

CHARTER TOWNSHIP OF TEXAS

ORDINANCE NO. _____

WELLHEAD PROTECTION ORDINANCE

THE CHARTER TOWNSHIP OF TEXAS ORDAINS:

Section 1.

A. Intent / Purpose

The intent of the Charter Township of Texas Wellhead Protection Ordinance is to safeguard the health, safety, and welfare of persons served by the Public Water Supply System by protecting groundwater that serves as drinking water, thus providing a safe potable water supply now and for future generations.

B. Definitions

The following definitions apply to this ordinance:

Best Management Practices (BMP) means the best available methods, activities, maintenance procedures, technologies, operating methods or management practices for preventing or reducing the quantity of Regulated Substances entering groundwater and surface water from a particular land use activity.

Capture Zone means that area through which water travels below the surface and reaches a municipal well or well field within a specified period of time (under specified conditions set by the MDEQ). This ordinance addresses both a one-year and ten-year time-of-travel capture zone. The capture zones are shown on the Wellhead Protection Ordinance Capture Zone Map, attached to this Ordinance and incorporated herein by this reference.

City means the City of Kalamazoo.

Groundwater means the water below the land surface in a zone of saturation, excluding those waters in underground piping for water, wastewater, or stormwater distribution/collection systems.

Michigan Department of Environmental Quality (MDEQ): shall include its predecessors and successors.

Performance Standards shall mean those BMPs and engineering controls contained within the document "Performance Standards for Groundwater Protection within Wellhead Protection Capture Zones and Stormwater Quality

Management.” which is adopted by resolution of the Township Board and which may be amended by resolution of the Township Board as necessary to incorporate new or modified BMPs and engineering controls. The Wellhead Protection Administrator shall maintain the document and shall at times be prepared to consult and distribute the most recently adopted performance standards, a copy of which shall also be retained by the Township Clerk with resolution date indicated thereon.

RCRA means the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580; 42 U.S.C. 6901 et seq.), as amended.

Regulated Substances shall include:

1. Substances for which there is a material safety data sheet (MSDS), as established by the United States Occupational Safety and Health Administration, and the MSDS cites possible health hazards for said substance;
2. Hazardous Waste, as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended;
3. Hazardous Substance, as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with the U.S. EPA regulations;
4. Radiological materials; and
5. Biohazards.

Regulated Substances shall not, however, include:

1. Substances in an amount equal or less than 2200 pounds that are in an area capable of fully containing a total release of said substance or an area that would drain the substance to a wastewater treatment system, excluding septic tanks systems, capable of treating the released substance(s);
2. Substances in a parked or stopped vehicle in transit, provided the vehicle is stopped or parked for less than 72 hours;
3. Substances, such as gasoline or oil, in operable motor vehicles or boats so long as used solely for the operation of the vehicle, but not the tanker portion of a tank truck;

4. Pressurized gases such as chlorine, propane, hydrogen, and nitrogen when in a chemical storage tank;
5. Refrigerants contained within equipment and used for on-site air cooling or in household appliances;
6. Substances contained within electrical utility transformers/switches;
or
7. Substances used in construction for which all necessary permits have been obtained, and in accordance with the "Performance Standards."

Release means the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of one or more regulated substances upon or into any land or water within a capture zone. Release includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site sewage disposal system, dry-well, catch basin, or landfill. The term "release" when used and applied herein does not include:

1. Disposal in accordance with all applicable legal requirements, including those in RCRA and CERCLA, of hazardous wastes in a Facility that has received and maintained all necessary legal approvals for that purpose;
2. Disposal of any substance in compliance with applicable legal requirements, including without limitation, the terms and provisions of a valid municipal, state, or federal permit;
3. Disposal, in accordance with all legal requirements, of any substance to a sanitary sewer system that has received and maintained all necessary legal approvals for that purpose;
4. Disposal, in accordance with all legal requirements, of "sanitary sewage" to subsurface sewage disposal systems as defined and permitted by the State of Michigan or Kalamazoo County Environmental Health;
5. A release for which there is no obligation to report under Federal, State, or other local regulations that occurs on an impervious ground surface (e.g. building floor or concrete driveway) that is effectively cleaned up before reaching permeable ground (e.g. unpaved), a dry well, a storm sewer, or surface water body; or

6. The application of agricultural chemicals, fertilizers, mineral acids, organic sulfur compounds, etc. as used in routine agricultural operations and applied under the “Generally Accepted Agricultural Management Practices,” and consistent with label directions approved by the United States Environmental Protection Agency or the Michigan Department of Agriculture.

Spill Contingency Plan: A written site-specific plan conforming to the specifications contained in the “Performance Standards,” including the documentation of general site operations; Regulated Substance storage areas; potential for releases of Regulated Substances and an analysis of the potential destination of such releases; and procedures to be followed in the event of a release.

Township: The Charter Township of Texas

Wellhead: is any individual well used for supplying water.

Wellhead Protection Board of Appeals: Shall be the Charter Township of Texas Planning Commission unless the Township Board by resolution designates a separate Wellhead Protection Board of Appeals.

C. Responsibility for Administration

The Township Board shall, by Resolution, designate a person or persons who shall administer, implement and enforce the provisions of this ordinance. That person shall be known as the Wellhead Protection Administrator.

D. Prohibitions within Ten (10) Year Time-of-Travel (TOT) Capture Zone.

Within a ten-year time-of-travel capture zone, no person shall, nor cause or allow another over whom he or she has control to:

1. Release or allow the release of a Regulated Substance, alone or in combination with other materials (such as fill) in such a manner that the substance gains access to the ground, to a storm sewer or surface water or in any other way such that the substance might enter the groundwater if doing so creates a reasonable likelihood of an adverse impact upon the groundwater;
2. Possess a Regulated Substance, including fuels (e.g. gasoline, diesel, kerosene, etc.) exceeding fifty-five (55) gallons aggregate for liquid materials, or four-hundred forty (440) pounds aggregate for dry weights, unless prepackaged and intended for retail sale or for commercial or household use (such as salt used in water softeners, fertilizers, pesticides, herbicides, etc.), or unless

engineering controls are designed and implemented consistent with the "Performance Standards," BMPs, the Fire Code, and applicable State of Michigan laws and regulations. The following, however, shall not be considered prohibited activities:

- a. The use of underground oil and water separators and stormwater treatment structures which meet the conditions of the "Performance Standards;
 - b. The use of current hazardous waste storage areas at RCRA permitted facilities;
 - c. Laboratory activities, consistent with all Federal, state, and local regulations.
3. Operate a scrap and recycling yard;
 4. Operate a sanitary / solid waste landfill;
 5. Use oil, waste oil or similar liquid petroleum-type products for dust suppression;
 6. Install a private water well for the purpose of drinking water or irrigation if, in the determination of the Township, public water service is reasonably available;
 7. Install or use a private water well not installed for the purpose of drinking water or irrigation unless it is determined by the Township that the well owner (or representative) has scientifically demonstrated that the well will not cause an adverse impact to the public water supply;
 8. Use any private well if said use is likely to cause an adverse impact to the public water supply;
 9. Excavate, extract, or mine sand, gravel, bedrock or any other type of earth if a permit or site plan review is required unless the property owner has established, to the Township's satisfaction, that the activity will not cause an adverse impact to the public water supply;
 10. Allow the presence of an abandoned well, which is defined as any well which has either been discontinued for more than one year, is in such disrepair that its continued use for obtaining groundwater is impractical, has been left uncompleted, is a threat to groundwater resources, or is a health or safety hazard. A well shall not be

considered abandoned if it has been properly plugged pursuant to The Groundwater Quality Control Act, Part 127, 1978 PA 368; or

11. Drill for natural gas or petroleum, whether for exploration, production or otherwise.

E. Prohibitions Within One (1) Year Time-of-Travel (TOT) Capture Zone.

Within a one-year time-of-travel capture zone, no person shall, nor cause or allow another, over whom he or she has control, to:

1. Engage in any activity prohibited in the 10-Year TOT Capture Zone;
2. Possess Regulated Substances, including fuels (e.g. gasoline, diesel, kerosene, etc.), exceeding fifty-five (55) gallons aggregate for liquid materials or four-hundred forty (440) pounds aggregate for dry weights, such as sometimes occurs with activities such as fueling service establishments, motor vehicle repair, body repair; trucking or bus terminals; primary metal product industries; metal plating, polishing, etching, engraving, anodizing or similar processes; lawn, garden, pesticide and agricultural services with on-site bulk mixing or blending of fertilizers, pesticides and other industry-related chemicals for commercial application; and dry cleaning facilities with on-site cleaning service; or
3. Construct or replace any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of domestic or non-domestic wastewater if in the determination of the Township, a public sanitary sewer is reasonably available.

F. Well Isolation Distance Restrictions

Within either capture zone, no person shall cause or allow uses or activities that would violate the terms and conditions set forth in the document “Minimum Well Isolation Distances (From Contamination Sources and Buildings), Part 127, Act 368, P.A. 1978 and Act 399, PA 1976” as prepared by the MDEQ, Water Division, as it may be amended, which, for the purpose of this section, shall be deemed to apply to all persons, unless approved in writing by the Township Wellhead Protection Administrator.

G. Determination of Capture Zone Boundaries

In determining whether a property is within a capture zone, the following shall apply:

1. Where a capture zone line that delineates the boundary of one or more zones passes through a property, the entire parcel shall be subject to the restrictions that apply to the more restrictive zone.
2. The Township Wellhead Protection Administrator or his or her designee shall have the authority to interpret the capture zone and determine where the boundaries of the different zones fall, if in dispute. Said interpretation may be appealed to the Wellhead Protection Board of Appeals, appointed by the Township Board.

H. Continuation of Existing Facilities and Land Uses

All facilities shall meet the requirements of the "Performance Standards" and/or shall prepare a Spill Contingency Plan within two years from the adoption date of this ordinance.

I. Requirements Regarding Release of Regulated Substance

1. Upon discovery of a release within a capture zone, the owner and person in control of the property on which a release occurred, as well as the person responsible for the release, shall take appropriate reasonable actions to mitigate the potential impact of the release on groundwater and remediate the release. Remediation must be conducted in a timely manner and in accordance with applicable law. Wastes generated during remediation of a Regulated Substance release must be handled in accordance with all applicable legal requirements. Storage of these materials for a period of greater than ninety (90) days must be reported to, and approval obtained from, the Township Wellhead Protection Administrator.
2. All releases shall be documented in writing and notice thereof shall be mailed to the Township within ten (10) business days of said incident. Initial release notification shall include, at a minimum, the following:
 - a. Location of the release (address, and name and phone number of property owner);
 - b. Reporting party's name, address, and phone (if different from above);
 - c. Emergency contact and phone;
 - d. Description of the nature of the incident, including date, time, location, and cause of the incident; type, concentration, and volume of substance(s) released;

- e. Map showing exact release location, and relevant site features (i.e. paved area, storm sewer catch basins/inlets, water features, etc.), scale, and north arrow;
 - f. All measures taken to clean up the release; and
 - g. All measures proposed to be taken to reduce and prevent any future release.
3. The Township Wellhead Protection Administrator or his/her designee shall use the Regulated Substance Release Report to determine if and where any additional investigative work needs to be completed to assess the potential impact of the release. The owner or operator shall retain a copy of the written notice for at least three years.

J. Inactive Operations

This section applies to any business or other operation (“operation”) that is inactive, is within a capture zone, and at which there are regulated substances. For purposes of this section, “inactive” is defined to include those businesses or operations that are unoccupied and have no activity for at least thirty (30) days. Those who own or control such an inactive operation shall do the following:

1. Within 7 days of the operation becoming inactive, take such steps as necessary to secure the site such that vandals and all other persons cannot gain access to the regulated substances;
2. Within 30 days of the operation becoming inactive, provide to the Township Wellhead Protection Administrator a document that identifies the site, the date of inactivity, the regulated substances that exist on site, and the name, address and telephone number of both the owner and the person in control of the site; and
3. Within 6 months of the operation becoming inactive, remove all regulated substances from the site. This does not include those substances used for heating, cooling, or electrical lighting.

K. Enforcement

1. Whenever the Township determines that a person has violated a provision of this Ordinance, the Township may order compliance by issuing a written Notice of Violation to the responsible person/facility.
2. If the Township requires abatement of a violation and/or restoration of affected property, the notice shall set forth a deadline by which such action must be completed. Said notice may further advise that, should the violator fail to remediate or restore within the

established deadline, the work will be performed by the Township, with the resulting expense thereof charged to the violator.

3. Nothing within this section shall limit the Township's authority to seek injunctive relief and/or a search warrant allowing entry onto the premises and abatement of the violation to protect the public health, safety and welfare.

L. Variance / Appeal Rights

1. If an owner of property within a capture zone believes the requirements of this ordinance impose an unreasonable burden on the use of the owner's property, the owner may seek a variance from the Township Wellhead Protection Administrator (or his or her designee). Such a request must be in writing with enough detail to allow the Township Wellhead Protection Administrator to understand the situation and proposed variance. If the Township Wellhead Protection Administrator determines that additional information is needed, the request for additional information shall be made within 30 days of the owner's request. Within 30 days of the receipt of such additional information, or, if no such request is made, within 30 days of the owner's request, the Township Wellhead Protection Administrator shall issue a written response to the owner. The response shall grant, deny, or grant partial or different relief than was requested. A grant, partial or complete, may relieve the property owner from strict compliance of this ordinance. Reasonable conditions may be imposed as part of such a grant. The Township Wellhead Protection Administrator shall be guided by the primary goal of protecting the municipal well fields without creating undue hardship upon the property owners affected.
2. Any person receiving a Notice of Violation or whose variance request has been denied in whole or in part may appeal the determination set forth within the Notice or the variance decision to the Township Wellhead Protection Board of Appeals by submitting a written notice of appeal to the Township. The notice of appeal must be received by the Township Wellhead Protection Administrator within 30 days from the date of the Notice of Violation, with enough detail to allow the Township Wellhead Protection Board of Appeals to understand the situation. Within 30 days of the receipt of such an appeal, the Wellhead Protection Board of Appeals shall set the matter for hearing. Notice of the hearing shall be given in writing to the applicant and to the City of Kalamazoo Department of Public Services Director. The applicant shall be given the opportunity to present evidence at the hearing in person or in writing or by representative. The Board of Appeals

shall issue a written decision on the appeal. The Township Wellhead Protection Board of Appeals' response shall affirm, reverse, or modify the Notice of Violation being appealed.

3. If the person who has made an appeal does not agree with the Township Wellhead Protection Board of Appeals' decision, said person may appeal the matter by filing an appeal in the Kalamazoo Circuit Court, which may affirm, reverse or modify the decision being appealed. Such an appeal must be filed within 30 days of the Township Wellhead Protection Board of Appeals' decision.

M. Abatement / Remedial Activities by the Township

1. Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense. The Township is authorized to take any legal action necessary to abate, enjoin, or otherwise compel the cessation of such nuisance.
2. The Township may seek authority to enter the premises to take or may contract with others to take reasonable and necessary abatement or remedial activities whenever the Township determines a violation of this Ordinance has occurred and that the responsible party cannot or will not timely correct the violation, or when no known responsible party exists. The responsible party shall reimburse the Township for all reasonable expenses thus incurred by the Township.
3. The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Township to seek cumulative remedies.

N. Violation & Penalty

Any violation of this Ordinance or any order made in accordance with this Ordinance constitutes a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment of not more than 90 days, together with repayment of costs incurred by the Township in prosecuting the action; in abating the violation or seeking injunctive relief. Each day a violation exists shall be deemed to be a separate violation. A citation under this Ordinance may be issued by a sheriff's deputy, the Township's Ordinance Enforcement Officer or the Township's Wellhead Protection Administrator.

REPEALER

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

EFFECTIVE DATE

This Ordinance is effective on the 30th day following publication of a summary thereof, after adoption by the Township Board.