart County Board of Health desire to mutually administer and enforce the ground water protection program; and

WHEREAS pursuant to the authority vested by the Indiana Code Sections 36-1-3-1 et seq., the Board of Commissioners of the County of Elkhart, Indiana desire to re-establish, reconfirm, and continue the Elkhart County Ground Water Protection Program subject to the provisions hereinafter stated;

NOW, THEREFORE, be it ordained by the Board of Commissioners of the County of Elkhart, Indiana as follows:

Section 1. Title.

This Elkhart County Ordinance may be referred to as the "Elkhart County Ground Water Protection Ordinance."

Section 2. Purpose.

It is the purpose of this Ordinance to enhance and preserve the public health, safety, and welfare of persons and property in Elkhart County by protecting the ground water of Elkhart County from degradation resulting from the spills of toxic or hazardous substances.

Section 3. Definitions.

A. The term "above ground storage tank" means any non-portable container, excluding all pipes connected thereto, which is used to store an accumulation of toxic or hazardous substances and in which more than ninety percent (90%) of the volume of the storage container is at or above the final ground elevation.

B. The term "agricultural" means of or pertaining to real property used principally for the production of food chain crops and livestock on a farm. The term "agricultural" does not include the sale or distribution of toxic or hazardous substances.

C. The term "animal" means all mammals, birds, reptiles, amphibians, fish, crustaceans and mollusks.

D. The term "aquatic life" means those plants and macroinvertebrates that are dependent upon an aquatic environment.

E. The term "Board of Health" means the Elkhart County Board of Health.

F. The term "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

G. The term "commercial or industrial" means of or pertaining to real property used principally for purposes of retail or wholesale business, commerce, trade, manufacture, or production or to serve and facilitate the operation of retail or wholesale business, commerce, trade, manufacture, or production.

H. The term "Commissioners" means the Board of Commissioners of the County of Elkhart, Indiana.

I. The term "community water system" or "CWS" means a public water system that serves at least fifteen (15) service connections used by year round residents or regularly serves at least twenty-five (25) year round residents.

J. The term "contain" means to take such immediate action as necessary to dam, block, restrain, or otherwise act to most effectively prevent a spill from entering waters of the state or soils or minimize damage to the waters of the state or soils from a spill.

K. The term "Class V injection well" means a type of injection well, as defined in 40 CFR 146.3, which typically has a depth greater than its largest surface dimension, emplaces fluids into the subsurface, and does not meet the definitions of Class I through IV wells as defined under 40 CFR 146.5. While the term includes the specific examples described in 40 CFR 144.81, septic systems that serve more than one (1) single family dwelling or provide service for non-domestic waste, dug wells, bored wells,

improved sinkholes, french drains, infiltration sumps, and infiltration galleries, it does not include surface impoundments, trenches, or ditches that are wider than they are deep.

L. The term "County" shall mean the County of Elkhart in the State of Indiana.

M The term "damage" means the actual or imminent alteration of the waters of the state or soils so as to render the waters or soils harmful, detrimental, or injurious to:

1. public health, safety, or welfare;
2. domestic, commercial, industrial, agricultural, or recreational uses; or
3. animals or aquatic life.

N. The term "facility" means all contiguous land and related structures, appurtenances, and improvements on land with the same operator. A facility may consist of multiple operations including retail or wholesale business, commerce, trade, manufacturing, production, treatment, storage, or disposal units, landfills, surface impoundments, or combinations of them. For these purposes, contiguous land shall include land separated by a public right-of-way so long as such land would otherwise be contiguous.

O. The term "Health Department" shall mean the Environmental Health Division of the Elkhart County Health Department.

P. The term "inside" means within a structure totally enclosed on all sides and with a ceiling or roof and a floor of an impervious surface.

Q. The term "objectionable substance" means substances that are of a quantity and a type, and present for a duration and at a location so as to potentially render waters of the state within Elkhart County harmful, detrimental or injurious to public health, safety and welfare.

R. The term "operator" shall mean the person responsible for the overall operation of a facility.

S. The term "Ordinance" means this Elkhart County Ground Water Protection Ordinance.

T. The term "outside" means any location that is not inside.

U. The term "owner" shall mean the person who owns a facility or part of a facility.

V. The term "person" shall include individuals, firms, corporations, associations, partnerships, consortiums, joint ventures, limited liability companies, and any other legal entity. A corporation and its subsidiaries shall be considered one person.

W. The term "process tank" means a vessel or other container used for the mixing or batching of chemicals, feeds, wastewater, or other components, or for the preparation of one (1) or more components, leading to the production of a desired product. The term includes all attached piping and other fixtures necessary for the intended operation of the vessel or container.

X. The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Y. The term "public wellhead protection area" means the surface and subsurface area delineated by fixed radius, hydrogeological mapping, analytical, semianalytical, or numerical flow/solute transport methods which contributes water to a community water supply system production well or wellfield and through which contaminants are likely to move and reach the well in a specified period or as further defined in Rule 327 IAC 8-4.1 et seq., as amended.

Z. The term "RCRA" means the Resource Conservation and Recovery Act of 1976, as amended.

AA. The term "reportable quantity" means the amount of a hazardous substance or extremely hazardous substance that is required to be reported under federal law under 42 USC 960 (a) and (b) and 42 USC 9603 (a) et. seq. (40 CFR 302.4 or 40 CFR 355 Appendix A.)

BB. The term "residential" means of or pertaining to real property used principally for a residence.

CC. The term "secondary containment" means a containment system that is designed and operated in accordance with the rules and regulations for such adopted under this Ordinance.

DD. The term "spill" means any unintentional or intentional discharging, leaking, pumping, pouring, emitting, emptying, releasing, injecting, escaping, leaching, dumping, or disposing of a toxic or hazardous substance, or objectionable substances into or upon the soil, surface water, or ground water of Elkhart County.

The term "spill," as used and applied in this Ordinance, does not include the following

1. proper disposal, in accordance with all legal requirements and in accordance with the requirements of RCRA and the regulations thereunder, of hazardous wastes in a facility that has received and maintained all necessary legal approvals for that purpose

2. proper disposal, in accordance with all legal requirements, of any substance, as provided by 329 IAC et seq. of the Indiana Administrative Code, as amended, in a solid waste disposal facility that has received and maintained all necessary legal approvals for that purpose;

3. proper disposal of any substance in compliance with the terms and provisions of a valid municipal, state, or federal permit;

4. proper disposal, in accordance with all legal requirements, of any substance to a sanitary sewer system that has received and maintained all necessary legal approvals for that purpose;

5. proper application of fertilizers and pesticides in accordance with label requirements and in accordance with the guidelines of the Indiana State Chemist's Office;

6. proper application of road salts, deicing, or dust control materials for the purposes of snow, ice, or dust control;

7. proper disposal, in accordance with all legal requirements, of "sanitary sewage" to subsurface sewage disposal systems as defined and permitted by Rule 410 IAC 6-8.1 et seq. and by Rule 410 IAC 6-10 et seq. of the Indiana Administrative Code, as amended;

8. proper application of animal manure, compost, animal bedding or animal byproducts using accepted agricultural practices;

9. releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil or waters of the state;

10. releases of less than one pound or one pint.

EE. The term "spill response" for purposes of this rule means the following;

1. The spill is contained;

2. Free material is removed or neutralized; and

3. Actions taken to minimize further contamination to soils and waters of the state within Elkhart County.

FF. The term "spill report" means a written report that includes the following information about a spill to the extent that the information is known at the time of the report:

1. The name, address, and telephone number of the person submitting the spill report.

2. The names, address, and telephone number of a contact person, if different from clause (1).

3. The location of the spill.

4. The time of the spill.

5. The identification of the substance spilled.

6. The approximate quantity of the substance that has been or may further be spilled.

7. The duration of the spill.

8. The source of the spill.
9. Name and location of any waters damaged.
10. The identity of any response organization that is or has responded to the spill.
11. What measures have been or will be undertaken to perform a spill response.
12. The amount of spilled materials recovered.
13. Any other information that may be significant.

GG. The term "store" or "storage" means holding a substance prior to or after its use. The terms shall not include any associated and connected piping.

HH. The term "toxic or hazardous substance" means

1. any substance designated pursuant to section 311 of the Clean Water Act; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under section 307 of the Clean Water Act; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to the Toxic Substances Control Act;

2. petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); or

3. radioactive and infectious substances as defined by any applicable local, state, or federal law or regulation.

II. The term "underground storage tank" means any one or a combination of containers, excluding all pipes connected thereto, which is used to store an accumulation of toxic or hazardous substances, and the volume of which is ten percent (10%) or more beneath the surface of the ground.

JJ. The term "waters" means the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, that are wholly or partially within, flow through or border upon this county. The term does not include any private pond or any off stream pond, reservoir, or facility built for reduction or control of pollution or cooling water prior to discharge unless the discharge from the pond, reservoir or facility causes or threatens to cause water pollution.

Section 4. Prohibitions.

The negligent, reckless, knowing, or intentional spill of toxic or hazardous substances is prohibited. Placing toxic or hazardous substances in a location at a facility that would allow a spill of such substances in the event of an accidental release is prohibited. The discharge of process wastewater into or upon the soil, surface water or ground water of Elkhart County is prohibited without a permit from the appropriate local, state, or federal agency except as stated in the Rules and Regulations adopted under and pursuant to this Ordinance.

Section 5. Registration Requirements.

A. Commercial/Industrial On-Site Wastewater Disposal Systems.

1. Commercial or industrial facilities which possess an on-site waste water disposal system emptying, releasing, injecting, dumping, or disposing upon or into the ground including septic systems, drywells, unlined lagoons, oil water separators, Class V injection wells, or other field absorption systems shall register with the Health Department in accordance with the Rules and Regulations adopted under and pursuant to this Ordinance.

2. Registration required under this Section, if not previously submitted under the original Elkhart County Ground Water Protection Ordinance effective May 1, 1989, shall be submitted within sixty (60) days after the effective date of the adoption of this Ordinance.

B. Commercial/Industrial Toxic or Hazardous Substance Storage Areas.

1. Facilities that store toxic or hazardous substances shall register with the Health Department in accordance with the Rules and Regulations adopted under and pursuant to this Ordinance.

2. Registration required under this Section, if not previously submitted under the original Elkhart County Ground Water Protection Ordinance effective May 1, 1989, shall be submitted within sixty (60) days after the effective date of the adoption of this Ordinance.

Section 6. Waste Water Testing.

Commercial or industrial facilities which possess an on-site waste water disposal system emptying, releasing, injecting, dumping, or disposing upon or into the ground including septic systems, drywells, unlined lagoons, oil water separators, Class V injection wells or other field absorption systems shall furnish a waste water characterization for each system to the Health Department in accordance with the Rules and Regulations adopted under and pursuant to this Ordinance. The Health Department may at any time require an additional sample be taken with a Health Department representative present and the sample then analyzed and furnished to the Health Department at the facility's expense.

Section 7. Wellhead Protection.

The Elkhart County Plan Commission shall study, establish, and submit recommended rules, regulations, policies, procedures, amendments to the comprehensive plan, and amendments to the zoning ordinance to the Commissioners for consideration that shall have the purpose and effect of protecting the public wellhead protection area. The plan commissions of all municipalities in the County and all political subdivisions in the County with public wellhead protection areas should, and it is recommended that they also, study, establish, and submit recommended rules, regulations, policies, procedures, amendments to comprehensive plans, and amendments to zoning ordinances to the appropriate elected officials for consideration which would have the purpose and effect of protecting the public wellhead protection area.

Section 8. Above Ground Storage of Toxic or Hazardous Substances.

A. The storage of toxic or hazardous substances in containers, whether portable or non-portable, in which more than ninety percent (90%) of the volume of the container, excluding all pipes connected thereto, is at or above the final ground elevation, shall be restricted and regulated in accordance with the Rules and Regulations adopted under and pursuant to this Ordinance.

B. In addition to the Rules and Regulations adopted under and pursuant to this Section, all applicable state and federal requirements for storage, leak detection, record keeping, spill prevention, emergency response, transportation, and disposal shall be met.

Section 9. Education and Review Program.

A. Following the adoption of this ordinance, the County may adopt and implement an on-going program designed to educate and inform the public, as well as respond to questions from the public, concerning ground water pollution, ground water protection, and this ground water Ordinance.

B. Following the adoption of this Ordinance, there shall be established a Ground Water Ordinance Advisory Board, which shall be composed of six (6) members. The members of this Advisory Board shall be composed of one (1) member of the Commissioners or the Commissioners' designee, one (1) member of the Elkhart County Council or the Council's designee, one (1) member of the Elkhart County Board of Health or the Board of Health's designee, one (1) member as an Elkhart County citizen representative who has an environmental interest which member shall be designated by the Board of Health, one (1) member of a municipal water department involved in wellhead protection which member shall be designated by the Elkhart County Plan Commission, and one (1) member as an Elkhart County business or commerce representative with any Chamber of Commerce located in Elkhart County eligible to make recommendations for the representative and which member shall be designated by the Commissioners. Designees shall serve at the pleasure of the appointing authority. The Advisory Board may meet on a quarterly basis or as necessary. Designees shall serve at the pleasure of the appointing authority. The Advisory Board shall be responsible for studying, analyzing, evaluating, and reviewing the implementation, operation, maintenance, effectiveness, compliance, and enforcement of this Ordinance and the Rules and Regulations adopted under and pursuant to this Ordinance. The Advisory Board shall review this Ordinance prior to sunset for purposes of determining whether all or any portion of this

Ordinance has been superseded by any state or federal law or regulation, and if so, whether all or any portion of this Ordinance should be repealed. The Advisory Board shall report to the Board of Health at least thirty' (30) days after completing its review with respect to the results of its review. Proposed changes to the Ordinance or the Rules and Regulations shall require a majority vote of the members present. The Advisory Board shall also be responsible for making any other recommendations to the Commissioners and the Board of Health for revisions, additions, and amendments to this Ordinance and the Rules and Regulations adopted under and pursuant to this Ordinance.

Section 10. Reportable Spills

A. The following spills from a facility must be reported;

1. Spills of toxic or hazardous materials, excluding petroleum and motor vehicle operating fluids, when the amount exceeds one hundred (100) pounds or the reportable quantity which ever is less;

2. Spills of petroleum or motor vehicle operating fluids when the total amount exceeds fifty-five (55) gallons;

3. Spills of toxic or hazardous materials that damage waters of the state within the borders of Elkhart County; and

4. Spills of toxic or hazardous materials within a community water system's designated wellhead protection area.

5. Any spill which does not have a spill response.

B. The operator of a facility shall notify the Environmental Health Services Division of the Elkhart County Health Department or the 911 systems as soon as possible within twenty-four (24) hours of the discovery of any reportable spill in the county that is owned by and/or subject to the control of the facility. The operator shall provide the best available information of what was spilled, how much was spilled, when the spill occurred, where the spilled occurred, and what spill response was taken.

C. Any operator, owner or person of a facility from which a spill occurs shall, upon discovery of a spill, do the following;

1. Contain the spill, if possible;

2. Undertake or cause others to undertake activities needed to accomplish a spill response; and

3. If the spill is considered a reportable spill as defined within Section 10 (A) or Section 10 (B), submit a spill report to the Environmental Health Services Division of the Elkhart County Health Department within ten (10) days after completion of spill response but in no event later than one hundred eighty (180) days after discovery of the spill.

Section 11. Records.

In accordance with the Rules and Regulations adopted under and pursuant to this Ordinance, a copy of the records pertaining to registration under this Ordinance shall be retained by the facility for not less than three (3) years and shall be made available for review by the County upon request.

Section 12. Penalties.

A. Any person who violates any provision contained in this Ordinance, in the Rules and Regulations adopted under and pursuant to this Ordinance, or in any variance granted pursuant to Section 15 may be fined up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each day that a violation continues shall be deemed to constitute a separate violation. In assessing any fine under this Ordinance, the nature of the violation, the seriousness of the violation, the culpability of the violator, the harm or potential harm involved by the violation, and any other relevant factors shall be considered.

B. Whenever any violation of this Ordinance, the Rules and Regulations adopted under and pursuant to this Ordinance, or any variance granted pursuant to this Ordinance is occurring, the Health Department may order the violation stopped by written notice served on any person in violation, and such person upon receiving said notice shall immediately cease the violation.

C. The County may institute suit for injunction or fines in the County's Circuit or Superior Courts to restrain any person from or fine any person violating the provisions of this Ordinance, any Rules and Regulations established under and pursuant to Section 16 below, or any variance granted pursuant to Section 15 below.

Section 13. Enforcement.

A. The provisions of this Ordinance and the Rules and Regulations adopted under and pursuant to this Ordinance shall be mutually administered and enforced by the Commissioners and the Board of Health as agreed upon by the Commissioners and the Board of Health.

B. Inspections to assure compliance and to investigate alleged violations of this Ordinance might be conducted at any time in accordance with the requirements of law. Whenever necessary to make an inspection or to enforce this Ordinance, any facility or premises may be entered at all reasonable times upon presentation of proper credentials and demand for entry. If entry is refused, recourse shall be had to every remedy provided by law to secure entry.

C. Upon request, the owner or operator of any facility at which toxic or hazardous substances are used, stored, or generated shall furnish the Health Department all information then currently available to the facility deemed necessary by the Health Department to monitor compliance with this Ordinance.

Section 14. Appeals.

Any decision regarding a variance request may be appealed to the Commissioners by any person adversely affected by that decision and the appeal shall be processed under all laws, rules, and regulations applicable to the Commissioners. Any appeal to the Commissioners must be taken no later than thirty

(30) days following written notice of the decision. In addition, any person adversely affected by a decision of the Commissioners as a result of an appeal to the Commissioners shall have the right of appeal as in other civil actions if such person gives fifteen (15) days written notice of intent to do so to the Commissioners by certified U. S. mail. The notice shall concisely state the alleged grievance. It is specifically provided that failure to appeal to the Commissioners and exhaust other remedies shall work as a bar to the right to appeal to the Courts.

Section 15. Variances.

A. Although the provisions of this Ordinance are to be followed with strict compliance, certain individual cases may justify the issuance of a variance while still allowing for consistent protection of ground water resources.

B. All requests for variances shall be processed under the Rules and Regulations adopted under and pursuant to this Ordinance. In no case, however, shall a variance be granted which will violate existing federal, state, or local law or regulation.

Section 16. Adoption of Rules and Regulations.

Rules, regulations, and forms necessary to implement, effectuate, interpret, and assure compliance with the requirements of this Ordinance shall be adopted by the Commissioners in accordance with the requirements of law following consideration, review, and recommendations from the Board of Health.

Section 17. Compliance with Other Laws.

Compliance with this Ordinance does not obviate or eliminate the necessity of complying with any and all other applicable federal, state, or local laws and regulations with respect to toxic or hazardous substances.

Section 18. Construction.

A. To the extent that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to be preempted by any state or federal law, this Ordinance shall automatically be deemed amended by eliminating the preempted provision and incorporating in its place the applicable provision of the preempting state or federal law.

B. Each provision of this Ordinance shall be construed so as to be valid and enforceable. In addition, 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.

Section 19. Sunset Provision.

This Ordinance and the Rules and Regulations adopted under and pursuant to this Ordinance shall expire and shall be rendered null and void five (5) years after the effective date of this Ordinance unless

the Ordinance and its Rules and Regulations are approved and re-adopted by the Commissioners and the Board of Health.

Section 20. Effective Date.

This Ordinance shall take effect on the 1st day of May 2009 and shall serve to prospectively supersede the Elkhart County Ground Water Protection Ordinance dated May 1, 2004 and the Rules and Regulations adopted thereunder. All actions, omissions, events, or circumstances existing or occurring prior to May 1, 2009 shall be governed by the Elkhart County Ground Water Protection Ordinance dated May 1, 2004 and the Rules and Regulations adopted thereunder.

APPROVED this ____ day of _____, 2009.

ELKHART COUNTY BOARD OF HEALTH

By _____

Title _____

ORAINED AND ADOPTED this ____ day of _____, 2009.

BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA

By _____

By _____

By _____

ATTEST:

Elkhart County Auditor

RULES AND REGULATIONS
ELKHART COUNTY
GROUND WATER PROTECTION ORDINANCE
May 1, 2009

Section 1 GENERAL PROVISIONS

- (A) These rules and regulations shall be administered by the Health Department through its Health Officer and his or her authorized representative.
- (B) These rules and regulations contain requirements for the implementation of the Elkhart County Ground Water Protection Ordinance.
- (C) These rules and regulations apply to facilities that use, store, or generate toxic or hazardous substances.
- (D). The definitions contained in the Elkhart County Ground Water Protection Ordinance shall be applicable to the terms as used in these rules and regulations.

Section 2 REGISTRATION.

(A) GENERAL REQUIREMENTS

Registration required under Sections 2(C) and 2(D) of these rules and regulations shall be submitted by the operator of the facility on forms approved by the Health Department and shall include, at a minimum, the following information:

- (1) name of the facility;
- (2) street and mailing address of the facility and
- (3) designated individual for contact purposes.

The registration shall be a one-time registration with the operator of the facility responsible for maintaining a current registration. Registration is non-transferable.

- (B) Any facility receiving any toxic or hazardous substance in pre-packaged containers only and offering such containers unopened for direct resale shall be exempt from registration under Section 2D.
- (C) COMMERCIAL/INDUSTRIAL ON-SITE WASTEWATER DISPOSAL SYSTEM REGISTRATION

- (1) In addition to the registration requirements set forth in Section 2(A) above, the following information is required for compliance with Section 5(A) of the Ordinances
 - a. number, type, and location of on-site disposal systems present and
 - b. estimated flow rate to each on-site disposal system.
- (2) The operator of a facility shall notify the Health Department within sixty (60) days of any change at the facility, except estimated flow rate changes, after the initial registration which renders the information contained in the then existing registration inaccurate.
- (3) Any facility subject to registration which is placed in service after the effective date of the Ordinance shall register with the Health Department within sixty (60) days after being placed in service and shall meet all other applicable requirements of these rules and regulations.
- (4) Closed system heat pumps, irrigation systems, and non-contact cooling water systems are exempt from registration under this Section 2(C).

(D) TOXIC OR HAZARDOUS SUBSTANCE STORAGE AREA REGISTRATION

- (1) Facilities which store toxic or hazardous substances in aggregate quantities greater than 100 kilograms per month (approximately equal to 25 gallons or 220 pounds) shall register with the Health Department.
- (2) Agricultural and residential underground storage tanks of less than eleven hundred (1,100) gallon capacity and which are used for storing motor fuels for non-commercial purposes and any underground storage tanks used for storing heating oil for consumptive use on the premises shall register with the Health Department.
- (3) In addition to the registration requirements set forth in Section 2(A) above, the following information is required for compliance with Section 5(B) of the Ordinance:
 - a. general classification of substance stored (ignitable, corrosive, reactive, toxic)
 - b. maximum amount stored in any month
 - c. type of storage container and
 - d. location of storage (indoor/outdoor).

- (4) The operator of a facility shall notify the Health Department within sixty (60) days of any change at the facility after the initial registration which renders the information contained in the then existing registration inaccurate.
- (5) Any facility subject to registration which is placed in service after the effective date of the Ordinance shall register with the Health Department within sixty (60) days after being placed in service and shall meet all other applicable requirements of these rules and regulations.
- (6) Hazardous waste storage areas that are regulated under RCRA shall be considered to have met the registration requirements under this section.
- (7) Any laboratory that is a facility and any laboratory contained in a facility shall be exempt under this Section 2(D) but only with respect to its laboratory activities.

Section 3 COMMERCIAL/ INDUSTRIAL WASTEWATER TESTING.

A wastewater characterization shall be provided by any facility required to register under both Section 2(C) and Section 2(D) of these rules and regulations and each such facility shall be subject to the followings:

- (A) A wastewater characterization for each on-site disposal system shall be provided by an independent, qualified laboratory using standard EPA methods appropriate for the testing and analysis being performed. In the absence of a liquid wastewater sample, soils from the wastewater system may be used to determine wastewater characterization upon prior written approval from the Health Department.
- (B) Minimum testing required shall be directly related to the hazardous and/or toxic substances identified at the facility. Tests may include, but are not limited to, the following analyses:
 - (1) Total Toxic Organics (volatile organic chemicals, semi-volatile organic chemicals, pesticides);
 - (2) Heavy Metals (as listed in federal and/or state Primary Drinking Water Standards).
- (C) Sampling Method Requirements.

All sampling and analysis conducted to comply with Section 3 of this regulation shall be performed in accordance with 40 CFR Part 136, as amended or

methodology approved in writing by the Health Department. Samples shall be representative of facility effluent discharges. Practices such as dilution or treatment that change the representative facility effluent discharge are a violation of these rules and regulations. The individual who obtains the wastewater sample shall certify compliance with these sampling method requirements.

(D) Chain of Custody.

Chain of custody procedures shall be followed on all wastewater sampling, handling, and testing procedures.

(E) For facilities subject to this section, an initial wastewater characterization shall be required within a period of six (6) months but no longer than fifteen (15) months after being placed in service. No further wastewater characterization shall be submitted unless deemed necessary by the Health Department. The Health Department may require additional testing for a facility if the Health Department has a rational basis for doing so based upon inspection, complaint, an operational change at the facility or contamination of the wastewater system or groundwater in the area.

Section 4 ABOVE GROUND STORAGE OF TOXIC OR HAZARDOUS SUBSTANCES.

The following requirement shall apply under Section 8 of the Ordinance:

- (A) A secondary containment system for above ground storage of toxic or hazardous substances outside shall be maintained and must be designed and operated as follows:
- (1) A base must underlay the storage container(s) that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;
 - (2) The base must be sloped or the secondary containment system must be otherwise designed and operated so as to allow the drainage and removal of liquids resulting from leaks, spills, or precipitation
 - (3) The secondary containment system must have sufficient capacity to contain 10% of the total volume of the containers or 110% of the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in the determination;
 - (4) Precipitation run-off into the secondary containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in subsection (A)(3) above to contain any run-offs which might enter the system; and

- (5) A secondary containment system must be properly maintained to protect the integrity and capacity of the containment system;
 - (6) Spilled or leaked materials and accumulated precipitation must be legally removed and disposed of from the sump or collection area in a timely manner as necessary to prevent overflow of the secondary containment system.
 - (7) A facility that is in compliance with 327 IAC 2-10-6 shall be considered to be in compliance with the secondary containment construction requirements of Section 4(A) of the rules and regulations this ordinance.
- (B) Toxic or hazardous substances may not be located in a manner that would allow a discharge spill onto the ground or into a drain that is connected to an on-site wastewater disposal system that drains or empties into the ground.
- (C) Outside storage of toxic or hazardous substances is prohibited except in product-tight containers.
- (D) Drainage of precipitation from within any area designed to contain a discharge spill of a toxic or hazardous substance shall be controlled in a manner that will prevent any toxic or hazardous substance from entering into or upon the soil, surface water, or ground water of Elkhart County.
- (E) Exemptions:
- (1) Agricultural and residential facilities shall be exempt under this section.
 - (2) Above ground storage tanks, which contain solids or gases at ambient temperature and pressure, shall be exempt under this section.
 - (3) Integral operating fluids contained within machinery or equipment provided that these fluids are necessary for the proper operation of the equipment shall be exempt under this section.
 - (4) Process tanks shall be exempt under this section.
- (F) Designated temporary storage areas such as may exist in loading areas shall be exempt from sections 4(A) and 4(D) of the Rules and Regulations providing they meet the following conditions:
- (1) Containers are to be temporarily stored on an impervious surface to the materials within the container;

- (2) Storage of containers shall not exceed two (2) business days prior to container placement in another non-temporary storage area;
 - (3) Documentation must be immediately available to ascertain the exact date of delivery of the containers in order to determine compliance; and
 - (4) The facility has developed a spill response plan as required by 327 IAC 2-10-8.
- (G). A petroleum storage area at a construction site shall be exempt from Sections 4 (A) and 4(D) of the Rules and Regulations providing it meets all the following conditions:
- (1) only one such storage area may exist at a facility;
 - (2) only petroleum products may be exempted;
 - (3) no single container shall exceed three hundred (300) gallons;
 - (4) the total amount of petroleum products does not exceed six hundred and sixty (660) gallons;
 - (5) the facility has established a regular (weekly) inspection program with documentation of inspection date and inspector to insure the storage area is being maintained and spills have not occurred,
 - (6) the containers are clearly labeled; and
 - (7) the facility has developed and maintained a spill response plan as outlined by 327 IAC 2-10-8.

Section 5 RECORDS.

All records required by these rules and regulations or copies thereof shall be transferred to any new owner or operator of a facility that is sold, leased, transferred to, or received by a new owner or operator. The transfer of such records shall in no way operate to eliminate or obviate the necessity of the new owner or operator to register with the Health Department as required by these rules and regulations. All records required by these rules and regulations shall be made available for review by the Health Department upon request.

Section 6 VARIANCES

- (A) All requests for variances must be in writing to the Health Department and must contain all specifications, studies, or evidence showing why such a variance should

be granted. The Health Department shall review the variance request and submit its recommendations to the Board of Health.

- (B) Variances from the Ordinance or the rules and regulations may be granted by the Board of Health after a hearing in compliance with general public notice at least ten (10) days prior to the hearing at which the applicant establishes that the requested variance will not jeopardize or degrade the ground water or create other hazards to human health and that requiring strict compliance with the requirements of the Ordinance and the rules and regulations would create an undue burden upon the applicant. In granting variances, the Board of Health shall take into consideration the amount and type of toxic or hazardous substances involved the rate and direction of ground water flow soil conditions depth to ground water size and slope of site existing and known future water supplies and any other relevant factors. All variances shall be site specific, in writing, and include any and all conditions deemed necessary by the Board of Health to protect the ground water and to prevent other hazards to human health. Prior to considering a variance request with respect to the wastewater characterization requirements, the Board of Health will require the applicant to conduct and submit not less than one (1) such wastewater characterization.

APPROVED this ____ day of _____, 2009

ELKHART COUNTY BOARD OF HEALTH

By_____

Title_____

APPROVED AND ADOPTED this ____ day of _____, 2009 to be effective May 1, 2009.

BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA

By_____

By_____

By_____

ATTEST:

Elkhart County Auditor