

will be effective Nov. 26th 1995

NOTICE TO THE CITIZENS AND RESIDENTS OF CASS COUNTY, INDIANA

Citizens and residents of Cass County, you are hereby notified that the Cass County Commissioners, on September 5, 1995, adopted an ordinance relating to illegal open dumping, County Ordinance #95-08. Said ordinance was also adopted by the Cass County Solid Waste District Board of Directors on September 28, 1995, as reflected in District Ordinance/Resolution #1995-01.

This ordinance is an ordinance to control improper solid waste disposal; to define open dumping; to establish violations thereof; and to provide for a clean-up of materials improperly disposed of in Cass County, Indiana. Section 8 of the ordinance provides for penalties and sanctions for individuals or persons who are found to be in violation of this ordinance by a court of proper jurisdiction. Penalties for such violation can be levied by the appropriate court up to \$2,500 per violation, depending on the Class violation. A copy of this ordinance is on file in the office of the Auditor, Cass County, Indiana, and is available for public inspection.

This ordinance shall be effective upon 30 days after the last publication of this notice.

CASS COUNTY COMMISSIONERS

By: Rex Harris, President

CASS COUNTY SOLID WASTE DISTRICT

By: William J. Champion, President

FAX	DATE 10/11	PAGES 1	FROM Chod
Julia		CO.	CASS CO. GOVT.
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Instructions -

Run two (2) times one (1) week apart.

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**JOINT CASS COUNTY ORDINANCE
RELATING TO ILLEGAL OPEN DUMPING
COUNTY ORDINANCE NO. 95 - 08
DISTRICT ORDINANCE/RESOLUTION NO. 1995- 01**

This is an Ordinance to control improper solid waste disposal, to define open dumping, to establish violations thereof, and to provide for clean-up of materials improperly disposed of in Cass County, Indiana.

WHEREAS, Section 36-8-2-4 of the Indiana Code provides that a government unit may regulate conduct that might endanger the public health, safety or welfare; and

WHEREAS, Section 36-9-30-35 of the Indiana Code prescribes proper methods of solid waste disposal, compliance and penalties; and

WHEREAS, Section 13-7-4-1 of the Indiana Code prescribes specific acts prohibited under law, including the open dumping of solid waste; and

WHEREAS, Improper disposal of solid wastes can be injurious to human health, and plant and animal life; can contaminate surface and ground waters; can harbor vermin and disease vectors; can interfere unreasonably with the enjoyment of life or property; can negatively impact the value of affected and adjacent properties; can degrade aesthetic appreciation of the natural environment; and can diminish the economic development potential of Cass County; and

WHEREAS, It is the desire and duty of the County Board of Commissioners and Cass County Solid Waste District to protect human health, natural resources and the environment and the economic development potential of Cass County; and

WHEREAS, It is the public interest to enact this ordinance to eliminate open dumping and clean up county property, roadways, highways, parks and recreation areas, lakes and streams, and elsewhere in Cass County;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF CASS COUNTY, AND THE CASS COUNTY SOLID WASTE DISTRICT BOARD OF DIRECTORS, INDIANA, as follows:

Section One

Title.

This Ordinance is titled "Illegal Open Dumping Ordinance."

Section Two

Purpose.

The purpose of this Ordinance is to prohibit open dumping of solid waste; to establish penalties for violations thereof; and to provide for the clean-up of open dumps. Littering and improper disposal at recycling stations shall also be prohibited. This Ordinance is intended to protect the citizens of Cass County, Indiana from the burden of costs related to dumping control and clean-up.

The primary intent of the Ordinance is to prevent illegal dumping, to promote clean-up of dumps, and to encourage proper waste management alternatives. Elimination of illegal open dumping is necessary to protect human health and the natural environment to protect surface and ground water from pollution and to protect the value of property from the negative effects of illegal dumps. Fines and sanctions are meant to deter violations of this Ordinance.

Section Three

Definitions.

The following definitions shall apply in the interpretation and enforcement of this Ordinance.

(a) "Accumulate" - as pertains to solid waste, means any one of the following: (1) improperly collecting solid waste in an improper storage containers; or (2) collecting solid waste for a period exceeding ninety (90) days; or (3) collecting solid waste in an accumulation greater than three (3) cubic yards. As pertains to Construction/Demolition Materials, means any one of the following: (1) improperly collecting Construction/Demolition Materials in an improper storage container; or (2) collecting Construction/Demolition Materials for a period exceeding ninety (90) days; or (3) collecting Construction/Demolition Materials in an accumulation greater than forty (40) cubic yards.

(b) "Contamination" - as it pertains to recyclables shall be defined to include: unrinsed containers with food or product residues; non-container glass materials; containers that contained oil, pesticides, fertilizers, paint products, herbicides, poisons, or other hazardous materials; materials fouled with dirt or other substances foreign to their original contents or composition; wet or saturated newspapers; wet, saturated, or waxed cardboard and waxed paperboard products; plastic products not specifically accepted by the program; and any other materials not specifically accepted by the recycling program or any other condition which renders otherwise acceptable materials unrecyclable.

(c) "Discard" - means to abandon, bury, chuck, deposit, desert, discharge, dispose, drop, dump, eliminate, emit, filing, heave, hurl, jettison, launch, leave, loft, pitch, place, put, scrap, spill, throw, or toss any item, any solid waste or derivative thereof, or any inherently waste-like material in a manner such that the discarded substance or material remains upon the land as solid waste.

(d) "Construction/Demolition Materials" - means any discarded construction or demolition materials including, but not limited to, lumber, wood, paneling, drywall, roofing, shingles, siding, plumbing, electrical, doors, windows, floor coverings, cabinets, and other similar materials.

(e) "Garbage" - for the purposes of this ordinance, shall be defined by the definition in Section 13-7-1-11 of the Indiana Code. ["Garbage" means all putrescible animal solid, vegetable solid, and semisolid wastes from the processing, handling, preparation, cooking, serving, or consumption of food or food materials.]

(f) "Generation" - means the act or process of producing solid waste.

(g) "Generator" - means the person whose actions or processes result in the unwanted solid waste materials.

(h) "Hazardous waste" - means any waste that, because of its quantity; concentration; or physical, chemical, or infectious characteristics may: 1) cause or significantly contribute to an increase in mortality or increase in serious irreversible, or incapacitating reversible, illness; or, 2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored transported, handled, disposed of or otherwise managed; or 3) be nondegradable or persistent in the environment; or 4) be biologically magnified; or 5) cause or tend to cause cumulative effects; or 6) be defined in Section 261.3 of 40 CFR and any future amendments. This definition includes household hazardous wastes and used non-food oils, and solvents.

(i) "Inert solid waste" -means uncontaminated earth, rock, rigid concrete, bricks, tiles, or aged asphalt. Uncontaminated natural wood, brush, leaves, wood chips, sawdust, and similar materials shall be considered to be inert waste for the purposes of this ordinance. Any asbestos-containing products shall not be considered to be inert waste for the purposes of this ordinance.

(j) "Infectious waste" - means any waste that is capable of transmitting a communicable disease. This definition includes, but is not limited to, pathological wastes (human tissues, blood, excreta, and secretions), medical and laboratory wastes, contaminated or fouled bedding, bandages, dressings, and diapers, animal carcasses, offals, excreta, body parts, bedding, and other similar materials.

(k) "littering" - means discarding any item of solid waste in any location other than a proper waste storage container or disposal site. Littering shall include leaving unsolicited or unwanted materials unless placed in a proper delivery receptacle. Littering may also include any item of waste materials moved by wind, water, or animals onto a public way or onto an adjacent property. Littering shall not include anything or any combination of items exceeding a volume of one cubic foot.

(l) "Open dump" - for the purposes of this Ordinance, shall be defined by the definition in Section 13-7-1-16 of the Indiana Code. ["Open dump" means the consolidation of solid waste from one (1) or more sources or the disposal of solid waste at a single disposal site that does not fulfill the requirements of a sanitary landfill or other

land disposal method prescribed by law or regulations, and that is established and maintained without cover and without regard to the possibilities of contamination of surface or subsurface water resources.]

(m) "Open dumping" - for the purposes of this Ordinance shall be defined by the definition in Section 13-7-1-16 of the Indiana Code. ["Open dumping" means the act of disposing of solid waste at an open dump.] Open dumping shall include an accumulation of anything or any combination of items exceeding a volume of one cubic foot.

(n) "Person" - for the purposes of this Ordinance, shall be defined by the definition in Section 13-7-1-17 of the Indiana Code. ["Person" means any individual, partnership, co-partnership, firm, limited liability company, company, corporation, association, joint stock company, trust, estate, municipal corporation, city, school city, town, school district, school corporation, county, any consolidated unit of government, political subdivision, state agency, or any other legal entity.]

(o) "Recyclables" - means materials segregated from the waste stream for the purposes of collection and reprocessing to recover and reuse as a material resource. This shall minimally include glass containers, newspaper, office paper, unwaxed corrugated cardboard, aluminum and steel containers, and certain plastic containers. Other materials may be specified from time to time and may include magazines, phone books, batteries, tires, oils, metals, and any other item then specified as accepted by recycling programs and services operating in Cass County.

(p) "Salvaging" - means the controlled removal of reusable or recyclable waste materials from a solid waste disposal facility with the consent of the owner of the waste material.

(q) "Scavenging" - means the uncontrolled, unauthorized, and illegal removal of materials from solid waste at any point in the waste management system.

(r) "Solid Waste" - means any garbage, refuse, sludge, or other discarded or disposed materials, including solid, liquid or semi-solid, or contained gaseous materials resulting from any operation, activity or source. For the purposes of this Ordinance, this definition excludes hazardous and infectious wastes as defined above.

(s) "Storage" - as pertains to solid waste, means proper temporary containment of waste materials in a waste storage container for a period not to exceed 90 days or an accumulation of three (3) cubic yards, whichever is the first to occur. As pertains to Construction/Demolition Materials means proper temporary containment of waste materials in a waste storage container for a period not to exceed ninety (90) days or an accumulation of forty (40) cubic yards, whichever is the first to occur.

(t) "Waste storage container" - means a proper and suitable receptacle used for the temporary storage of solid waste, infectious or hazardous wastes while awaiting collection. Containers shall be designed to prevent escape or leakage of contents and

should be resistant to scavenging animals. Plastic bags, paper bags and corrugated boxes shall not be considered to be proper containers for outdoor storage of wastes.

(u) "Vector" - means any animal or substance capable of harboring and transmitting microorganisms from one animal to another or to a human.

Section Four

Acts Prohibited.

(a) Violation of any of the following provisions shall constitute a Class "A" violation of this Ordinance:

- (1) No person shall discard any infectious or hazardous waste materials within Cass County.
- (2) No person who owns real property in Cass County shall cause or consent to the disposal, open dumping, or discarding, upon that property, of any solid waste, infectious waste, or hazardous waste generated at any location not owned by that person, or generated by any other person.
- (3) No person shall interfere with the enforcement of this Ordinance.

(b) Violation of any of the following provisions shall constitute a Class "B" violation of the Ordinance:

(1) No person shall discard any solid waste on the property of another person except in an approved and (if required) permitted disposal facility, transfer site, recycling facility, or transfer station.

(2) No person shall commit any act specifically prohibited under Section 13-7-4-1 of the Indiana Code.

From Section 13-7-4-1 of the Indiana Code, no person shall:

["(3) Deposit any contaminants upon the land in such place and manner which creates, or which would create, a pollution hazard that violates or would violate a rule adopted by one (1) of the boards, or deposit or cause or allow the deposit of any contaminants or solid waste upon the land except through the use of sanitary landfills, incineration, composting garbage grinding, or another method acceptable to the solid waste management board.

(4) Dump, cause, or allow the open dumping of garbage or of any other solid waste in violation of rules adopted by the solid waste management board.

(5) Dispose of solid waste in, upon, or within the limits of or adjacent to

any public highway, state park, nature preserve, or recreation area, or in or immediately adjacent to any lake or stream, except in proper containers provided for sanitary storage of such solid waste, or except as a part of a sanitary landfill operation of other land disposal method approved by the department."]

(3) No person shall discard any solid waste within or adjacent to county property, along roadways or highways, or within or adjacent to lakes and streams, and elsewhere in Cass County except in an approved and permitted disposal facility, transfer site, or transfer station.

(4) No person shall discard any materials other than recyclables in any facility or containers intended for collecting recyclables.

(5) No person shall accumulate infectious or hazardous wastes, solid waste, or Construction/Demolition Waste.

(c) Violation of any of the following provisions shall constitute a Class "C" violation of this Ordinance:

(1) No person shall discard any inert solid wastes for final disposal or for use as fill materials without the express consent of the property owner.

(2) No person shall litter, nor permit any dependent minor or other person for whom that person is legally responsible, to litter within Cass County, or cause another person to litter.

(3) No person shall deposit any contaminated recyclable materials in any facility or container intended for collecting recyclable materials.

(4) No person shall conduct salvaging of materials at any facility or container intended for collecting recyclable materials without the prior written permission of the facility operator.

(5) No person shall conduct scavenging of materials at any facility or container intended for collecting recyclable materials.

(6) No person shall open dump any solid waste on his/her own property, with the exception of materials defined as inert solid waste within this Ordinance.

(d) No person shall contract, or otherwise arrange or agree, with a third party to engage in any act prohibited by Section Four of this Ordinance. A violation of this provision of this Ordinance shall be an offense of the same class as the violation committed by the third party.

(e) Failure or refusal to bring property into compliance with this Ordinance after adjudication of a violation shall constitute a Class "A" violation of this Ordinance. Each day the noncompliance continues shall constitute a separate violation of this Ordinance.

(f) It shall not be a defense to an allegation or finding of violation of this Ordinance that other persons have participated in the violation, and any person adjudicated to have violated this Ordinance may be held liable for all costs related to investigation, enforcement, or action to achieve compliance with this Ordinance.

Section Five

Ordinance Enforcement Authority

(a) The following shall be authorized enforcement agents in the enforcement of this Ordinance within the limits of Cass County, Indiana; the Cass County Solid Waste District, the Cass County Health Department, and area law enforcement officials serving Cass County. Additionally, the City of Logansport and the Cass County Conservancy District are also authorized agents within their respective boundaries.

Section Six

Investigation.

(a) It shall be the duty of the authorized enforcement agents to investigate any reports or complaints of a violation of this Ordinance. Any person who violates any provision of this Ordinance shall be subject to punishment by fines or sanctions as set forth in Section Eight of this Ordinance.

(b) If access to property is required, the investigation shall proceed on a voluntary basis. If access is needed to proceed with an investigation, but is denied, the authorized enforcement agents may seek any necessary authorizations, including a search warrant, to enter the property.

(c) Witness accounts of any acts prohibited herein shall be considered as evidence to identify violators. Any other pertinent evidence may be considered to determine whether a violation of this ordinance has occurred.

Section Seven

Enforcement and Clean-up.

(a) If a condition violating this Ordinance exists on real property, the authorized enforcement agents shall take the following actions:

(1) Certified notice shall be mailed to all owner(s) of record at their last known mailing address. Owner(s) of record will be allowed thirty (30) days from the day of receipt/refusal of notice to bring the property into compliance or submit an acceptable clean-up plan specifying dates.

(2) If no action is taken by the property owner, the authorized enforcement agents will take the appropriate actions to bring the property into compliance with this Ordinance.

(3) In case of an emergency, the authorized enforcement agents may take immediate action and mail notice by no later than forty-eight (48) hours following the action. If action to bring compliance is taken, the costs involved may be recovered as set forth in Section Eight of this Ordinance.

(b) It shall be a violation of this Ordinance to interfere with any authorized enforcement agent while in the performance of duties hereunder.

(c) The owner of property on which illegal open dumping acts have occurred may be included as a party in an enforcement action against a person who committed the violation for the purposes of obtaining access to the land to cleanup and properly dispose of the wastes.

(d) Enforcement of this Ordinance may be brought pursuant to:

(1) Indiana Code Section 34-4-32, or

(2) Indiana Code Section 36-9-30-35.

(e) Whenever a law enforcement officer believes in good faith that a person has committed an ordinance violation, the officer may detain the person for a time sufficient to:

(1) Inform the person of the allegations.

(2) Obtain the person's name, address, phone number, and date of birth.

A person who knowingly or intentionally refuses to provide the above information commits a Class C misdemeanor pursuant to Indiana Code Section 34-4-32-3.

(f) A notice of Ordinance violation shall state the name of the person to whom the notice is being issued, the nature of the violation, the specific section of this Ordinance which has been violated, the date of the notice, and the fine imposed for the violation in accordance with Section 8 of this Ordinance. The notice of Ordinance violation shall direct the person to whom it is issued to appear before the specific enforcement agent that issued the notice of Ordinance violation.

Section Eight

Penalties and Sanctions.

(a) Any person who violates the provisions of this Ordinance shall appear within thirty (30) days at the office of the enforcement agent that issued the notice of Ordinance violation, and shall pay a fine as outlined in Section 8 (b) of this Ordinance. If a violator fails to appear at the office of the enforcement agent that issued the notice of Ordinance violation within thirty (30) days of the date of the notice of Ordinance violation, an enforcement action may be filed in either the Cass Circuit Court or Cass Superior Court, or any successor court. Upon conviction or admission of any violation of this Ordinance

in the Cass Circuit Court or Cass Superior Court, or any successor court, the violator shall be subject to fines and penalties as outlined in Section 8(c) of this Ordinance.

(b) Any person who violates the provisions of this Ordinance and appears within thirty (30) days at the office of the enforcement agent that issued the notice of Ordinance violation shall pay a fine as follows:

(1) Any person whose acts constitute a Class "A" violation of this ordinance shall: (1) pay a fine of \$500.00; (2) pay for and provide receipts evidencing all costs related to the clean-up and proper disposal of the infectious waste, hazardous waste, and/or solid waste related to the violation; or reimburse the authorized enforcement agents for all costs related to any clean-ups carried out by the authorized enforcement agents; and (3) provide receipts evidencing one year of contracted trash disposal service by a licensed waste hauler.

(2) Any person whose acts constitute a Class "B" violation of this ordinance shall: (1) pay for and provide receipts evidencing all costs related to the clean-up of solid waste and proper disposal of solid waste related to the violation; or reimburse the authorized enforcement agents for all costs related to the clean-ups carried out by the authorized enforcement agents; and (2) provide receipts evidencing one year of contracted trash disposal service by a licensed waste hauler.

(3) Any person whose acts constitute a Class "C" violation of this ordinance shall pay for and provide receipts evidencing all costs related to the clean-up of solid waste and proper disposal of solid waste related to the violation; or reimburse the authorized enforcement agents for all costs related to the clean-ups carried out by the authorized enforcement agents.

(c) Upon conviction or admission of any violation of this Ordinance in the Cass Circuit Court or Cass Superior Court, or any successor court, the violator shall be deemed guilty and subject to the following penalties:

(1) Any person who commits a Class "A" violation of this Ordinance shall be fined a sum of not less than Five Hundred Dollars (\$500.00) and not greater than Two Thousand Five Hundred Dollars (\$2500.00) per violation.

(2) Any person who commits a Class "B" violation of this Ordinance shall be fined a sum of not less than Two Hundred Fifty Dollars (\$250.00) and not greater than One Thousand Dollars (\$1000.00) per violation.

(3) Any person who commits a Class "C" violation of this Ordinance shall be fined a sum of not less than One Hundred Dollars (\$100.00) and not greater than Five Hundred (\$500.00) per violation.

(d) Any person found to be in violation of any provision of this Ordinance shall, in addition to any fines as set forth above, be assessed all costs and expenses of the investigation, clean-up, and removal of solid waste connected with the violation, and shall, in addition, be liable for all reasonable attorney fees and costs incurred by the

County or District in the enforcement of the Ordinance.

(e) Collection of money under any Section of this Ordinance shall constitute collection of money owed the Unit pursuant to Indiana Code Section 36-1-4-17.

Section Nine

Solid Waste Cleanup Fund.

(a) All fines, penalties and clean-up costs assessed under this Ordinance shall be deposited into the Cass County Solid Waste Clean-up Fund. Collection of such amounts shall constitute collection of money owed the unit pursuant to Indiana Code Section 36-1-4-17.

(b) The funds collected in the Cass County Solid Waste Clean-up Fund shall be administered under the direction of the Cass County Solid Waste District Board of Directors.

(c) The funds collected within the Cass County Solid Waste Clean-up Fund shall be used for the following purposes at the discretion of the Cass County Solid Waste District Board of Directors; costs related to the clean-up and proper disposal of materials collected at illegal open dumping sites, costs related to purchasing equipment and/or staff training related to the clean-up of illegal open dumping sites, costs related to court fees and attorneys fees related to the prosecution of illegal open dumping violations, costs related to educational materials used to discourage solid waste disposal via illegal open dumping costs related to informing residents of and publicizing the existence of this and associated Ordinances, and other expenditures as deemed appropriate by the Cass County Solid Waste District Board of Directors, the Cass County Board of Health, or the Cass County Sheriff's Office.

Section Ten

Severability.

If any part of this Ordinance shall be held invalid, that part shall be deemed severable and its invalidity shall not affect the remaining parts of this Ordinance.

Section Eleven

Applicability and Effective Date.

(a) This Ordinance shall apply to the entirety of Cass County, Indiana. Enforcement shall include towns and incorporated areas, unless those areas currently enforce a more stringent Ordinance. Incorporated areas may enforce this ordinance.

(b) All portions of former Ordinances in conflict herewith are hereby repealed or superseded. This Ordinance shall become in full force and effect from and after its

adoption and publication as required by law.

(c) Any violation of the provisions of this Ordinance that occurred prior to the enactment of this Ordinance, and which was a violation of existing state law, shall not be exempted from enforcement under this Ordinance.

PASSED AND ADOPTED by the Board of Commissioners of Cass County, Indiana, this 5th day of September, 1995.

BOARD OF COMMISSIONERS OF CASS
COUNTY, INDIANA.

Ray Harris

Michael Zusc

Steve Fowler

PASSED ADOPTED by the Cass County Solid Waste District Board of Directors, this 28th day of September, 1995.

Walter J. Chyn

Cass County Solid
Waste District Board of Directors.

ATTEST:

Chad A. Gibson

Cass County Solid Waste District
~~Board of Directors~~ Controller