

ORDINANCE NO. 7-3-8
**AN ORDINANCE TO REGULATE THE MOVEMENT
OR REMOVAL OF EARTH BELOW GROUND LEVEL**

WHEREAS, IC 36-7-2-6 states that “[a] unit may regulate excavation, mining, drilling, and other movement or removal of earth below ground level”;

WHEREAS, Morgan County, Indiana (“Morgan County”) desires to regulate earth removal operations as a means to regulate changes to the integrity of the topography, to protect the air quality and to maintain the water resources of Morgan County, and to protect the public welfare and interest; and,

WHEREAS, Morgan County, intends to carry out its obligation to protect the public interest through the regulatory powers granted to it by the Indiana General Assembly; and,

NOW THEREFORE, be it Ordained by the Board of Commissioners of Morgan County, Indiana that the Earth Removal Ordinance be passed and that excavation, mining, drilling and other movement or removal of earth below ground level be regulated, as follows:

Section 1: Applicability:

A. This ordinance shall apply to any operation that removes more than 2,000 cubic yards of earth more than one foot below ground level as a means to regulate changes to the integrity of the topography, to protect the air quality and to maintain the water resources of Morgan County, and to protect the public welfare and interest. However, this ordinance does not apply to farming operations for livestock or row crop production, nor does it apply to activity carried out under any development approved by the Morgan County Plan Commission under the Subdivision Control Ordinance.

B. Any existing earth movement or removal site in operation at the effective date of this ordinance which does not comply with these operational requirements shall be grandfathered with regard to such deficiencies except that there shall be no grandfathered rights regarding the duty to control dust under the Dust Control Plan (Section 2) and the hours of operation provisions under the Noise Minimization Plan (Section 7). The grandfather provisions of this sub-section shall only apply to existing operations in current use. Any expansion of an existing use must be treated as a new application and all provisions of the Ordinance shall apply. An expansion of an existing use shall be defined as any expansion of the operation beyond the parcel of real estate in which the current operation is located, as found in the records of the Morgan County Auditor.

C. A proposal to move or remove more than 2,000 cubic yards of earth must receive a permit from the Morgan County Board of Commissioners (“Commissioners”). Each permit shall provide the following information:

1. Legal name, address and telephone number of the entity or person which owns the land (and the entity or person which plans to conduct the operations, if different from the owner of the land);
2. Legal description of the premises at which the operation will be conducted;
3. General description of the type of earth moving activities to be conducted the applicant;
4. Zoning designation for the land used for the operation;
5. The date on which operations are expected to begin, and for those applicants in operation on or before the effective date of this Ordinance the date operations began and

provide any proof or evidence as may support the date of operation, to the satisfaction of the Commissioners.

In addition to the above, each application shall contain a Dust Control Plan, Groundwater Protection Plan, Topographical, Soil Protection and Reclamation Plan, Visual Impact Plan, County Road Protection Plan and Noise Minimization Plan, all as set forth below.

Section 2: Dust Control Plan

A. Definitions.

“Exposed areas” means unused areas on plant property that cannot be defined as paved or unpaved road or parking lot, storage pile, or associated areas that have the potential to emit particulate emissions by wind action.

“Material processing facilities” means equipment used to process material, including but not limited to, crushers, screens, grinders, mixers, belt conveyors, storage facilities, and truck loading stations.

“Material transportation” means the transfer of material from the earth to a truck or conveyor, from process equipment to the ground, from hauling equipment to storage piles, from a storage pile to hauling or transportation equipment, or other physical movement of material.

“Road” means a thoroughfare or right-of-way designed or used for vehicular traffic, or a designated location on which vehicles travel.

B. This section applies to paved and unpaved roads and parking lots, material transfer, wind erosion from storage piles and exposed areas, material transportation activities, material processing facilities, and any other facility or operation with a potential to emit dust and not included in this section.

C. Each applicant shall submit a dust control plan describing all measures to be taken to reduce the production, release, or transmission of dust and fine particulates from all locations, activities and equipment at the site, including pits, yards, storage areas and areas of operations. Dust control strategies include, but are not limited to:

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| -reducing vehicular traffic | -paving/cleaning road ways |
| -chemical stabilization | -covering loads |
| -enclosing/covering operations | -conveyor systems |
| -wind breaks | -planting vegetative cover |
| -boots on drop points | -mulching |
| -reduction in height of drop points | -dust collectors |
| -wetting/watering | -reducing vehicular speed |
| -cleaning haul trucks before leaving loading areas | |
| -wetting materials before production | |

D. A dust emission control strategy shall be presented which shall include:

- A list of the types of equipment generating dust;
- A diagram location of each activity or piece of equipment on site; and
- A description of dust control measures to be implemented for each activity, location or equipment.

E. Regarding dust control and the prevention of transmission of particular matter into the atmosphere and beyond the boundaries of the property on which the proposed operation shall be located, the applicant shall provide the maximum achievable control technology of particulate matter emissions, including enclosures, hoods, ducts, fans, and dampers, able to achieve 10% opacity or less on a three minute average, as determined using 40 CFR 60, Appendix A, Method 9***.

F. Within six months of the effective date of this section, an existing operation subject to this ordinance shall submit to the commissioners a dust emission control plan which, when fully implemented within six (6) months of approval by the commissioners, shall achieve compliance with the ordinance.

Section 3: Groundwater Protection Plan

In order to protect aquifers and underground water supplies, the applicant shall provide a hydro geological study which provides verifiable information on the depth, directional flow, volume, and seasonal variation of any aquifers or underground water resources down to a depth of 200 feet and located under or within 500 feet of the boundaries of the proposed parcel, and that establishes that the operation will not cause any pollution to ground water or surface water, nor disrupt the flow of ground water such that the water source of any other person is disrupted.

Section 4: Topographical, Soil Protection and Reclamation Plan

A. Applicants shall provide a plan for the storage of topsoil and reclamation of the site following the cessation of earth movement or removal activities, including a topographical map showing the intended final topography of the site. Reclamation work shall be completed within nine months of the closing of the site (or a portion of the site with regard to phased reclamation plans). Reclamation shall be completed in such a manner that it will ensure natural drainage, prevent standing water, and minimize erosion and sedimentation and be compatible with the planned end use of the reclaimed site. Furthermore, the applicant shall file with the county sufficient bond to insure that reclamation of the site, including installation of visual screen mounds and planting of screening trees and shrubs shall be completed and maintained for a period of five years following cessation of the operation.

B. Reclamation Bond Requirements

Applicants shall provide an irrevocable letter of credit or other such satisfactory surety or security in the sum of \$2,500 per acre of affected land on the site, to be released as follows for each section of the site subjected to reclamation, if the applicant provides for reclamation in stages concurrent with operations:

- Upon restoration of land topography according to the approved reclamation plan and re-establishment of topsoil, 25% bond release;
- Upon two years of successful revegetation, 25% bond release;
- Upon five years of successful revegetation, 25% bond release; and,
- Upon final completion of all earth movement or removal activities and removal of all equipment related thereto, 25% bond release.

If the benchmarks, as outlined above, are not successfully achieved by the applicant, the Commissioners may forfeit the bond or execute the applicant's letter of credit in order to carry out the reclamation activities at the site.

Section 5: Visual Impact Protection Plan

Mineral extraction and mining operations shall establish 20-foot high earthen mounds, to be topped with trees and shrubs, at a distance between 20 feet and 40 feet from public and private rights-of-way and adjoining residential properties. Mounds shall be seeded with and maintained in native grasses and wildflowers.

Section 6: County Road Protection Plan

A. Applicants shall conduct a traffic study which sets forth what the maximum and average estimated volume of traffic into and out of the operation will be, which describes the kinds of trucks and equipment which will be going into and out of the operation, which describes any potential or existing traffic hazards (including, but not limited to, weight-limited bridges, blind curves, significant slopes or hills, or school bus stops) on roads servicing the site and applicant's plans to address them, and which describes the ability of such roads to physically withstand the additional traffic generated by the site. The study shall consider the existing actual traffic conditions in the vicinity of the operation. The study shall also identify the expected route of vehicular traffic to and from the operation, identifying those county roads from the operation access to the nearest state highway and providing the mileage for the route from the operation access to the nearest state highway.

B. Applicants shall provide warranty bonds (or other such security as deemed sufficient by the Commissioners, including an irrevocable letter of credit) for those county roads upon which traffic consisting of vehicles in excess of 26,000 pounds access their operations. The bonds shall be in an amount sufficient to repave the county roads to a depth of three inches of asphalt along the route from the access of the operation to the nearest state highway. The bonds shall remain in place until three years after the cessation of operation, other than reclamation work. In the event the county roads covered by the bonds deteriorate at a rate greater than that of comparable county roads (taking note of usage, topographical features, historical need of repair or other such information as may reflect the normal wear and tear of such road) the Commissioners may revoke such bond and utilize the funds to repair such road or roads. In the event a bond is revoked under this section, the applicant shall be notified in writing by certified mail, return receipt requested.

Section 7: Noise Minimization Plan

* A. Operations shall limit weekday operations to hours no earlier than 7:00 am nor later than 8:30 pm. Operations on weekends (Saturday and Sunday) and holidays shall be limited to no earlier than 8:00 am, nor later than 7:00 pm. Holidays shall include the following: Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, and Independence Day (July 4).

B. The limits on hours of operation in this section apply to all existing operations as well as future applications.

Section 8 Severability

If any section, sentence or provision of this Ordinance, or the application thereof, to any person or circumstances, shall be declared unconstitutional or invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or application of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

Section 9 Application Evaluation Fees

The commissioners may charge a fee to cover the administration of this ordinance, including the expense of hiring appropriate legal and technical advice for use in evaluating each application for such a permit, and for such other legal and other fees associated with the use and enforcement of this ordinance. The fee shall be a minimum of \$500.00 and ten cents for each cubic yard, in excess of 50 cubic yards, of earth proposed for movement or removal.

Section 10 Penalties

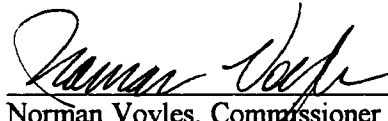
It shall be a violation of this ordinance for any person to fail to comply with the requirements of this ordinance. Any person who violates any provision of this Ordinance shall be subject to a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) for each such violation, per day. If the Commissioners shall have reason to believe that the fines assessed hereunder will not be effective in enforcing the provisions herein; then, the Commissioners may direct the Morgan County Attorney or the Morgan County Prosecutor to seek any other remedy provided by law, including injunction.

Section 11 Effective Date

This Ordinance shall take effect upon publication, as by law required.

All of which is **PASSED** and **ORDAINED** this 19th day of July, 2004.

**BOARD OF COMMISSIONERS
OF MORGAN COUNTY**



Norman Voyles, Commissioner



Jeff Quyle, Commissioner



Brian Goss, Commissioner

ATTEST:



MAE COOPER
Morgan County Auditor