

VIGO COUNTY CODE

Chapter 44

AIR QUALITY CONTROL ORDINANCE

3 - 44 - 1. Purpose. To regulate atmospheric emissions and control air quality within Vigo County, Indiana and to establish the Air Pollution Control Department within the Vigo County Government.

3 - 44 - 2. General Provisions.

A. This ordinance shall be known and cited as the "Air Quality Control Ordinance".

B. This ordinance is designed to control air pollution by:

1. Establishing the Air Pollution Control Department as an agency of Vigo County Government. The Department shall be headed by a director who is hired by the Vigo County Commissioners.
2. Providing for an Air Pollution Control Board.
3. Adopting by reference, Title 326 of the Indiana Administrative Code, which contains rules and regulations pertaining to air pollution control in the State of Indiana.

3 - 44 - 3. Definitions.

A. The following words and phrases, when used in this ordinance, shall, for the purpose of this ordinance, have the meanings respectively ascribed to them in this section, unless a different meaning is clearly indicated.

AIR CONTAMINANT. Particulate matter, dust, fumes, gas, mist, smoke or vapor, or any combination thereof, but excluding uncombined water.

AIR POLLUTION. The presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, or to property, or which unreasonably interfere with the enjoyment of life and property.

ATTORNEY. An attorney who is licensed to practice law in Indiana.

BOARD. The Air Pollution Control Board authorized by this ordinance.

CITY. City of Terre Haute, Indiana.

COMBUSTIBLE REFUSE. Any combustible waste material.

COUNTY. County of Vigo, Indiana.

COUNTY COMMISSIONER. County Commissioner of Vigo County.

DEPARTMENT. The Vigo County Air Pollution Control Department.

DIRECTOR. Director of the Vigo County Air Pollution Control Department, or the Director's authorized representative.

EMISSION. The act of passing into the atmosphere of an air contaminant, or the material so passed to the atmosphere.

ENGINEER. An individual qualified by graduation from a recognized university or college with a degree in Engineering, or a minimum of five (5) years experience in Air Pollution Control.

ODOR. The olfactory perception of any substance individually or in combination with other substances which interferes unreasonably with enjoyment of life or property.

OPEN BURNING. The combustion of any matter in the open or in an open dump, and (a) the products of combustion are emitted directly into open air without passing through a stack or chimney; or (b) combustion occurs in a device other than an approved incinerator or boiler.

PHYSICIAN. A person who has an unlimited license to practice medicine in Indiana.

RESIDENTIAL BURNING. The burning of material originating on the premises of single or two-family residences.

SALVAGE OPERATIONS. Any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

3 - 44 - 4. Administrative organization and Enforcement.

- A.** This ordinance shall be effective territorially throughout Vigo County, Indiana.
- B.** The administration and enforcement of this ordinance shall be conducted by the Air Pollution Control Department, in conjunction with local police and fire departments, as the situations warrant. Vigo County volunteer departments and/or the Vigo County Sheriff and/or the Terre Haute City Police may enforce the provisions of this ordinance which apply to private citizens.
- C.** The Director shall have a degree from an accredited college, in engineering, chemistry, business administration, or a closely related discipline. The Director shall be qualified by education and experience to cooperate with scientific, educational and civic organizations as well as government, industry, business and private citizens interested in air pollution control.
- D.** The Director shall perform such duties as may be required, relative to Air Pollution Control. The Director shall have control of all matters and things pertaining to the work of the Department, and shall supervise the execution of all laws, rules and regulations pertaining to air pollution. The Director shall be accountable to the Vigo County Commissioners.
- E.** The Air Pollution Engineer shall be an employee of the Department qualified by graduation from a recognized university or college with a degree in Engineering and with knowledge of the theory and practice of Air Pollution Control. In lieu of graduation, a minimum of five (5) years experience in Air Pollution Control may qualify as the same.
- F.** Air Pollution Inspectors shall be employees of the Department qualified by technical training in the theory and practice of the construction and operation of combustion and process equipment or in the theory and practice of air pollution control.
- G.** The duties of the Air Pollution Engineer and Air Pollution Inspectors shall be to carry out the directions of the Director in all matters relating to enforcement of this ordinance, and to aid and assist the Director in the efficient discharge of his duties. The Air Pollution Engineer and Air Pollution Inspectors may be authorized by the Director to act as his agents with regard to the issuance of warning notices and citations.

3 - 44 - 5. Powers and Duties of the Director.

- A.** Direct and administer the activities of the office and staff of the Air Pollution Control Department.
- B.** Receive and investigate complaints to determine their validity. Furnish person complained against with all details, observations, and nature of the complaint, except the identity of the complainants unless so ordered by a court of competent jurisdiction.
- C.** Make inspections and tests of existing and newly installed air pollution sources. Make inspections and observations of general air pollution conditions. Record such investigations, complaints, inspections and observations.
- D.** Administer the issuance of variances for open burning, warning notices, citations, and violation notices required under the provisions of this ordinance.
- E.** Prepare and place before the Air Pollution Control Board for their consideration, proposals for additions or revisions to this ordinance, or any other regulation pertaining to air pollution abatement.
- F.** Encourage voluntary cooperation by persons or affected groups in the preservation and restoration of the purity of the outdoor atmosphere, and grant a reasonable time to comply with the provisions of this ordinance.
- G.** Collect and disseminate information on air pollution control.
- H.** Work with planning and zoning agencies for the purpose of coordinating activities under provisions of this ordinance and foster the best possible management of the air resources.
- I.** Cooperate and work with Federal, interstate, state, county, district, municipal, and other agencies concerned with air pollution, with regard to aerometric studies, abatement programs, public complaints, and other matters to the end that the air resources of Vigo County shall be best conserved and improved.
- J.** Make annual application for Federal Grant Funds.

3 - 44 - 6. Air Pollution Control Board.

- A. An Air Pollution Control Board consisting of seven members shall be appointed as follows:
 - 1. The President of the Vigo County Board of Commissioners, The Vigo County Health Officer, and the Mayor of the City of Terre Haute shall serve as ex officio members of the board. An ex officio member of the board may designate in writing, a technical representative to serve as a voting member of the board when the ex officio member is unable to attend the board meeting. The remaining four (4) members shall be appointed by the Vigo County Commissioners, who shall appoint:
 - A. One (1) representative of business and industry;
 - B. One (1) representative of environmental interests;
 - C. One (1) representative of labor;
 - D. One (1) engineer
- B. The term of appointment of members shall be three years. Should any Board member fail to attend at least two (2) of the regularly scheduled meetings in any one year period without prior notice to the chairman, the Board may request to the proper appointing authority that a replacement be appointed to fulfill the remainder of the delinquent member's term.
- C. The Air Pollution Control Board shall elect its own Chairman and Vice Chairman to serve for one year. A quorum shall consist of a majority of the members of the Board. It shall meet at the call of the chairman, and all members shall serve without compensation. The Director shall serve as the secretary of the Board without vote or membership.
- D. The Board shall hold at least four meetings annually, and other meetings at such additional times as may be called by the chairman. The chairman shall call a special meeting upon the written request of at least three members of the Board, or upon the request of the Director of the Air Pollution Control Department, with the concurrence of the chairman. The Board shall keep minutes of its proceedings, which shall clearly show the official actions of the Board and the vote of any member.
- E. Powers and duties of the Board. The Board shall:
 - 1. Develop an effective and continuing program for the prevention, abatement, and control of air contaminants within Vigo County by:
 - a. Determining need for specific controls to achieve and maintain air quality objectives.
 - b. Propose to the Vigo County Commissioners, the establishment and/or the amendment of rules and regulations by setting standards based on the need, technical feasibility, and economic practicability.
 - 2. Institute investigations, consider complaints, listen to and decide on appeals, hold hearings, issue orders, and authorize and direct appropriate enforcement action, permitted by law and deemed necessary, to achieve compliance with the rules and regulations pursuant to this ordinance and the State of Indiana laws, rules, and regulations pertaining to air pollution control taking into consideration:
 - a. The character and degree of injury or interference with comfort, safety, health or the reasonable use or enjoyment of property.
 - b. The social and economic value of the activity causing the emission.
 - c. The practicability, both scientific and economic, of reducing or eliminating the emissions resulting from such activity.

3 - 44 - 7. Promulgation of Rules and Regulations.

- A. Before any rule or regulation or standard is adopted by the Vigo County Commissioners, the Board shall cause a notice to be published in Vigo County, Indiana, at least twenty-one (21) days prior to the date set for a hearing. Such notice shall include a statement of the time and place of said hearing, a reference to the subject matter of the proposed rule(s) or regulation(s) is on file at the office of the Air Pollution Control Department where it may be examined: provided, however, that no rule(s) or regulation(s) shall be invalid because the reference to the subject matter thereof in said notice may be inadequate or insufficient. Any interested person shall be given an adequate opportunity to examine a copy of said proposed rule(s) or regulation(s). On the date set for hearing, any interested person shall be afforded an adequate opportunity to participate in the formulation of the proposed rule(s) or regulation(s) through the presentation of facts or argument or the submission of written data or views. All relevant Matters presented shall be given full consideration by the Board.
- B. In case the Board desires to repeal, rescind or amend any rule(s) or regulation(s), the same procedures shall be followed as is provided in the preceding paragraph A for the adoption of rule(s) or regulation(s).

3 - 44 - 8. Hearings.

- A. All hearings conducted by the Air Pollution Control Board shall be open to the public and conducted in accordance with Indiana Code 4-22-1 (Administrative Adjudication Act).

3 - 44 - 9. Appeals.

- A. Any interested and affected person may, within fifteen (15) days of the Board's order or determination or the filing of a hearing officer's recommendation to the Board as to the order or recommendation, file with the Board his objections to the entry of such order. If any such objections are filed, the Board shall set the same for hearing. Said hearing shall be conducted in accordance with the Indiana Code 4-22-1 (Administrative Adjudication Act).

3 - 44 - 10. Rules and Regulations.

- A. The State of Indiana laws, rules and regulations pertaining to air pollution control are hereby and hereafter adopted by reference in their entirety. Two (2) copies of the Indiana Air Pollution laws, rules and regulations pertaining to air pollution are on file in the office of the Vigo County Clerk for public inspection.

1. All applications and necessary information required by the State of Indiana laws, rules, and regulations for registration, construction, modification or operation of an air pollution source in Vigo County shall be submitted to the Vigo County Air Pollution Control Department for processing and approval as the authorized agent of the Indiana Department of Environmental Management, Office of Air Management.
2. Permit Fees.
Fees shall be payable to the Vigo County Air Pollution Control Department.

B. Emission Information.

1. The Director may require written information regarding points of emission of air contaminants, whether by stack, duct, flue, equipment, or by any other means when necessary for the purpose of this ordinance.
2. The written information regarding points of emission may include the following information (approximate or estimated values will normally be acceptable): the location of the source of emission, size of outlets, height of outlets, rate of emission, composition of emission, temperature of effluent or emission, nature of the equipment creating the emissions, and any other pertinent information specified by the Director.

C. Open Burning.

1. APPLICABILITY: No person shall open burn any material except as provided in the following exemptions:
2. EXEMPTIONS: The following types of fires are permitted:
 - A. Fires celebrating school pep rallies, scouting activities and camp fires used solely for recreation purposes, where such fires are properly controlled by a responsible person.
 - B. Residential burning where residence contains two or fewer units. Burning shall be in a non-combustible container with enclosed sides, a bottom and mesh covering with openings no larger than 1/4" square. Burning is prohibited in apartment complexes and mobile home parks.
 - C. Farm burning of wood or wood products derived from farming operations. Clearing operations are not considered farm operations.
 - D. These exceptions apply in all areas where they are not prohibited by local ordinances or by other officials having jurisdiction, such as local fire officials.

All exemptions shall be subject to the following:

- 1) Only wood products shall be burned.
- 2) Fires shall be attended at all times until completely extinguished.

- 3) If a fire creates an air pollution problem, a nuisance, or a fire hazard, it shall be extinguished.
 - **** 4) All residential and farm burning shall be conducted during daylight hours and shall be extinguished at sunset.
 - **** 5) No burning shall be conducted during unfavorable meteorological conditions, such as temperature inversions, high winds, air stagnation, etc.
- **** During the months of October through March, the burning of leaves is prohibited before 10:00 AM and after 5:00 PM each day.

Enforcement of the open burning regulations is also extended to the Vigo County Volunteer Fire Departments. In such cases where enforcement is deemed necessary by the volunteer fire department of jurisdiction, a copy of the fire report shall be forwarded to the Director of the Vigo County Air Pollution Control Department.

D. NUISANCE AND AIRBORNE PARTICULATE

1. APPLICABILITY: This regulation shall apply to all persons in Vigo County.
2. LIMITATIONS:
 - A. It shall constitute a nuisance for any person to permit or cause the preventable emission of such quantities of air contaminants from whatever source, in such place or manner as to endanger the public, or in such manner as to cause or have a tendency to cause injury or damage to property or business. This provision shall specifically include the incineration of garbage, rubbish, trash, or any other material which produces smoke or noxious or offensive odors in such quantity, or of such duration as to interfere with the comfortable enjoyment of life or property or the conduct of business.
 - B. It shall be unlawful for any person to cause or permit the handling, transporting, or disposition of any substance or material which is likely to be scattered by the wind, or is susceptible to being windborne, without taking reasonable precautions or measures to minimize atmospheric pollution. It shall be unlawful for any person to operate or maintain or cause to be operated or maintained, any premises, open area, right of way, storage pile of materials, or vehicles, or construction, alteration, demolition, or wrecking operation, or any other enterprise, which involves any material or substance likely to be scattered by the wind, or susceptible to being windborne, without taking reasonable precautions or measures to minimize atmospheric pollution. No person shall maintain or conduct, or cause to be maintained or conducted, any parking lot, or automobile and/or truck sales lot, or use any roadway unless such lot or roadway is maintained in such manner as to minimize atmospheric pollution.
3. WAIVER: Nothing in any section of this ordinance relating to regulation of emission of air contaminants shall in any manner be construed as authorizing or legalizing the erection or maintenance of a nuisance.

E. Emission of Odors.

1. Applicability: This regulation shall apply to all persons and/or facilities in Vigo County.
2. Emission Limitations: No person shall cause, suffer, allow or permit the emission of gaseous materials in such quantities to cause an "objectionable odor".

3 - 44 - 11. Procedure for Violations.

- A. Warning Notice.** If the Director has reason to believe that any person or emission from any source has violated any provision of this ordinance, he may issue a Warning Notice to the person, owner or operator of source in question. The notice shall describe the alleged violation and, if appropriate, shall suggest what should be done to comply. There shall be no penalty or appeal associated with a Warning Notice. The director shall provide for follow-up inspections of each source for which a Warning Notice has been issued to determine whether compliance has been achieved or if additional procedures of this article should be evoked.
- B. Citation.** If evidence of a violation of any rule of this ordinance is brought to the attention of the Director, or if

any member of the Department observes a violation, the Director may issue a citation to the owner or operator of the source in question. The Citation shall describe the violation, state the penalty established according to Section 3-44-14 and list the appellate procedures as defined by this ordinance. A Citation may be issued without the prior issuance of a Warning Notice.

- C. Notice Of Violation.** A Notice Of Violation may be issued by the Director if he has evidence that a person or source has violated any provision of this ordinance. The notice shall describe the violation, list the appellate procedures as provided by this ordinance and request a Voluntary Conference to resolve the problem and develop a Consent Decree. If agreement cannot be reached in Voluntary Conference, or if the source requests it, a Public Hearing will be conducted by the Board.

Any person who is issued a Notice Of Violation may, within fifteen (15) days from the date of receipt of said notice request a Public Hearing before the Board.

The Board will appoint a hearing officer and set a date for the Public Hearing. The hearing officer shall report to the Board his findings of facts and recommendations based upon evidence presented at the hearing. The Board shall then act upon the decision and penalty, if any. The Board shall, within fifteen (15) days after the Public Hearing, inform the recipient of the Notice Of Violation of its decision to uphold, modify or withdraw the Notice.

The source shall have thirty (30) days (or such payment schedule as the Board may authorize), from receipt of the Board's decision in which to pay any fine or penalty, or to appeal the Board's decision in accordance with the Indiana Administrative Procedures Act.

Any fine imposed will be determined in accordance with 3 - 44 - 14.

- D. Voluntary Conferences.** The Director shall be permitted to arrange voluntary conferences with suspected or potential violators for the purpose of promoting compliance with the provisions of this ordinance. There will be no penalty associated with the failure to attend a voluntary conference.

3 - 44 - 12. Consent Decree.

- A.** If the Director has determined that any person or source has violated any provision of this ordinance and is subject to the provisions of 3-44-11C, Notice of Violation, the Board may enter into a Consent Decree with said person or source.
- B.** Consent Decrees shall contain, but are not limited to the following:
1. Findings of Fact to include documentation of the violation, documentation of the person or source responsible for the violation, and documentation of the authority for the Board to issue penalties and enter into agreements.
 2. Consent Decree to establish a timetable for the person or source to come into compliance with the appropriate regulation(s); the payment of a civil penalty as determined by 3-44-14 Penalties to be paid in full to the Air Pollution Control Department within thirty (30) days of the Board's approval of the Consent Decree; and penalties for not complying with the provisions of the Consent Decree.

3 - 44 - 13. Separate Offense.

- A.** Unless a different time period is specified in a specific law, rule, or regulation, each day's violation of any provision of this ordinance shall constitute a separate offense; and an unlawful emission from each chimney, stack, open fire, or other source shall also constitute a separate offense. A separate and distinct offense shall be regarded as committed each day, (or alternative time period), during which a person shall continue or permit any violation to exist after notification thereof by the Director.

3 - 44 - 14. Penalties.

- A.** Any person who violates any provision of this ordinance or who violates any determination or order of the Board shall be liable to a penalty not to exceed twenty-five thousand dollars (\$25,000.00) per day of any violation which may be recovered in a civil action commenced in any court of competent jurisdiction by the Board and also a request may be made in any such action that such person be enjoined from continuing such violation.

3 - 44 - 15. Repealer.

- A. All laws and parts of laws heretofore passed by the County Commissioners of Vigo County in conflict herewith, dealing with the problem of air pollution are hereby repealed.

3 - 44 - 16. Severability Clause.

- A. If any clause, sentence, paragraph or part of this ordinance, or the application thereof to any person, firm, corporation or circumstances, shall for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgement shall not affect, impair or invalidate the remainder of this ordinance, and the application of such provision to other persons, firms, corporations, or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgement shall have been rendered and to the person, firm, corporation or circumstances involved.

3 - 44 - 17. Repealed.

3 - 44 - 18. Effective Date.

- A. Passed and adopted by the Board of Commissioners of Vigo County, State of Indiana, on the 26th day of December, 1990.