

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE INSTALLATION OF UTILITIES IN A REGULATED DRAIN EASEMENT

WHEREAS, Henry County has the authority to enact regulations to promote the public health, safety and welfare; and,

WHEREAS, Henry County has determined that specific guidelines and regulations should be adopted regarding the installation of utilities in and through any regulated drain.

NOW THEREFORE, BE IT ORDAINED that the Henry County Code is hereby amended to include new Sections 154.115 through 154.123, which are hereby adopted and made a part of the Henry County Code.

Section 154.115. For purposes of this section, the following terms are hereby defined:

a. utility. shall mean any privately, municipally, publically, or cooperatively owned systems or facility for supplying communications, power, light, heat, electricity, gas, water, pipeline, sewer, sewage disposal, drain, or other like service, directly or indirectly to the public.

b. person: shall mean any natural person, corporation, limited liability company, partnership or other organization.

c. regulated drain: shall mean any drain under the jurisdiction of the Henry County Drainage Board and subject to the provisions of Indiana Code §36-9-27-1, et. seq.

d. regulated drain right-of-way: shall mean the area of land lying near a regulated drain on which the Surveyor or Drainage Board maintains a right of entry pursuant to Indiana Code §36-9-27-33.

e. foundry sand: shall mean silica based sand mixed with clay, oil, or other materials and is a by-product of the ferrous or non-ferrous metal casting process.

Section 154.116. No person shall install or relocate any utility in, through or across any regulated drain or regulated drain right-of-way unless such person has obtained a Drain Utility Installation Permit issued pursuant to Section 154.116.

Section 154.117. A Drain Utility Installation Permit may be issued by the Henry County Surveyor. The Permit shall allow a person to install a utility in a regulated drain or within a regulated drain right-of-way during the timeframe specified in the Permit. In order to obtain a Drain Utility Installation Permit, a person must submit an application in the form prescribed by the Henry County Drainage Board. The application for the Permit shall include the following:

a. Detailed plans and specifications showing the proposed location of the utility to be installed, which must include the following:

i. Topographic profile of the route and location of the utility within the regulated drain or regulated drain right-of-way.

ii. A depiction of open channel flow lines in original channel bottom grades. A tile probe shall be utilized to determine the original channel bottom grade.

iii. Existing tile elevations.

b. A bond or other security in a sum sufficient to ensure that damage caused by the installation of a utility will be properly and timely repaired, provided however, that the bond or other security shall be in a sum of no less than \$10,000.00;

c. A description of the backfill and surface repair material that will be used following installation;

d. One or more agreements in a form satisfactory to the Henry County Drainage Board under which the applicant is bound to indemnify, defend and hold Henry County harmless from any damage to property or bodily injury caused in connection with the installation of a utility and under which the applicant warrants that its repair work performed within a regulated drain or a regulated drain right-of-way shall be free of defects for a period of no less than three (3) years following the completion of the installation; and,

e. The payment of the application fee set forth in Section 154.120.

Section 154.118. The Henry County Surveyor shall issue a Drain Utility Installation Permit authorizing the installation of a utility if the Surveyor determines:

a. The location of the utility does not unreasonably interfere with the use or function of the regulated drain;

b. That any piping installed will be at least thirty-six (36") inches below the original channel bottom;

c. Any piping installed will be at least two feet (2') away from any drainage tile;

d. Any piping installed will be at least twenty-five feet (25') away from the top of the bank when installed parallel to any channel and at least fifteen feet (15') away from any drainage tile when installed parallel to a drainage tile;

e. Any boring will be at least twelve inches (12") below any buried drainage tile and will be subject to visual inspection by the Surveyor or his designee;

f. If the applicant intends to cross a regulated drain, the applicant will utilize granular backfill and such granular backfill will be compacted in a manner that supports the existing tile alignment.

g. That joints at each side of the trench wall will be secured and the applicant will utilize geotextile fabric if reasonably necessary to ensure the security of any joint.

h. The applicant has executed all necessary agreements to indemnify Henry County from and against any claims for damage arising from the installation of a utility and further executed any document warranting its work to be free from defects as required by Section 154.117(d);

i. The Henry County Drainage Board has approved the placement of any permanent structure to be located within a regulated drain or regulated drain right-of-way; and,

j. The installation of a utility as described in the application will not violate any other applicable provision of the Henry County Code or any applicable state or federal law or regulation.

Section 154.119. A person may post a blanket bond, insuring the repair of damage in connection with, or resulting from, all utility installation work performed by such person during a one-year period, in lieu of providing a bond in connection with each utility application as described in Section 154.117(b) above. The blanket bond must be in a form and an amount reasonably satisfactory to the Drainage Board to ensure the proper repair of any damage caused in the installation of a utility in a regulated drain or within a regulated drain right of way by the applicant in connection with all of the applicant's proposed installations during the effective dates of the bond.

Section 154. 120. A person shall pay a fee, at the time of making application to perform utility work in any regulated drain or regulated drain right of way. The fee shall be due at the time of making application, provided however, that a person shall not be required to pay more than one application fee during any twelve (12) month period commencing on the date of the person's first application. The application fees to be collected are as follows:

a. for each proposed crossing of a regulated drain, the applicant shall pay a fee in the sum of \$250.00 for each proposed crossing; and

b. for each proposed encroachment into a regulated drain or regulated drain easement area, a fee in the sum of \$25.00 per twelve inches (12") of encroachment with a minimum application fee of \$250.00.

Section 154.121. The Henry County Surveyor may issue a stop work order or other directive instructing a person to cease work in connection with the installation of a utility in a regulated drain or a regulated drain right-of-way if such person is:

- a. Disturbing the regulated drain or regulated drain easement area or taking any step to install a utility without first obtaining a Drain Utility Installation Permit;
- b. Installing a utility in a location or in a manner not specified in a Drain Utility Installation Permit; or,
- c. Installing a utility in a manner that materially deviates from the application for a Drain Utility Installation Permit or does not otherwise conform with the specifications required by Section 154.118 for the installation of a utility in a regulated drain or regulated drain right-of-way.

Section 154.122. No person shall utilize foundry sand as a fill material or place foundry sand on or in the ground within a regulated drain or regulated drain right of way. Any person who violates the provisions of this section shall, in addition to being subject to a fine as set forth in Section 154.199, immediately remove any foundry sand placed in violation of this Section.


Section 154.123. The provisions of this Ordinance shall not be applicable to work performed in connection with, or ancillary to, the installation of a Wind Energy Conservation System, as defined and regulated by §§ 154.095 through 154.107 of the Henry County Code, and all amendments thereto.

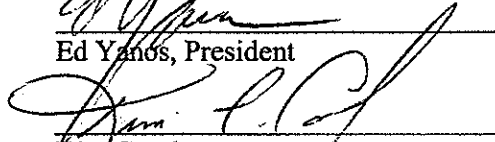
EFFECTIVE DATE: This Ordinance shall be effective upon passage and at the earliest date permitted by law.

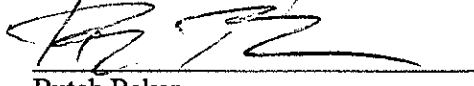
SEVERABILITY: Any provision contained in this ordinance, which is found by a court of competent jurisdiction to be unlawful or by operation of law, including subsequent legislative enactment, is rendered inapplicable, shall be omitted and the rest and remainder of this ordinance shall remain in full force and effect.

REPEALER: All ordinances that are in conflict with the terms of this Ordinance are hereby repealed as of the effective date of this Ordinance.


ADOPTED by the Board of Commissioners of Henry County, Indiana this 16th day of November, 2016, by a vote of 3 to 0.


Ed Yanos, President


Kim Cronk


Butch Baker

Attest:


Patricia A. French, Auditor