

**STARKE COUNTY COMMISSIONERS
ORDINANCE 2018-_____
CERTIFICATION OF OSS INSTALLERS**

WHEREAS, pursuant to 410 IAC 6-8.3-51 the Starke County Board of Health, through its health officer and the officer’s authorized representative possesses administrative authority with respect to issuance of permits onsite sewage system (“OSS”) installations in Starke County; and,

WHEREAS, subsection 410 IAC 6-8.3-51(b) does not prohibit “more stringent requirements in local ordinances”; and,

WHEREAS, the unique circumstances of Starke County in terms of population distribution throughout rural and residential areas, the hydrology and geology and climatic conditions, and in consideration of the benefits of affordable home ownership require an approach tailored specifically to Starke County; and,

WHEREAS, pursuant to the Indiana Home Rule Act, Ind. Code § 36-1-3-1 *et seq.*, the Board of Commissioners of Starke County possess the power to regulate conduct even though it is regulated by a state agency, if state statutory law is not violated by the local regulatory action;

WHEREAS, regulations insuring the persons installing or maintaining OSS installations in Starke County possess competency and knowledge in performing these services, and also in the statutory and regulatory rules applicable thereto, is in the interests of the health, safety and general welfare of the citizens of Starke County; now therefore,

THE COMMISSIONERS HEREBY ESTABLISH the following Ordinance establishing certification for OSS installers working in the county.

Section I. Definitions. The following definitions shall apply throughout this Ordinance:

- (a) “*Certified OSS Installer*” means an installer who files with the Starke County Health Department (a) proof of being a Registered Contractor, and (b) proof they have

passed a written proficiency examination conducted by an approved entity, and that the installer maintains certification through retesting or obtaining sufficient qualifying Continuing Education Units. The Indiana Onsite Wastewater Professionals Association (“IOWPA”) is a qualifying certification entity; however, the Starke County Health Department may approve certification from other entities.

- (b) “*Department*” means the Indiana State Department of Health or the Starke County Health Department, as is appropriate according to the context.
- (b) “OSS” [Onsite Sewage System] means all equipment and devices necessary for proper onsite conduction, collection, storage, and treatment and absorption in soil of sewage from a residence, municipality, publicly owned treatment works, or commercial facility, all as defined by I.C. § 13-11-2-144.8 .
- (c) “*Registered Contractor*” means a tradesman, contractor, excavator, plumber, or similar person or organization who is currently registered, bonded and insured, and in good standing with the Starke County Plan Commission. Registered Contractors are not Certified OSS Installers unless and until they are qualified and registered with the Starke County Health Department as set forth in this ordinance.

Section II. Unauthorized OSS Construction Prohibited. Effective June 1, 2019, no person shall construct, install, replace, alter, or repair any part of any OSS located in Starke County unless the person is a Certified OSS Installer with the Starke County Health Department; but subject to the following:

(a) *Individual Owner Installers Exempt from Certification.* Notwithstanding the other terms hereto, a property owner of record may install, repair, replace or otherwise work on an OSS which is both located on and serves the owner’s property. Such owner/installer must nevertheless follow all applicable laws, rules, technical specifications and local ordinances. Property held by a single individual human, or in a joint tenancy, tenancy by the entirety or tenancy in common of more than one human, and property held in a revocable trust wherein the trustee is the trust settlor and would have qualified but for the creation of the trust are examples of situations where this exemption applies.

(a) *Owner Installers Not Exempt from Certification.* Notwithstanding the other terms hereto, a property owned by a corporation or other business entity does not qualify for the Individual Owner Installer exemption set forth in Section II(a) above.

Section III. OSS Installer Certification Requirements. Registered Contractors may seek to acquire and maintain the status of Certified OSS Installer, subject to compliance with the following terms and conditions:

(a) *Requirements for Certification; Copy of Contractor Registration.* Contractors seeking Certification as an OSS Installer shall file with the Starke County Department of Health a copy of their contractor registration with the Office of the Starke County Planning Commission.

(b) *Requirements for Certification; Certifications of Competency.* To qualify for certification, each installer must demonstrate proficiency in all laws, rules, regulations, technical specifications and ordinances regarding installation, maintenance and operation of OSS for both the State of Indiana and Starke County. As proof of such proficiency each installer must maintain on file with the Starke County Health Department current, valid and unrevoked certifications, issued based upon a written proficiency examination conducted by an entity approved by the Starke County Health Department (e.g. the IOWPA), and establishing one or more of the following areas of competency: (1) Gravity OSS; (2) Flood Dose OSS; (3) Trench Pressure OSS; (4) Sand Mound OSS. Registered installers who wish to employ alternative technologies in their OSS projects must file a certification for, (5) Alternative Technology OSS for which an interim standard has been published by the Department.

(c) *Term of Certification, Renewals.* Certifications may be filed at any time, but all expire at midnight on December 31st of each calendar year, and must be renewed on an annual basis. Installers may satisfy the annual renewal requirement by filing with the Starke Co. Health Department a copy of their annual renewal of their Planning Commission registration.

(d) *Non-transferability.* Because the validity of an OSS Installer certification is based upon the competency certificates listed in subpart III(b) above, OSS Installer certifications are generally not transferable. However, the Starke County Health Department may, in its discretion, allow a transfer for the purposes of changing the form of business or trade name (or similar purpose), if the Department finds that the new business is a continuation of an existing registered entity and that the person or persons have filed the requisite certificates under subpart III(b) above.

(e) *Compliance as Registered Contractors.* Certified OSS Installers must maintain their status as Registered Contractors in good standing and full compliance with all terms thereof, including bonding and insurance requirements. Lapse of good standing as a Registered Contractor also constitutes a lapse of good standing as a Certified OSS Installer.

Section IV. Certified OSS Installer; Duties and Responsibilities. Certified OSS Installers must at all times maintain compliance with state, federal and local laws, rules, regulations, ordinances and proper procedures for construction, maintenance and operation of OSS installations where they work. In addition Certified OSS Installers shall observe the following, terms, rules and conditions:

(a) *Certified OSS Installers with Limited Areas of Certified Competency.* Each Certified OSS Installer shall solely and exclusively be associated with OSS permit project applications, projects or installations within their area of certified competency and shall refrain from

seeking a permit for, or otherwise engaging in construction or maintenance activities on an OSS installation that is not within their established and certified area of competency. For example, a Certified OSS Installer with certification only for Gravity OSS shall not seek nor be involved in a project involving any other area of competency unless a Certified OSS Installer certified in that area of competency oversees that portion of the project.

(b) *Project Oversight.* The Certified OSS Installer shall possess a copy of their certification at all times while on site at an OSS installation project. A Certified OSS Installer shall be on site at all times during an OSS construction, repair or maintenance project, and shall be deemed responsible for all aspects of the construction. A Certified OSS Installer may supervise other construction workers as necessary to assist in the project.

(c) *Un-permitted Projects.* A certified OSS Installer shall not participate in any way in project that has not received valid permits. Participation in an un-permitted project is a serious violation of the installer's duties under this ordinance.

(c) *Professionalism and Integrity.* A certified OSS Installer shall operate with professionalism and integrity, by providing (1) honest, accurate and timely information to the Starke County Health Department, Planning Commission, and other public officials; (2) dealing with the public, customers, and their neighbors in a professional and forthright manner, and (3) by producing workmanlike projects in timely compliance with the project designs, specifications, and all federal, state and local laws, rules and regulations.

Section V. Enforcement. The terms of this ordinance shall be enforced as follows:

(a) *Violations by Certified OSS Installers; Revocation.* If a Certified OSS Installer has committed or allowed a serious violation of this ordinance, or has committed repeated lesser violations of this ordinance, or has violated the applicable rules or technical specifications of the Department, the Starke County Health Officer, or agent thereof, may revoke the installer's certification, terminate the contractor's registration, or both.

(b) *Re-certification After Revocation.* If a revocation is made, the installer may re-apply for re-registration and re-certification, but may be required to go through re-testing to acquire new certifications, and may be required to pay a new registration fee. An installer who achieves re-certification shall be on a probationary status for a period of one (1) year.

(c) *OSS Projects by Prohibited Persons.* Any person who constructs, installs, repairs, replaces or alters an OSS in violation of this Ordinance commits the civil violation of Unauthorized OSS Construction. A first offense is punishable by a fine of no more than \$500.00, and each subsequent offense is punishable by a fine of no more than \$1000.00. Each violation of this ordinance shall constitute a separate violation. Fines shall be levied by the Starke County Health Officer.

(d) *Appeals.* Any person who is the subject of any enforcement action by the Health Officer, including certification revocations or fines under this Section V, has the right to appeal the enforcement action by written notice to the Starke County Board of Health not less than thirty (30) days after they receive notice of the enforcement action. The notice of appeal shall be in writing and shall include a brief and plain statement of the basis of the appeal, and the relief requested.

Section VI. Effective Date. Upon adoption and signature, this Ordinance shall become effective on June 1, 2019.

Presented to the Board of Commissioners of Starke County, Indiana, and approved on the _____ day of December, 2018 by the following vote:

COMMISSIONERS OF STARKE COUNTY

VOTE

Donny Binkley, *President*

Kathy Norem, *Vice-President*

Charles Chesak, *Secretary*

ATTEST:

Katherine Chaffins, *Auditor*
Of Starke County Indiana