

COPY

97-6-372

ORDINANCE NO. 97-11

WHITLEY COUNTY ORDINANCE OF PRIVATE WATER WELLS

WHEREAS, in order to protect the health and welfare of the citizens of Whitley County, the Whitley County Board of Health has found it necessary to enact an Ordinance establishing specific rules and regulations for private water wells in Whitley County, Indiana, and  
WHEREAS, pursuant to I.C. 16-1-4, the Board of Health is authorized to enforce the health laws, ordinances, orders, rules, and regulations of their own and superior boards of health.  
NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Whitley County, Indiana, that the Private Water Well Ordinance for the County of Whitley shall read as follows:

ARTICLE I

Section I. Title. This Ordinance may be referred to as "Whitley County Ordinance Of Private Water Wells".

Section II. Adoption of Regulations by Reference.

The regulations of the Indiana State Department of Natural Resources at 310 IAC 16-1-1--16-12-5 et seq. entitled "Final Rules Concerning The Regulation Of Water Well Drilling", and IC 25-39-1.5--5 et seq. entitled "Water Well Drilling Contractors", as amended from time to time, and as promulgated by the Indiana Department of Natural Resources, are hereby incorporated and adopted by reference. One copy of these regulations shall be on file with the Whitley County Health Department.

SECTION III. Definitions: The following terms and phrases shall be defined as following for the purposes of this Ordinance:

"Abandon" means to terminate operations of a well for water supply, monitoring, dewatering, or geothermal purposes and to restore the site of the well in a manner that will protect ground water resources from contamination.

"Abandoned well" means a well, (1) whose original purpose and use have been discontinued for more than five (5) years, or (2) that is in such a state of disrepair that using it to obtain ground water is impractical or a health hazard.

"Annular Space" means the space between the exterior of the well casing and the natural formation in a drilled well.

"Aquifer" means any underground geologic formation (consolidated or unconsolidated) that has the ability to receive, store, and transmit water in amounts sufficient of the satisfaction of any beneficial use.

"Bentonite" means clay material composed predominantly of sodium montmorillonite which meets American Petroleum Institute specifications standard 13-A (1985).

"Bentonite slurry" means a mixture, made according to manufacturer specifications, of water and commercial grouting or plugging bentonite which contains high concentrations of solids. The term does not include solid concentration or which are designed for drilling fluid purposes.

"Bridge" means a barrier created by any unwanted object or material which prevents the introduction of grouting materials in the borehole or well.

"Casing" means a pipe installed to prevent unwanted solids, liquids, or gases from entering the interior of a well.

"Coarse grade crushed bentonite" means natural bentonite crushed to an average size range of three-eighths (3/8) to three-fourths (3/4) inches.

"Commission" refers to the Natural Resources commission established under IC 14-3-3-3.

"Contamination" means the degradation of natural water quality as a result of human activities.

"County" means those unincorporated areas which are under the jurisdiction of the Whitley County Health Officer and not incorporated cities or towns, except as provided for under authority of Indiana Code 16-1.

"Dewatering well" means a temporary well that: (1) is used as part of a construction project to remove water from a surface or subsurface area; and (2) ceases to be used upon completion of the construction project or shortly after completion of the project.

"Disinfection" means the process of destroying pathogenic microorganisms such as coliform bacteria.

"Division" means the division of water of the Department of Natural Resources.

"Groundwater" means water beneath the earth's surface between saturated soil and rock that supplies wells and springs.

"Grout pipe" means a length of hose or pipe positioned in the annular space of a well, between the well casing and the borehole, used for the introduction of grouting materials.

"Health Officer" means the Whitley County Health Officer or a duly authorized representative.

"Medium grade crushed bentonite" means natural bentonite crushed to an average size range of one-fourth (1/4) to three-eighths (3/8) inch.

"Monitoring well" means a well installed to obtain hydrogeological information or to monitor the quality or quantity of ground water.

"Neat Cement" means a mixture of ninety-four (94) pounds of cement and no more than six (6) gallons of clean water. Additives designed to increase fluidity may not exceed five percent (5%) of the total mixture.

"Person" means an individual, firm, corporation, partnership, or association.

"Private Water Wells" means any water well, including those serving geothermal heat pump systems, constructed to provide water to one and/or two family dwellings totally or in part. Also to encompass any water well used for agricultural purposes. Among those wells specifically excluded from this definition are those which serve commercial or public needs. Also excluded from this definition are all wells constructed, installed, maintained, operated, and owned by a municipality or a taxing district established for the purpose of providing water.

## ARTICLE II

### Private Water Wells

Section I. No person shall place, install, or permit the installation of a private water well in an unsanitary or unsafe manner within the County.

Section II. No private water well shall be installed which does not conform to any ruling of the Health Officer issued under this Ordinance.

Section III. If any defect exists or occurs in any private water well which could cause that private water well to contaminate an existing aquifer or the groundwater, the owner or occupant shall correct the violation immediately.

Section IV. If the owner or occupant of any property, or his or her agent, receives a written order from the Whitley County Board of Health or Health Officer, he or she shall comply with the provisions of the order and perform all acts required by the order within the time limit set forth in that order. The order shall be served on the owner or occupant of the property or his or her agent, or by United States Certified Mail, but may be served on any person who, by contract with the owner, has assumed the duty of complying with the provisions of this Ordinance and any order issued under this Ordinance.

### ARTICLE III

#### Construction, Placement, Permits and Inspections

Section I. Private water wells shall be located in accordance with the distances shown in Table I below:

Table I. Minimal Horizontal Separation Distances from private water wells:

Lake, pond, river, stream, or public ditches.	25 feet
Dwelling or other inhabiting structure.	10 feet
Side, rear, or front lot lines.	5 feet
Private Sewage Disposal Systems.	50 feet
Commercial Sewage Disposal Systems.	100 feet
Private Sewage Disposal Systems. (in soils where aquifers are in danger of contamination)	100 feet
Underground storage tanks for fuel or chemicals.	50 feet
Permanently fixed above-ground storage tanks for fuel or chemicals. (300 gallons or more)	50 feet
Permanently fixed above-ground storage tanks for fuel or chemicals. (0-299 gallons)	25 feet
Earthen Agricultural Waste Pits	200 feet
Concrete Agricultural Waste Pits	50 feet
Sanitary Sewage Lines (water main grade pipe and fittings)	10 feet (horizontal) 18 inch (vertical)
Sanitary Sewage Lagoons	300 feet

Landfills (presently or previously  
licensed or permitted by the State  
of Indiana)

600 feet

Section II. Private water well casings shall be a minimum of two (2) inches in diameter.

Section III. Private water wells shall not be placed in below grade well pits.

Section IV. The cap of the private water well shall be visible and securely attached at a height above the surface of the ground, no greater than two (2) feet and no less than one (1) foot. Minimum well depth shall be thirty (30) feet or more if necessary to enter a satisfactory aquifer. Single suction lines must be fifty (50) from the septic tanks and sewage absorption systems. Unless the suction lines are made of water main grade pipe with water main grade fittings.

Section V. No annular space may exist. Materials and design for sealing must conform to the standards of the Indiana Department of Natural Resources.

Section VI. Pitless adapters shall be required on each new private water well as in accordance with the requirements of the Indiana Department of Natural Resources.

Section VII. All new water wells shall be properly disinfected at the time of installation.

Section VIII. The owner of any building or private residence where a private water well is to be installed, or replacement of an existing private water well is planned, shall obtain a written permit signed by the Whitley County Health Officer before any construction begins. The owner shall apply for a permit on a form provided by the County. The applicant shall supplement the application with plans, specifications and other information deemed necessary by the Whitley County Health Officer. The Health Officer shall then make a site review of the area proposed, in person, within two (2) working days of the filed application. The Health Officer will provide drawings of area(s) in which the private well may be placed, to the owner, and well driller. The applicant shall pay a permit and inspection fee of Ten Dollars (\$10.00), as established under Indiana Code 16-1-4-24, to the County Health Department at the time the application is filed. The fee shall be accounted for and paid into the County Health Department. The installation or repair of well lines, screens, pump, pressure tanks, etc. are exempted unless a new well is also installed.

Section IX. No permit for a private water well shall become effective until the installation is completed to the satisfaction of the Whitley County 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 Whitley County Health Department when the well construction is completed; during the day it was finished or the following weekday. The Whitley County Health Officer shall make the inspection within two (2) working days of the receipt of notice from the applicant.

Section X. The Whitley County Health Officer shall upon the request of the applicant sample and test the new private water well for total coliform, nitrate/nitrogen, and any other substances as deemed necessary by the Whitley County Health Officer. The applicant may employ private laboratory personnel, from Indiana state certified labs, to conduct the required test under the direction of the Whitley County Health Officer. The Whitley County Health Officer may, in any event, conduct tests deemed necessary by the Whitley County Health Officer. All final sample results must be within acceptable primary standards as established by the United States Environmental Protection Agency for Public Drinking Water Sources. All fees and charges for water testing shall be the responsibility of the individual property owner.

Section XI. All water tests shall be ran according to the most recent Standard Methods for the Examination of Water and Wastewater. These test results will be provided in writing to the Whitley County Health Department within forty-five (45) days from the date of well completion. The failure of of a private water well to meet any of these primary water quality standards will constitute grounds for rejection of the private water well by the Whitley County Health Officer.

Section XII. The applicant will post the permit in a conspicuous place at or near the building where the private water well is under construction. The notice shall be plainly visible from the public thoroughfare nearest this building.

Section XIII. Subdivisions designed to utilize private water wells, the plans for which were duly recorded in the Office of the Whitley County Recorder prior to January 1, 1997, are exempt from the provisions of this Ordinance regarding location, and may be located in accordance with the best judgment of the Whitley County Health Officer.

Section XIV. The private water well permit is valid for a term of one (1) year from the date of issue, unless otherwise voided by the Whitley County Health Officer.

Section XV. In cases of extreme emergency and when the Whitley County Board of Health is not open for public business, a private water well may be installed without first obtaining a local permit provided that the property owner or his agent obtains a local private well permit within the next working day. The private water well must meet all other requirements of this ordinance.

Section XVI. No person shall install a private water well in Whitley County, without being licensed by the State of Indiana Department of Natural Resources; under authority of Indiana code, IC 25-39-3.

#### Article IV

##### Powers For Inspection

Section I. The Whitley County Health Officer will be permitted to enter upon all properties at any reasonable and proper time to inspect, observe, measure, sample, and test to carry out the provisions of this Ordinance. The Whitley County Health Officer shall, upon request, produce and display proper credentials and identification.

#### Article V

##### Notices

Section I. The Whitley County Health Officer will serve any person found to be violation any provision of this Ordinance with a written order stating the nature of the violation and providing a time limit for its satisfactory correction.

## Article VI

### Penalties

Section I. Any person who violates any provision of this ordinance will 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 violation and not more than One Thousand dollars (\$1000.00) for the second and each subsequent violation. Each day a violation continues after the expiration of the time set forth in any order issued under this Ordinance for abating unsafe conditions and completing improvements as ordered by the Whitley County Health Officer constitutes a separate violation.

Any person violating any provision of this Ordinance will be liable to the County for any expense, including attorney fees, loss or damage suffered by the County due to that violation. Nothing in this Ordinance shall be deemed or construed to bar, abridge or limit in any way, any existing legal or equitable remedies for the abatement of a private or public nuisance.

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 Whitley County Prosecutor and/or the Whitley County Attorney for appropriate action against the offending person, including prosecution and enforcement action, for violation of the provisions of this Ordinance.

## Article VII

### Hearings

Section I. Any person affected by an order or notice in connection with the enforcement of any provision or Ordinance may request and shall be granted a hearing on the matter before the Whitley County Board of Health provided that the person files a written Request for Hearing with the Health Officer within ten (10) days. Written requests for hearing shall clearly state the following:

- a. The Name and Address of the person affected;
- b. The Provisions of the Ordinance in question;
- c. The reasons for requesting a hearing;
- d. The request relief; and
- e. The basis for the requested relief.

Section II. A hearing requested pursuant to this section shall be conducted within thirty (30) days of the Health Officer's receipt of the request. The hearing shall be conducted by the Whitley 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 certified United States 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.

Section III. 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 Whitley 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 after the hearing.

Section IV. The Whitley County Board of Health may in its discretion establish a Hearing Board to conduct private water well 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 general public, appointed by the Whitley County Board of Health, to serve at its pleasure, and one private well driller, registered with the state, appointed by Whitley County Board of Health to serve at its pleasure. In the event that a Hearing Board is established, the procedures indicated above in Sections I, II, and III 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 Whitley County Board of Health for a further hearing on the matter in accordance with and to be conducted under the provisions of the Sections I, II, and III above. In such an event, the Whitley County Board of Health may affirm, reverse, or modify the decision of the Hearing Board.

Section V. 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 Whitley County Prosecutor and/or the Whitley County Attorney in accordance with Article VI, Section I, the hearing provisions contained within Article VII, Sections I, II, III, and IV shall not apply and shall not be available to the affected person.

#### Article VIII

##### Well Abandonment

Section I. (a) A well abandoned before January 1, 1988, must be sealed at or above the ground surface by a welded, threaded, or mechanically attached watertight cap. The well shall be maintained so the well does not become a source or channel of ground water contamination. A well which poses a hazard to human health must also be plugged under subsection (c). A cased or uncased bucket well or a hand dug well (other than buried slab construction) that was abandoned before January 1, 1988, shall be closed in conformance with one (1) of the following procedures:

- (1) Covered with a reinforced concrete slab at least four (4) inches thick and having a diameter larger than the nominal diameter of the borehole or the well casing.
- (2) Equipped with a properly reinforced cover constructed of pressure treated lumber, using chromium copper arsenic (CCA) salt, that has dimensions larger than the nominal diameter of the borehole or well casing. The cover shall be protected against the water with roofing or other water repelling materials that are properly maintained to ensure the integrity of the cover. Closure shall not be performed under this subdivision, however, if the cover is in direct contact with ground water or surface water.
- (3) Closed as otherwise approved by the division.

(b) A well drilled before January 1, 1988, and properly abandoned before January 1, 1994, shall be sealed at or above ground surface by a welded, threaded, or mechanically attached watertight cap. This sealing of the well shall be the responsibility of the property owner. The well shall be maintained so the well does not become a source or channel of ground water contamination. A well which poses a hazard to human health must also be plugged under subsection (c).

(c) A well abandoned after December 31, 1987, shall be plugged with an impervious grouting material to prevent the migration of materials or fluids in the well and the loss of pressure in a confined aquifer, by a registered and licensed well driller.

(d) A well drilled after December 31, 1987, and not equipped with casing must be plugged within seventy-two (72) hours after completion.

(e) This subsection applies as follows to a cased or uncased well abandoned after December 31, 1987: (1) The plugging material must consist of one (1) or a combination of the following:

- (A) Neat cement with not more than five percent (5%) by weight of bentonite additive.
- (B) Bentonite slurry (which can include polymers designed to retard swelling).
- (C) Pelletized, medium-grade, or coarse-grade crushed bentonite.
- (D) Other materials approved by the commission.

(2) The following methods apply: (A) Cement and bentonite slurries shall be pumped into place in a continuous operation with a grout pipe introducing the plugging material at the bottom of the well and moving the pipe progressively upward as the well is filled.

(B) Plugging materials other than neat cement or bentonite slurry shall be installed in a manner to prevent bridging of the well or borehole. The well or borehole shall be measured periodically throughout the plugging process to ensure that bridging does not occur.

(3) The following procedures apply: (A) An abandoned well shall be disconnected from the water system. Any substance which may interfere with plugging shall be removed, if practicable.

(B) A well (other than a monitoring well, a dewatering well, or an uncased borehole) shall be chlorinated before abandonment as provided in 310 IAC 16-9-1.

(4) A cased well shall be plugged as follows: (A) With neat cement, bentonite slurry, or medium-grade or coarse-grade crushed or pelletized bentonite from the bottom of the well to within two feet (2) below the ground surface, unless otherwise provided by the department.

(B) The well casing shall be severed at least two (2) feet below the ground surface and a cement plug larger in diameter than the borehole shall be constructed over the borehole and covered with natural clay material to the ground surface.

(5) An uncased well (other than a borehole drilled by a bucket rig or a dewatering well governed by subdivision (8) or (9)), shall be filled with natural clay materials, neat cement, bentonite slurry, or medium-grade or coarse-grade or pelletized bentonite from the bottom of the borehole to a depth of no less than twenty-five (25) feet below ground surface. The borehole shall be filled with neat cement, or medium-grade or coarse-grade crushed or pelletized bentonite from a depth no less than twenty-five (25) feet below ground surface to within two (2) feet below ground surface. The remaining borehole shall be filled with natural clay material to ground surface.

(6) A cased or uncased monitoring well shall be plugged from the bottom of the well or borehole to the ground surface with a bentonite slurry or pelletized or coarse-grade crushed bentonite.

(7) A bucket well shall be plugged as follows: (A) a bucket well installed as buried slab construction shall be filled with gravel from the bottom of the well to within ten (10) feet below the ground surface. Neat cement, bentonite slurry, or pelletized, medium-grade, or coarse-grade crushed bentonite shall be installed in the casing or well pipe from no less than ten (10) feet below the ground surface to within two (2) feet below the ground surface. The well pipe shall be severed at least two (2) feet below the ground surface and covered with a cement plug larger in diameter than the well pipe. The remaining hole shall be filled with natural clay material to the ground surface.



(B) Bucket well construction using casing with an inside diameter of less than twelve (12) inches extending the entire length of the borehole and equipped with a well screen shall be abandoned under subdivision (4)(A).

(C) An uncased borehole drilled by a bucket rig shall be filled with natural clay material from the bottom of the hole to the ground surface. The clay material shall be thoroughly tamped to minimized settling.

(D) For other than buried slab construction, a bucket well shall be filled with gravel from the bottom of the well to at least five (5) feet below ground surface. The top section of the concrete or tile well casing shall be removed to cause the top of the well to terminate below ground surface. The top section of the concrete or tile well casing shall be removed to cause the top of the well to terminate below ground surface. The well shall be filled with at least one (1) foot or neat cement, bentonite slurry, or pelletized, medium-grade, or coarse-grade crushed bentonite from at least five (5) feet below ground surface to the top of the well casing. The well casing shall be covered with a cement plug larger in diameter than the borehole. The remaining borehole shall be filled with natural clay material to ground surface.

(8) If a dewatering well casing is removed following use, the remaining borehole shall initially be filled with granular, pelletized, medium-grade, or coarse-grade crushed bentonite a minimum of one (1) foot thick. The remainder of the borehole shall be filled with natural earth materials obtained during the drilling process to the ground surface and be thoroughly tamped to minimize settling.

(9) If a dewatering well casing is removed following use and the well site will be excavated as part of the construction project, the remaining borehole shall be filled with natural earth materials obtained during the drilling process to the ground surface and be thoroughly tamped to minimize settling.

(f) The division shall be notified in writing of a well abandonment within thirty (30) days after plugging is completed.

## Article IX

### Construction

**Section I.** In the event that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to conflict with any provision of Indiana Department of Natural Resources Code, Title 310, and Indiana Code 25-39-1.5; then and in any such event the more strict provision shall govern.

**Section II.** 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.

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

Section IV. 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 water wells.

Article X

Authority of Health Officer

Section I. It is hereby acknowledged, understood, and declared by the Board of Commissioners of the County of Whitley, 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 Whitley, Indiana, in regulation of private water wells. 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, or similar authorization under this Ordinance is hereby declared to be discretionary.

Article XI

Disclaimer

Section I. Because of many interrelating factors contributing in the failure of a private water well, acceptance of a private water well does not imply approval, and it cannot be considered as a guarantee by the Board of Health of successful potability or operation. The Whitley County Health Officer's signature merely signifies that as of the date of signing the private water well meets the Whitley County Board of Health's minimum standards. The Whitley County Health Officer's signature makes no other representation.

Article XII

Effective Date and Repeal

Section I. This Ordinance shall take effect on the first (1st) day of ~~August~~ 1997. All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed. Approved by the Board of Commissioners of the County of Whitley.

*James Augerbright*  
*James Pettigrew*  
*Joe Redman*

WHITLEY COUNTY BOARD OF COMMISSIONERS

DATE: June 16, 1997

Attest: *Bette J. Grube*  
Bette J. Grube, Whitley County Auditor

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