



Indiana State Department of Health

Regulatory Aspects of On-site Sewage Disposal

Residential On-site Sewage Disposal Program

Regulatory History

This section provides a partial history of laws and regulations affecting on-site sewage disposal.

1939 – Bulletin S.E. 8, *Sewage Treatment for the Rural Resident*, was developed by Purdue University and the Indiana State Board of Health (ISBH) to provide guidance to rural residents on sewage disposal. Several iterations of this bulletin followed through the early 1970s, as understanding of on-site sewage disposal limitations increased. The revision also became necessary as new building outside the reaches of municipal sewers began to utilize in-door plumbing.

1943 – First Stream Pollution Control Law: created comprehensive water pollution control laws under the administrative authority of the ISBH. It designated the Stream Pollution Control Board as the only entity authorized to approve discharges to the waters of the state. This law is now under the administrative authority of the Indiana Department of Environmental Management (IDEM). IDEM's authority includes all discharging systems and sewage disposal plans for municipal, sewer and conservancy districts, including cluster on-site systems proposed by municipalities and districts.

1949 – First Public Health Laws creating Local Health Departments: created comprehensive public health laws, local health officers, boards of health, and departments of health. Requires local health officers to enforce rules of their own boards of health and the ISDH.

1953 – First Local Government Laws: local units of government granted specific powers to adopt ordinances as granted by statute, and powers necessary or desirable to conduct its affairs even though not granted by statute.

1977 - ISBH promulgates HSE 25/HSE 25R, *Residential Sewage Disposal Systems*, the first state sewage disposal rule (was re-codified to 410 IAC 6-8 in 1978). It was enacted for a number of reasons, including that a number of counties did not have ordinances and that there

was a lack of uniformity among those counties that did have ordinances. Unlike Bulletin S.E. 8, HSE 25/HSE 25R permitted use of alternatives to conventional gravity on-site sewage disposal systems (OSDS). As provided for in IC 36-1-3-2, local health departments are required to enforce this rule.

1990 – Indiana State Department of Health (ISDH) promulgates 410 IAC 6-8.1, *Residential Sewage Disposal Systems*. This administrative code required soil evaluations (instead of percolation tests) of proposed soil absorption field sites, and allowed for the use of flood dose OSDS and sand mound OSDS. This administrative code also defined OSDS failure, which includes any of the following:

- When the OSDS refuses to accept sewage, interfering with the normal use of plumbing fixtures; or
 - When effluent from an OSDS discharges to the ground surface or to surface waters; or
 - When effluent from an OSDS contaminates a water supply, ground water, or surface water.
- As provided for in IC 36-1-3-2, local health departments are required to enforce this rule.

1999 - ISDH proposes 410 IAC 6-8.2, *On-site Sewage Disposal*. This administrative code merges residential and commercial on-site rules and places technical requirements into a separate document called the Technical Specification for On-site Sewage Disposal, 1999 Edition. It clarifies many requirements contained in 410 IAC 6-8.1, continues to prohibit “off-lot” discharge and define OSDS failure, and details how the ISDH may allow new technologies to be brought on-line (alternative technology OSDS). As provided for in IC 36-1-3-2, local health departments will also be required to enforce this rule.

Regulatory Authority

This section provides a partial listing of laws and regulations affecting on-site sewage disposal. It is subdivided into Indiana Code and Indiana Administrative Code. Health officers and health boards are advised to consult legal council regarding the full scope and interpretation of laws and regulations affecting on-site sewage disposal.

Indiana Code

IC 16-19-1, Health. State Department of Health. Establishment of State Department of Health. Important section includes:

- **IC 16-19-1-2**, “Status of department: The state department is the superior health department of the state, to which all other health boards are subordinate.”
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IC 16-19-3, Health. State Department of Health. Powers and Duties of State Department of Health and Executive Board. Important sections include:

- **IC 16-19-3-1**, “Supervision of health and life of citizens; necessary powers: The state department shall supervise the health and life of the citizens of Indiana and shall possess all powers necessary to fulfill the duties prescribed in the statutes and to bring action in the courts for the enforcement of health laws and health rules.”

- **IC 16-19-3-4**, "Protection and improvement of public health; adoption of rules:
 - (a) The executive board may, by an affirmative vote of a majority of its members, adopt reasonable rules on behalf of the state department to protect or to improve the public health in Indiana.
 - (b) The rules may concern but are not limited to the following:
 - (1) Nuisances dangerous to public health.
 - (2) The pollution of any water supply other than where jurisdiction is in the water pollution control board and department of environmental management.
 - (3) The disposition of excremental and sewage matter.
 - (4) The control of fly and mosquito breeding places.
 - (5) The detection, reporting, prevention, and control of diseases that affect public health.
 - (6) The care of maternity and infant cases and the conduct of maternity homes.
 - (7) The production, distribution, and sale of human food.
 - (8) The conduct of camps.
 - (9) Standards of cleanliness of eating facilities for the public.
 - (10) Standards of cleanliness of sanitary facilities offered for public use.
 - (11) The handling, disposal, disinterment, and reburial of dead human bodies.
 - (12) Vital statistics.
 - (13) Sanitary conditions and facilities in public buildings and grounds, including plumbing, drainage, sewage disposal, water supply, lighting, heating, and ventilation, other than where jurisdiction is vested by law in the fire prevention and building safety commission or other state agency.
 - (14) The design, construction, and operation of swimming and wading pools. However, the rules governing swimming and wading pools do not apply to a pool maintained by an individual for the sole use of the individual's household and house guests."

IC 16-20-1, Health. Local Health Departments. Powers and Duties of Local Health Departments. Important sections include:

- **IC 16-20-1-19**, "Enforcement: Local health officers shall enforce the health laws, ordinances, orders, rules, and regulations of the officer's own and superior boards of health."
- **IC 16-20-1-23**, "Inspection of private property; property in which officer has interest:
 - (a) Except as provided in subsection (b), the local health officer or the officer's designee may enter upon and inspect private property, at proper times after due notice, in regard to the possible presence, source, and cause of disease. The local health officer or designee may order what is reasonable and necessary for prevention and suppression of disease and in all reasonable and necessary ways protect the public health.
 - (b) However, a local health officer, or a person acting under the local health officer, shall not inspect property in which the local health officer has any interest, whether real, equitable, or otherwise. Any such inspection or any attempt to make such inspection is grounds for removal as provided for in this article.
 - (c) This section does not prevent inspection of premises in which a local health officer has an interest if the premises cannot otherwise be inspected. If the premises cannot otherwise be inspected, the county health officer shall inspect the premises personally."
- **IC 16-20-1-25**, "Unlawful conditions; abatement order; enforcement:
 - (a) A person shall not institute, permit, or maintain any conditions that may transmit, generate, or promote disease.
 - (b) A health officer, upon hearing of the existence of such unlawful conditions within the officer's jurisdiction, shall order the abatement of those conditions. The order must:

- (1) be in writing if demanded;
 - (2) specify the conditions that may transmit disease; and
 - (3) name the shortest reasonable time for abatement.
- (c) If a person refuses or neglects to obey an order issued under this section, the attorney representing the county of the health jurisdiction where the offense occurs shall, upon receiving the information from the health officer, institute proceedings in the courts for enforcement. An order may be enforced by injunction. If the action concerning public health is a criminal offense, a law enforcement authority with jurisdiction over the place where the offense occurred shall be notified.”

Note: See citations below under IC 16-41-20, Health. Public Health Measures for the Prevention and Control of Disease. Health, Sanitation, and Safety: Dwellings Unfit for Human Habitation. See also 410 IAC 6-8.1-31(e), General sewage requirements. Temporary sewage holding tank.

- **IC 16-20-1-26**, “Injunctive enforcement; legal representation of health authorities:
 - (a) A local board of health or local health officer may enforce the board's or officer's orders by an action in the circuit or superior court. In the action, the court may enforce the order by injunction.
 - (b) The county attorney in which a local board of health or local health officer has jurisdiction shall represent the local health board and local health officer in the action unless the county executive employs other legal counsel or the matter has been referred through law enforcement authorities to the prosecuting attorney.”

[See related Indiana Administrative Code 410 IAC 6-8.1, Residential Sewage Disposal Systems]

IC 16-41-20, Health. Public Health Measures for the Prevention and Control of Disease. Health, Sanitation, and Safety: Dwellings Unfit for Human Habitation. Important sections include:

- **IC 16-41-20-1**, “Dwellings unfit for human habitation: A dwelling is unfit for human habitation when the dwelling is dangerous or detrimental to life or health because of any of the following:
 - (1) Want of repair.
 - (2) Defects in the drainage, plumbing, lighting, ventilation, or construction.
 - (3) Infection with contagious disease.
 - (4) The existence on the premises of an unsanitary condition that is likely to cause sickness among occupants of the dwelling.”
- **IC 16-41-20-4**, “Orders to vacate dwellings: Whenever the state department, the local board of health, or county health officer determines that a dwelling is unfit for human habitation, the state department, local board of health, or county health officer may issue an order requiring all persons living in the dwelling to vacate the dwelling within not less than five (5) days and not more than fifteen (15) days. The order must mention at least one (1) reason for the order.”
- **IC 16-41-20-5**, “Extension or revocation of orders to vacate dwellings:
 - (a) The state department, local board of health, or county health officer that issued an order to vacate under section 4 of this chapter shall, for a good reason, extend the time within which to comply with the order.
 - (b) The state department, local board of health, or county health officer may revoke the order if satisfied that the danger from the dwelling has ceased to exist and that the dwelling is fit for habitation.”

- **IC 16-41-20-6**, “Public nuisances: The state department, local board of health, or county health officer may declare a dwelling that is unfit for human habitation a public nuisance. The state department, local board of health, or county health officer may order to be removed, abated, suspended, altered, improved, or purified a dwelling, structure, excavation, business, pursuit, or thing in or about the dwelling or the dwelling's lot, or the plumbing, sewerage, drainage, light, or ventilation of the dwelling.”
- **IC 16-41-20-7**, “Order for cleaning, repairing, or improving: The state department, local board of health, or county health officer may order purified, cleansed, disinfected, renewed, altered, repaired, or improved a dwelling, excavation, building, structure, sewer, plumbing, pipe, passage, premises, ground, or thing in or about a dwelling that is found to be unfit for human habitation or the dwelling's lot.”
- **IC 16-41-20-8**, “Service of orders: An order issued under this chapter shall be served on the tenant and the owner of the dwelling or the owner's rental agent. The order may be served on a person who by contract has assumed the duty of doing the things that the order specifies to be done.”
- **IC 16-41-20-9**, “Judicial review of orders:
 - (a) A person aggrieved by an order of a local board of health or county health officer issued under this chapter may, not more than ten (10) days after the making of the order, file with the circuit or superior court a petition seeking a review of the order.
 - (b) The court shall hear the appeal. The court's decision is final.”
- **IC 16-41-20-12**, “Costs and expenses: A person who:
 - (1) violates this chapter; or
 - (2) fails to comply with an order of:
 - (A) the state department or the state department's authorized agents;
 - (B) a local board of health; or
 - (C) a county health officer;
 is liable for all costs and expenses paid or incurred by the state department, a local board of health or the local board of health's authorized agents, or a local health officer in executing the order. This amount may be recovered in a civil action brought by the state department, the local board of health or the local board of health's authorized agents, or the county health officer, who is entitled to recover reasonable attorney's fees.”

IC 16-20-2, Health. Local Health Departments. Local Health Boards. Important sections include:

- **IC 16-20-2-3**, “Management of local health departments: A local board of health shall manage each local health department established under this chapter.”
- **IC 16-20-2-4**, “Composition of board: A local board of health is composed of seven (7) members, not more than four (4) of whom may be from the same political party.”
- **IC 16-20-2-5**, “Membership selection criteria: The members of a local board of health shall be chosen as follows:
 - (1) Four (4) persons knowledgeable in public health, at least two (2) of whom are licensed physicians. The other two (2) appointees may be any of the following:
 - (A) A registered nurse licensed under IC 25-23.
 - (B) A registered pharmacist licensed under IC 25-26.
 - (C) A dentist licensed under IC 25-14.

- (D) A hospital administrator.
 - (E) A social worker.
 - (F) An attorney with expertise in health matters.
 - (G) A school superintendent.
 - (H) A veterinarian licensed under IC 15-5-1.1.
 - (I) A professional engineer registered under IC 25-31.
 - (J) An environmental scientist.
 - (2) Two (2) representatives of the general public.
 - (3) One (1) representative described in either subdivision (1) or (2)."
- **IC 16-20-2-13**, "Conflict of interest: An individual who has a vested interest or stands to gain financially from any activity of the local health department or a policy decision of the board is ineligible to serve on a local health board."

IC 36-1-3, Local Government. General Provisions. -Home Rule. Important sections include:

- **IC 36-1-3-2**, "Policy: The policy of the state is to grant units all the powers that they need for the effective operation of government as to local affairs."
- **IC 36-1-3-3**, "Rule of law; resolution of doubt as to existence of power of a unit:
 - (a) The rule of law that any doubt as to the existence of a power of a unit shall be resolved against its existence is abrogated.
 - (b) Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed."
- **IC 36-1-3-4**, "Rule of law; powers of unit:
 - (a) The rule of law that a unit has only:
 - (1) powers expressly granted by statute;
 - (2) powers necessarily or fairly implied in or incident to powers expressly granted; and
 - (3) powers indispensable to the declared purposes of the unit;
 is abrogated.
 - (b) A unit has:
 - (1) all powers granted it by statute; and
 - (2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.
 - (c) The powers that units have under subsection (b)(1) are listed in various statutes. However, these statutes do not list the powers that units have under subsection (b)(2); therefore, the omission of a power from such a list does not imply that units lack that power."

IC 13-18-4, Environment. Water Pollution Control. Restrictions on Pollution of Water. Important sections include:

- **IC 13-18-4-1**, "Water qualities and properties indicating pollution:

The board may adopt rules under IC 4-22-2 to determine what qualities and properties of water indicate a polluted condition of the water in any of the streams or waters of Indiana:

 - (1) that is deleterious to:
 - (A) the public health; or

(B) the prosecution of any industry or lawful occupation for which or in which any waters may be lawfully used or employed; ...”

- **IC 13-18-4-3**, “Rules restricting polluting content discharged into streams: The board may adopt rules restricting the polluting content of any waste material and polluting substances discharged or sought to be discharged into any of the streams or waters of Indiana.”

[See related Indiana Administrative Code 327 IAC 5, Water Pollution Control Board, Industrial Wastewater Pretreatment Programs (NPDES)]

- **IC 13-18-4-5**, “Unlawful discharge of deleterious substances:
A person may not:
(1) throw, run, drain, or otherwise dispose into any of the streams or waters of Indiana; or
(2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters;
any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under sections 1 and 3 of this chapter.”

Indiana Administrative Code

410 IAC 6-8.1, Residential Sewage Disposal Systems. Important sections include:

- **410 IAC 6-8.1-31**, “General sewage disposal requirements:
(a) *No person shall throw, run, drain, seep, or otherwise dispose into any of the surface waters or ground waters of this state, or cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into such waters, any organic or inorganic matter from a dwelling or residential sewage disposal system that would cause or contribute to a health hazard or water pollution.*
(b) *The design, construction, installation, location, maintenance, and operation of residential sewage disposal systems shall comply with the provisions of this rule.*
(c) *All residential sewage disposal systems utilizing sanitary privies shall conform to Indiana state board of health bulletin SE 11, “The Sanitary Vault Privy,” 1986 Edition.*
(d) *Any dwelling which is not connected, or cannot be connected, to a sanitary sewerage system and which does not utilize a sanitary privy for its residential sewage disposal system shall be provided with a residential sewage disposal system which includes a septic tank and a soil absorption system that has not failed.*
(e) *A temporary sewage holding tank is an alternative method of sewage disposal subject to the written approval of the commissioner required in subsection (f). A temporary sewage holding tank shall not be used as a primary means of residential sewage disposal except where necessary to prevent continued discharge of wastewater from a failed existing system. A temporary sewage holding tank may be used as follows:
(1) *As a temporary storage facility for no more than one (1) year where occupancy of the home must continue while the system is being renovated.*
(2) *Where such facility is owned and operated temporarily by a conservancy district, sewer district, private utility, or municipality as a part of its sewage disposal plan or for no more than one (1) year while connection to sanitary sewer is being secured.**
(f) *If any conditions preclude the installation of a residential sewage disposal system as described in this rule, the local board of health may not approve the use of any other*

alternative residential sewage disposal system without the express written approval of the commissioner. ..."

- **410 IAC 6-8.1-32**, "System failure correction:
Should a residential sewage disposal system fail, the failure shall be corrected by the owner within the time limit set by the health officer."
- **410 IAC 6-8.1-33**, "Written permit:
(a) *The owner or agent of the owner shall obtain a written permit, signed by the health officer, for construction of a residential sewage disposal system prior to:*
 - (1) *Construction of a residence or placement of a mobile home which will not be connected to a sanitary sewerage system.*
 - (2) *Any replacement, reconstruction of, expansion or remodeling of a residence which may increase the number of bedrooms.*
 - (3) *Any addition to, alteration of, or repair of an existing residential sewage disposal system.*

The application for such a permit shall be made on a form approved by the commissioner, which application shall contain information outlined in section 48 of this rule, the profile analysis of all the soils in which the system is to be constructed, and any other information deemed necessary by the health officer. Other than the approval referenced in subsection (c), the approval of a site by the local plan commission or the county recorder does not constitute approval by the local health officer. The provisions of this rule relating to system design and installation shall not apply where alterations become necessary due to system defect, failure, or malfunction. Such alterations shall be made in accordance with the best judgment of the local board of health except that such alterations shall not be contrary to section 31(a) of this rule, and no portion of a soil absorption system shall be constructed to a depth greater than forty-eight (48) inches below the ground surface.
- (b) *If it is determined that the proposed system design does not meet the minimum requirements of this rule, the permit shall be denied and the owner shall be notified in writing of the basis for the denial. The notification shall also state that the owner has the right to appeal the denial and shall state the procedure for registering any such appeal. ..."*
- **410 IAC 6-8.1-34**, "Violation:
(a) *Any person found to be violating this rule may be served by the health officer with a written order stating the nature of the violation and providing a time limit for satisfactory correction thereof.*
- (b) *After receiving an order in writing from the local board of health or the health officer, the owner of the property shall comply with the provisions of this rule as set forth in said order and within the time limit specified therein. Said order shall be served on the owner or the agent of the owner, but may be served on any person who, by contract with the owner, has assumed the duty of complying with the provisions of an order."*
- **410 IAC 6-8.1-35**, "Revocation of permit:
(a) *If an applicant is refused a permit, the local board of health shall, upon request, afford the applicants the opportunity for a fair hearing. The parties involved may agree to use the procedures set forth in IC 4-21.5, the Administrative Procedure and Orders Act.*
- (b) *The local board of health may revoke a permit which had been issued for construction of a residential sewage disposal system if it finds that the owner of the permit has failed to comply with this rule. Upon such notice the local board shall, upon request, afford the applicant the opportunity for a fair hearing. The parties involved may agree to use the procedures set forth in IC 4-21.5, the Administrative Procedure and Orders Act."*

- **410 IAC 6-8.1-48**, "On-site evaluation:
 - (a) Before issuance of any permit for construction of a residential sewage disposal system or the alteration of a soil absorption field, an on-site evaluation, which shall include an evaluation of the soil profile, shall be conducted. System feasibility, location, selection, and design shall be based on the site evaluation and information obtained from the soil profile. The site and soil information needed is outlined and further defined in subsection (e). Properties of the soil at each site shall be determined using the guidelines set forth in the soil manuals, technical bulletins, and handbooks of the SCS. The local health department may, when necessary, provide or require to be provided, a direct soil profile observation by a soil scientist, using the guidelines set forth in the soil manuals, technical bulletins, and handbooks of the SCS.
 - (b) When direct soils profile observations are made, soil profile information shall be recorded to a depth of five (5) feet or until a layer is encountered which cannot be readily penetrated, whichever is shallower.
 - (c) The on-site evaluation shall be conducted before construction begins. No construction on the residential sewage disposal system may take place if the residential sewage disposal system site is disturbed or altered after the on-site evaluation by the addition of fill material, (other than construction necessary for the residential sewage disposal system) or by cutting, scraping, compaction, or the removal of soil, until a new evaluation has been conducted and a modified permit has been issued.
 - (d) When any site limitations and soil information for the site has been thusly determined, the owner is responsible for designing a residential sewage disposal system which addresses the demands of the site in accordance with this rule, and which will meet local health department approval.
 - (e) The information needed to evaluate a site includes the following:
 - (1) Topographic information including the following:
 - (A) Slope and slope aspect.
 - (B) Surface drainage characteristics and patterns including swales, ditches, and streams.
 - (C) Proposed or existing location of house and well.
 - (D) Location of other major features or structures.
 - (E) Location of soil evaluation sites and appropriate soil type boundaries.
 - (F) Topographic position of the site.
 - (2) Soil characteristics as follows:
 - (A) Approximate depths of soil horizons.
 - (B) Soil color, structure, and texture at each horizon.
 - (C) Depth to any layer which has a loading rate greater than seventy-five hundredths (0.75) gallons per day per square foot.
 - (D) Depth to seasonal high ground water as indicated by soil wetness characteristics.
 - (E) Depth to bedrock.
 - (F) Soil consistence at each horizon.
 - (G) Soil effervescence at each horizon.
 - (H) Presence or absence of roots.
 - (f) Soil absorption systems shall not be constructed in areas where surface drainage or run-off will have an adverse effect on the system, unless the surface run-off can be effectively diverted around the system.
 - (g) Soil absorption systems shall not be constructed below the floodway elevation of any flood having a peak discharge equaled or exceeded on the average of once in any one hundred (100) year period.
 - (h) Soil absorption systems shall not be constructed in areas subject to ponding."

327 IAC 5-1, Industrial Wastewater Pretreatment Programs. Important sections include:

- **327 IAC 5-1-1.5**, *“Prohibitions: The point source discharge of sewage treated or untreated, from a dwelling or its associated residential sewage disposal system, to the waters of the state is prohibited.”*
- **327 IAC 5-1.5-11**, *“Discharge of a pollutant’ means any addition of any pollutant, or combination of pollutants, into any waters of the state from a point source in Indiana. The term includes, without limitation, additions of pollutants into waters of the state from the following:
(1) Surface run-off collected or channeled by man.
(2) Discharges through pipes, sewers, or other conveyances that do not lead to treatment works.”*

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