

ORDINANCE NO. 1264A

LAKE COUNTY ENVIRONMENTAL PROTECTION ORDINANCE

WHEREAS, pursuant to I.C. 36-2-3.5-5, the County Council shall adopt ordinances to promote efficient County Government; and

WHEREAS, the Lake County Council desires to adopt a Lake County Environmental Protection Ordinance.

NOW, THEREFORE, LET IT BE ORDAINED AS FOLLOWS:

I. PURPOSE AND INTENT.

(A) This chapter shall be known and may be cited as the "Lake County Environmental Protection Ordinance".

(B) It is hereby declared to be the purpose of this chapter to protect public safety, health and welfare and enhance the environment for the people of the County by providing for the investigation and remediation of Hazardous Substances.

(C) The provisions of this chapter are not intended and shall not be construed as superseding or conflicting with any statutory provisions relating to, or rules and regulations promulgated by, United State Environmental Protection Agency or the Indiana Department of Environmental Management, but shall be construed as supplementing, implementing and assisting in the enforcement of federal and state laws concerning Hazardous Substances. Should any of the provisions of this chapter be determined to be inconsistent with federal or state law the remainder of this ordinance shall remain in effect and be interpreted ignoring such provision.

(D) This chapter shall not be construed to limit the authority of any municipality to adopt more stringent standards. The purpose of this chapter is solely to establish minimum standards protective of human health and the environment.

II. DEFINITIONS.

As used in this chapter, the following terms shall be defined as follows:

(A) "Abatement Costs" mean all necessary and reasonable costs required to abate any discharge of hazardous substances.

(B) "Abate" means to reduce the presence of uncontrolled hazardous materials in the environment to a level that adequately reduces the risk of human health and the environment consistent with the future proposed use of the property.

(C) "Covered Person" means:

(1) Those persons described in the Comprehensive Environmental Response, Compensation and Liability Act, Section 107(a), 42 U.S.C. Sec. 9607(a); and

(2) All tenants or other persons in control of any real property within the County where hazardous substances exist.

(D) "Discharge" means any intentional or accidental action or omission which in the releasing, spilling, pumping, pouring, emitting, emptying, or dumping of any hazardous substance upon public or private property located within the limits of the County.

(E) "Environmental Public Nuisance" means:

(1) Any property where hazardous substances are present, unless the presence of hazardous substances is specifically authorized under state or federal laws or regulations governing hazardous substances; or,

(2) Property which has otherwise been allowed to become a health or safety hazard.

(F) "Local Government" means the County or any municipality within the County seeking to enforce this chapter.

(G) "Local Government Designee" means:

(1) The department, official or component designated by any local government within the County to enforce this chapter;

(2) The designee for the County shall be the Lake County Sheriff's Police.

(3) The designee for any municipality within the County shall be the Lake County Sheriff's Police, unless notice of an alternate designation is given to the Lake County Sheriff's Police by the executive of the municipality.

(H) "Hazardous Substance" means "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, Section 101(14), 42 U.S.C. Sec. 9601(14) and "hazardous waste" as defined in the Solid Waste Disposal Act, Section 3001 (42 U.S.C. Sec. 6921) and "hazardous material" as defined in Title 13 Section 13-11-2-96 of the Indiana Code and "hazardous waste" as defined in Title 13 Section 13-11-2-99 of the Indiana Code.

(I) "Notice of Violation" means a Notice of Violation pursuant to Section 101.60 of

this chapter.

(J) "Persons" means one or more individuals, partnerships, corporations, trusts, joint ventures, association or any other entities or any combination thereof.

III. ENVIRONMENTAL PUBLIC NUISANCES PROHIBITED.

(A) All covered persons shall be required to keep the real property in the County free from environmental nuisances.

(B) It shall be unlawful for any covered person to allow an environmental public nuisance to exist.

IV. VIOLATIONS OF RULES AND REGULATIONS OF THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

(A) The regulations of the United States Environmental Protection Agency as set forth in 40 C.F.R. 403 on the effective date of this Ordinance are hereby adopted and are incorporated herein by reference hereto.

(B) All rules and regulations promulgated by the Indiana Department of Environmental Management are hereby adopted and are made a part of this chapter by reference.

(C) Any person who commits a violation of any rules and regulations adopted pursuant to this section shall be deemed guilty of committing a violation of this chapter.

(D) Violations of such rules and regulations shall constitute violations of this chapter triable in the court of appropriate jurisdiction.

(E) Nothing in this section shall be construed to prohibit the Local Government or any from enacting ordinances stricter than the rules and regulations incorporated herein or to invalidate or supersede ordinances heretofore enacted by the Local Government which are stricter than the rules and regulations incorporated in this section.

V. INVESTIGATION.

(A) Whenever a Local Government Designee has reason to believe that a Discharge of a Hazardous substance has occurred or is about to occur, the Local Government Designee may undertake such investigation, monitoring, surveying, testing, and other information gathering as the Local Government Designee may deem necessary or appropriate to identify the existence and extent of a Discharge or the threat of a Discharge, the source and nature of any Hazardous Substances involved and the extent of danger to the public health or welfare or to the environment.

(B) The local Government Designee may require any person who has or may have

information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

- (1) The identification, nature and quantity of materials which have been or are manufactured, generated, treated, stored, or disposed of at the property;
- (2) The nature or extent of a release or threatened release of a Hazardous Substance or pollutant or contaminant at or on the property; and
- (3) Information relating to the ability of a person to pay for or to perform a cleanup.

(c) In addition, upon reasonable notice, such person shall either:

- (1) Grant the Local Government Designee access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters; or,
- (2) Copy and furnish to the Local Government Designee all such documents or records, at the option and expense of such person. However, nothing in this section shall be interpreted to waive the Local Government Designee's ability to inspect original documents.

(D) The Local Government Designee is authorized to enter at reasonable times any of the following:

- (1) Any vessel, facility, establishment, or other place or property where any Hazardous Substance may be or has been discharged;
- (2) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance has been or may have been discharged;
- (3) Any vessel, facility, establishment, or other place or property where such discharge is or may be threatened; or
- (4) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate abatement under this chapter.

(E) The Local Government Designee is authorized to inspect and obtain samples from

any vessel, facility, establishment, or other place or property referred to in section 101.40(D) or from any location of any suspected hazardous substance. Each such inspection shall be completed with reasonable promptness.

(F) The Local Government Designee is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances. If the Local Government Designee obtains any samples, before leaving the premises the Local Government Designee shall give to the covered person of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the covered person in control, if such person can be located.

(G) Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance, the Local Government Designee may seek compliance in court as follows:

- (1) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection, unless under the circumstances of the case, the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- (2) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with requests or orders to provide such information or documents unless, under the circumstances of the case, the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

VI. TRADE SECRETS; PUBLIC INFORMATION.

(A) Any trade secret reported to or otherwise obtained by the Local Government or a Local Government Designee in connection with an investigation conducted pursuant to this chapter shall be considered confidential.

(B) Sampling results and other environmental data regarding the conditions of soil or groundwater at a property are not trade secrets under this section and shall be available to the public at the discretion of the Local Government Designee.

VII. NOTICE OF VIOLATION.

(A) Any department of a Local Government which receives a complaint regarding an environmental public nuisance on any property within the County shall forward that complaint to the local Government Designee, who shall make a record of, and assign a case number to,

such complaint. The Local Government Designee shall inspect the property in question.

(B) If the Local Government Designee determines action is appropriate and necessary to abate an Environmental Public Nuisance, a Notice of Violation shall be issued to one or more of the covered persons, unless there is an imminent threat to public health or the environment. If there is an imminent threat to public health or the environment, then no notice is required.

(C) Notice of violation shall be issued either by personal service or by first class United States mail, postage prepaid. Such notice of violation shall state the nature of the alleged environmental public nuisance and the action deemed necessary to correct the condition, and shall fix a date not sooner than ten days from the date of the notice of violation when the property will be re-inspected. The notice of violation shall inform the recipient that, if the condition is not corrected upon re-inspection, the Local Government has the right to:

- (1) Enter on the property to abate the Environmental Public Nuisance and bill the recipient for abatement costs and, if necessary, assert a lien against the subject property;
- (2) File a court action against the recipient for ordinance violation; or,
- (3) File a court action against the recipient to enjoin the Environmental Public Nuisance.

(D) A notice to the occupant at the real estate or to any covered person at the address to which property tax statements are sent, as these addresses are shown by the most current records in the township assessor's office of the township in which the real estate is located, shall be sufficient notice under this section.

VIII. CONSENT AGREEMENTS.

(A) The Local Government or the Local Government Designee, may, in their discretion:

- (1) Terminate an investigation or an action commenced under the provisions of this chapter upon execution of a written consent agreement between the local Government Designee, and the persons who are the subjects of the investigation or action; or,
- (2) Hold in abeyance pending performance of voluntary compliance activities an investigation or an action commenced under the provisions of this chapter upon execution of a written consent agreement between the Local Government Designee, and the persons who are the subjects of the investigation or action.

(B) The consent agreement shall provide written assurance of voluntary compliance

with all the applicable provisions of this chapter by said persons.

(C) The consent agreement may provide, in the discretion of the Local Government Designee, the following: environmental mitigation; compensatory damages; punitive damages; civil penalties; abatement costs of the Local Government and attorneys' fees and costs.

(D) The consent agreement may provide, in the discretion of the Local Government Designee, a release or covenant not to sue to any covered person.

(E) An executed written consent agreement shall neither be evidence of a prior violation of this chapter, nor shall such agreement be deemed to impose any limitation upon any investigation or action by the Local Government or the Local Government Designee, in the enforcement of this chapter.

(F) No consent agreement shall constitute a waiver of or limitation upon the enforcement of any federal or state laws.

(G) No consent agreement shall constitute waiver of or limitation upon the enforcement of any local laws and ordinances, unless expressly provided.

(H) Each violation of any of the terms and conditions of an executed written consent agreement shall constitute a separate offense under this chapter by any persons in active concert or participation with the person who executed the consent agreement, including but not limited to officers, directors, agents, servants and employees who receive actual notice of the consent agreement.

(I) Each day during any portion of which each such violation occurs constitutes a separate offense under this chapter.

IX. CLEAN-UP AND ABATEMENT.

(A) The Local Government is authorized to take such steps as are necessary to clean up, remove or abate the effects of any hazardous substances located on the property (including streets and appurtenances) or facilities located within the limits of the County.

(B) In complying with the provisions of this chapter, the Local Government Designee may retain the use of private contractors to assist it.

(C) The provisions of this chapter do not apply to hazardous substances on properties where any Local Government entity is a covered person.

(D) Any covered person shall be jointly and severally liable for the abatement costs for any discharge of hazardous substance.

(E) When responding to any discharge of any hazardous substance, the designee for the local government shall keep a detailed record of the abatement costs attributable to any

covered person.

X. COURT ACTION FOR FAILURE TO ADDRESS A NOTICE VIOLATION.

(A) If the Local Government Designee determines that the abatement has not occurred within ten days of the issuance of any Notice of Violation or within any period specifically provided in the Notice of Violation, the Local Government Designee may initiate a civil action or administrative action for ordinance violation against the recipient.

(B) Any court action may involve a complaint of ordinance violation, a request to enjoin any Environmental Public Nuisance or both.

XI. REIMBURSEMENT OF ABATEMENT COSTS-PENALTIES-OTHER REMEDIES.

(A) Each covered person shall reimburse the Local Government Designee for the full amount of all abatement costs within a period of ten days after receipt of an itemized bill for such abatement costs from the Local Government, plus any accrued interest. No further documentation is required.

(B) If any covered person fails to reimburse the Local Government Designee as required by Section XI.(A) of this chapter within 30 days, the Local Government Designee may certify to the County Auditor the amount of the bill, plus any additional administrative costs, incurred in the certification. The County Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected, except that payments from these efforts shall be made to the Local Government Designee.

(C) Any person who fails to comply with this chapter, shall be subject to:

- (1) Civil penalties up to the amount of \$10,000.00 per violation per day; and
- (2) A lien for abatement costs, civil penalties and other damages under this chapter upon the real property owned which is the subject of any Notice of Violation or any abatement efforts on the part of the Local Government or the Local Government Designee. The lien shall attach regardless of whether any covered person or otherwise liable for investigation or remediation of any hazardous substances release because a claim and lien is imposed pursuant to this section. This lien shall be superior to every other lien to the maximum extent allowed by federal and state law.
- (3) In assessing any civil penalty, the following factors should be considered: (a) the seriousness of the violation or violations; (b) the economic benefit (if any) resulting


from the violation or violations; (c) any history of such violations, and any good-faith efforts to comply with the applicable requirements; (d) the economic impact of the penalty on the violator; and, (e) such other matters as justice may require.



(D) Attorneys fees and costs. The Local Government shall be entitled to the reasonable attorneys fees an costs expended in obtaining amounts due the Local Government under this chapter.

(E) Funds recovered under this chapter will be charged back to the Local Government Department that provided services or materials. It is the intent of this chapter that amounts expended by any Local Government Department in performing activities authorized under this chapter shall be replenished in a prompt manner.


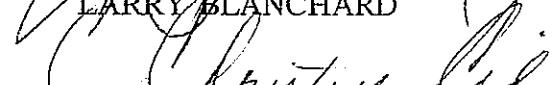
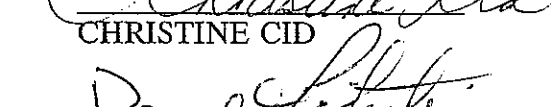
(F) The remedies provided for in this section shall be supplemental to and in addition to all other available remedies at law and equity.

SO ORDAINED THIS 13th DAY OF JUNE, 2005.


WILL A. SMITH, JR., President


RON TABACZYNSKI

THOMAS O'DONNELL

ELSIE FRANKLIN


LARRY BLANCHARD

CHRISTINE CID

DONALD POTREBIC

Members of the Lake County Council