

## **CHAPTER 1041**

### **WELLHEAD PROTECTION**

#### **1041.01 Findings and Public Purpose**

The City Commission finds that groundwater is vulnerable to contamination originating from certain activities on the earth's surface and that the City has a significant public investment in the municipal water system, including the water source.

The purpose of the City of Battle Creek Wellhead Protection Ordinance ("Ordinance") is to safeguard the health, safety, and welfare of persons served by the City of Battle Creek Public Water Supply System by protecting groundwater that serves as drinking water from activities that have been found through research and experience to have an increased risk of causing contamination of ground water, thus providing a safe potable water supply now and for future generations.

To protect the City's drinking water source from long-term contamination the City Commission does hereby adopt these supplemental regulations which are applicable to designated activities in areas identified in a Wellhead Protection Zone Map which is made a part of this Chapter.

#### **1041.02. Definitions**

The following definitions apply to this Chapter:

- (1) 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.
- (2) City means the City of Battle Creek.
- (3) Department means the City of Battle Creek Department of Public Works.
- (4) Director means the City of Battle Creek Utilities Director or his or her designee.
- (5) Groundwater means the water below the land surface in a zone of saturation, excluding those waters in underground piping for water, wastewater, or storm water distribution/collection systems.

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

(7) *Performance Standards* means those BMPs and engineering controls contained within the document "City of Battle Creek, Performance Standards for Groundwater Protection within the Wellhead Protection Area."

(8) *Person* includes a natural person, a corporation, a partnership, and any other legal entity, and including all agents thereof.

(9) *Regulated Substances*

(a) Regulated Substances shall include:

- (i) Substances for which there is a material safety data sheet (here "MSDS"), as established by the United States Occupational Safety and Health Administration, and the MSDS cites possible health hazards for said substance;
- (ii) Hazardous Waste as defined in the Resource Conservation and Recovery Act of 1976, as amended (hereafter "RCRA").
- (iii) Hazardous Substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act (hereafter "CERCLA").
- (iv) Radiological materials and biohazards.

(b) *Regulated Substances* shall not, however, include:

- (i) Substances in an amount equal or less than 2,200 pounds (total onsite storage) 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);
- (ii) Substances such as gasoline or oil in operable motor vehicles so long as used solely for the operation of the vehicle, but not the tanker portion of a tank truck;
- (iii) Pressurized gases such as chlorine, propane, hydrogen, and nitrogen when in a chemical storage tank;
- (iv) Refrigerants contained within equipment and used for on-site air cooling or in household appliances;
- (v) Substances contained within electrical utility transformers/switches; or

(vi) Substances used in construction for which all necessary permits have been obtained, and in accordance with the "Performance Standards".

- (12) 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 WHPA. 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:
- (a) Disposal, in accordance with all applicable legal requirements and in accordance with the requirements of the RCRA regulations, of hazardous wastes in a Facility that has received and maintained all necessary legal approvals for that purpose;
  - (b) Disposal or release of any substance in compliance with applicable legal requirements, including without limitation, the terms and provisions of a valid municipal, state, or federal permit, if such permits are required by applicable environmental laws;
  - (c) 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;
  - (d) 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 the Calhoun County Environmental Health Department;
  - (e) 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 and documented; or
  - (f) 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 U. S. EPA or the Michigan Department of Agriculture.

- (13) Responsible Person includes the owner of the property, a person who has the right to possession of the property whether through land contract, lease, or otherwise, the person responsible for a spill, or a

combination of any one or more of them depending upon the circumstances.

- (14) 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, an analysis of the potential destination of such releases, and procedures to be followed in the event of a release.
- (15) Time of Travel: The time it will take a particle of water to travel through the wellhead protection area and into a well.
- (16) Well: A deep vertical hole whether used to supply water, test water, inject brine, or for any other purpose, other than a well which is part of the City's Water Supply System.
- (17) Wellhead Protection Area (WHPA) means that area through which water travels below the surface and reaches a City Water Supply System well or well field under specified conditions set by the Michigan Department of Environmental Quality [MDEQ] within both a one-year and ten-year time-of-travel.
- (18) Wellhead Protection Zone Map is the map of the Wellhead Protection Area and any Well Isolation Distance related to a Wellhead Protection Area which is made a part of this Ordinance, a copy of which will be available in the City Clerk's Office and the Planning Department.

#### **1041.03 Application of Wellhead Protection Regulations**

The regulations in this Chapter apply to all activities conducted in the WHPA area which is shown on the Wellhead Protection Zone Map. They are also applicable to an activity that occurs outside the WHPA if the activity is within the required Well Isolation Distance from a City well, as required by state law. In addition to any other applicable ordinance, a person must comply with this Chapter and with the City's Zoning Ordinances. However, if there is a conflict between any provision of this Chapter and the City's Zoning Ordinances, or any other City ordinance, the requirements of this Chapter control unless specifically otherwise provided in this Chapter.

#### **1041.04 Responsibility for Administration**

The Director shall administer, implement, and enforce the provisions of this Chapter. Any powers granted or duties imposed upon the Director may be

delegated in writing by the Director or the City Manager to third parties, as the Director or City Manager deems appropriate.

#### **1041.05 Prohibitions within Ten-Year Time-of-Travel**

Within a ten-year time-of-travel in the WHPA, no person shall, nor shall any person allow another over whom the person 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 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 City's "Performance Standards," the City's Fire Code, and applicable State of Michigan laws and regulations. The foregoing limits shall not apply to Regulated Substances being contained in the following:
  - (a) Underground oil and water separators and storm water treatment structures that meet the conditions of the "Performance Standards";
  - (b) Hazardous waste storage areas at RCRA facilities;
  - (c) Laboratory facilities that comply with all federal, state, and local regulations.
- (3) Except as otherwise provided for in section 1041.09 of this Ordinance, operate a scrap or recycling yard that uses, stores, generates, or has as a byproduct of or results in the presence of a Regulated Substance ;
- (4) Except as otherwise provided for in section 1041.09 of this Ordinance, operate a sanitary/solid waste landfill that uses, stores, generates, or has as a byproduct of or results in the presence of a Regulated Substance;
- (5) Use oil, waste oil, or similar liquid petroleum-type products for dust suppression;

- (6) Install a water well for the purpose of drinking water or irrigation if, in the determination of the Director, public water service is reasonably available;
  - (7) Install or use a well unless it is determined by the Director that it has been scientifically demonstrated by the person responsible for the well, that the well will not cause an adverse impact to the public water supply. Notwithstanding the foregoing, a well may be installed with the approval of the Director for the purposes of detecting environmental contamination, monitoring environment containment and remediation, or if required by federal, state, or local law;
  - (8) Except as otherwise provided for in section 1041.09 of this Ordinance, excavate, extract, or mine sand, gravel, bedrock, or any other type of earth if a permit or site plan review is required, unless the operator has established to the Director's satisfaction that the activity will not cause an adverse impact to the public water supply;
- (7) Allow the presence of an abandoned well, which is defined as any well that has either been discontinued for more than one year, is in such disrepair that its continued use 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
  - (8) Except as otherwise provided for in section 1041.09 of this Ordinance, drill for natural gas or petroleum, whether for exploration, production, or otherwise including by enhanced recovery methods such as hydraulic fracturing.

## **1041.06 Prohibitions within the One-Year Time-of-Travel**

Within a one-year time-of-travel to the WHPA, no person shall, nor shall a person cause or allow another over whom the person has control to:

- (1) Engage in any activity prohibited in the ten-year time-of-travel; or
- (2) Possess Regulated Substances, 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 for water softeners, fertilizers, pesticides, herbicides, etc.).

## **1041.07 Well Isolation Distance Restrictions**

Within or without the WHPA, 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 Bureau, as it may be amended. The Director shall determine whether a use or activity is being conducted within the Minimum Well isolation Distance so that it must be evaluated for compliance with terms and conditions.

#### **1041.08 Determination of Time of Travel Zone Boundaries to Property**

The following shall apply to determine which Time of Travel zone a property lies within:

- (1) Except as provided in subsection (2) of this section, where the line that delineates the boundary of one or more time of travel zones passes through a property, the entire parcel shall be subject to the restrictions that apply to the more restrictive Time of Travel zone.
- (2) The Director shall have the authority to determine that a property will be subject to a less restrictive Time of Travel zone than would be called for in subsection (1) of this section based upon the portion of the property in the time-of-travel zones involved as well as the activities conducted on the property and any other factor relevant to protecting the safety of the public water.

#### **1041.09 Continuation of Existing Non-Conforming Facilities and Activities Involving Regulated Substances**

A facility or activity that does not meet the requirements of this Chapter on the effective date of this Chapter will be allowed to remain or continue only in accordance with the more strict of the following standards:

- (1) Those standards in Chapter 1288, Nonconforming Uses of the City of Battle Creek Zoning Ordinances; or,
- (2) No longer than three years from the adoption date of this ordinance at which time the facility and/or activity must meet the requirements of the "Performance Standards" as determined by the Director. The Director's determination will be based on the particular activity and/or site specific information regarding the storage, use and transport of regulated substances at the facility. Achieving the greatest risk reduction to the water supply in a practical and implementable manner will be the primary goals in the decision process.

## **1041.10 Requirements Regarding Release of Regulated Substance**

- (1) Upon discovery of a release, the owner and person in control of the property on which a release is occurring or occurred, and the person responsible for the release, shall take appropriate reasonable actions to stop the release, mitigate the potential impact of the release on groundwater and remediate the release. All actions involved in stopping, mitigating, and remediating must be conducted in a timely manner and in accordance with applicable federal, state and local law. If wastes generated during remediation of a Regulated Substance release are expected to be stored, or are stored on site or elsewhere in the WHPA for a period greater than fourteen (14) days, within that 14 days the storage must be reported to, and approval obtained from, the Director.
- (2) In addition to any other report required by state or federal law, all releases must be reported to the Department in writing within five (5) business days from the date of the release on a Regulated Substance Release form available from the Department. The Regulated Substance Release form shall include, at a minimum, the following:
  - (a) Location of the release
  - (b) Name, address, and telephone number of the owner of the property and the person who has possession of the property if different than the owner;
  - (c) Name and address of the person who caused the release;
  - (d) Reporting party's name, address, and telephone number (if different from above);
  - (e) Emergency contact and telephone number for the reporting person;
  - (f) Description of the nature of the incident, including date, time, location, and cause of the incident; type, concentration, and volume of substance(s) released;
  - (g) Map showing exact release location, relevant site features (i.e., paved area, storm sewer catch basins/inlets, water features, etc.), scale, and north arrow;
  - (h) All measures taken and/or intended to be taken to clean up the release; and
  - (i) All measures proposed to be taken to reduce and prevent any future release.

- (3) It is the joint and several obligation of the property owner, person in charge of the property, if other than the owner, and person who was responsible for the release if different from the property owner and other person in charge, to ensure that the Regulated Substance Release form is filed with the Director as required in this subsection. Only one form need be filed if all of the information is accurate and complete. However, if a responsible person knows that the form filed is inaccurate, incomplete, or the circumstances have changed so that the information should be corrected or updated, another form must be filed by the person(s) who have the knowledge.
- (4) The Director shall use the Regulated Substance Release form to determine if any additional investigative work needs to be completed to assess the potential impact of the release, whether any additional containment or remediation work needs to be done, and whether the future prevention plan is sufficient.

#### **1041.11 Inactive Operations**

An "inactive operation" is either 1) an unoccupied facility in which there is one or more Regulated Substances; and/or, 2) a facility which had an activity that involved a Regulated Substance which activity has been discontinued for thirty (30) consecutive days. Those who own or control such an inactive operation shall do the following:

- (1) Immediately upon the operation becoming inactive, take the steps necessary to secure the site such that vandals and all other persons cannot gain access to the Regulated Substance(s);
- (2) Within ten (10) days of becoming an inactive operation, provide to the Director a document that identifies the site, the date it became an inactive operation, the reason it qualifies as an inactive operation, 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) Unless otherwise approved by the Director, within thirty (30) days of the operation becoming an inactive operation, remove all Regulated Substances from the site; this does not include those substances used for heating, cooling, or electrical lighting of the structure if the structure can still be legally occupied.
- (4) Notwithstanding the foregoing, if the Regulated Substance is, in the determination of the Director, a significant threat to the health, safety, and/or welfare of the general public, whether based upon the characteristics of the Regulated Substance itself, or the manner

of containment, or the potential for unauthorized release, or a combination of any one or more, the Director may require the removal of the Regulated Substance in a lesser time, up to and including immediately.

- (5) The owner or other person in charge of the facility or activity may appeal the time required to remove a Regulated Substance in accordance with section 1041.13.

#### **1041.12 Notice of Violation**

- (1) **Notice of Violation.** Whenever the Department determines that a person has violated a provision of this Ordinance, the Director may order compliance by issuing a written Notice of Violation to the responsible person. The Notice of Violation will contain at least the following information:
- (a) The date of the violation;
  - (b) The place of the violation;
  - (c) What the violation consists of;
  - (d) The action required to be taken, including but not limited to abatement and restoration;
  - (e) The deadline for the action which shall be not less than 7 days and not longer than 30 days, except that a violation that is an imminent threat to the health, safety, and/or welfare of the public can be ordered abated immediately;
  - (f) Information on how to file an appeal under 1041.13.
- (2) **Service of Notice of Violation.** If the person to be cited is the owner or occupant of the property upon which a violation is occurring or occurred, the service of the Notice may be given by personal service, or by mailing a copy of the Notice of Violation by first class mail to the responsible person or persons and posting a copy on the property where the activity was or is occurring. If the person to be cited is someone who is not the owner or occupant, the Notice must be given by personal service or certified mail with return receipt.
- (3) **Cumulative Remedies.** Whether or not a Notice of Violation has been issued, the Department may use all civil and/or criminal remedies available under the law, including federal, state, or local ordinance.

## **1041.13 Regulation Variance**

If an owner or lessee of property within the WHPA believes one or more regulations set forth in this Chapter impose an unreasonable burden on a property or activity, the owner or lessee may seek a regulation variance from the Director as follows:

- (1) Such a request must be in writing on a form provided by the Department. The form shall require at least the following:
  - (a) Name, address, and telephone number of the applicant.
  - (b) Proof of authority to make application, i.e. proof of property ownership or right to occupy;
  - (c) The regulation being appealed;
  - (d) The reason the regulation is being appealed and the proposed variance with enough detail to allow the Director to understand the situation and how the proposed regulation variance would provide substantially the same protection as the current regulation.
- (2) If the Director determines that additional information is needed, the request for additional information shall be made to the applicant within thirty (30) days from the date the request for the variance was received by the Director.
- (3) Within thirty (30) days of the receipt of such additional information by the Director, or, if no request for additional information is made by the Director, within thirty (30) days of the date the request for regulation variance was received by the Director, the Director shall issue a written determination to the owner.
- (4) The determination shall grant, deny, or partially grant the regulation variance request. A grant, whether partial or complete, may relieve the property owner from strict compliance with one or more regulations in this Chapter if the proposed variance provides substantially the same protection as the regulation from which relief is sought. Reasonable conditions may be imposed as part of such a grant. The Public Works Director shall be guided by the facts and circumstances of the particular case with primary goal of protecting the City's well fields without creating undue hardship upon the property owner or lessee affected. A person may appeal a partial grant or a denial in accordance with 1041.14.

## **1041.14 Appeals**

A person receiving a Notice of Violation or a partial or full denial of a Request for Regulation Variance may appeal as follows:

(1) Appeal of Notice of Violation.

- (a) The person who receives the Notice of Violation may appeal the Notice of Violation by filing the appeal in writing with the Director on a form provided by the Department within seven (7) days of the date of the Notice of Violation. The appeal must state specifically the basis of the appeal and supply any relevant material.
- (b) The Director shall issue a written determination of the appeal within thirty (30) days of the date the completed appeal form is filed with the Department. The Director may affirm the Notice of Violation or may modify the Notice of Violation in whole or in part. The Determination shall set forth the reasons for the determination. The Director's determination is final.
- (c) Except for cases in which the violation is an imminent threat to the health, safety, and/or welfare of the public, the filing of an appeal under this section tolls the running of the period given under the Notice of Violation to take corrective action.
- (d) Failure to comply with the determination of the Director will result in one or more of the enforcement actions available under this Chapter or otherwise under law being pursued by the Department.

(2) Appeal of Determination of Request for Regulation Variance. A person whose Request for Regulation Variance was denied in whole or in part may appeal the denial to the Calhoun County Circuit Court.

(3) Appeal of Determination of Time-of-Travel Zone Application to Property  
An owner or lessee of property who is aggrieved by a determination of which time-of-travel zone applies may appeal the determination to the Calhoun County Circuit Court.

**1041.14        Abatement/Remedial Activities by the Public Works Department**

- (1) The Director is authorized to take, or contract with others to take, reasonable and necessary abatement or remedial activities whenever the Director determines a violation of this Ordinance has occurred and that the responsible person(s) cannot or will not timely correct the violation, or when no known responsible person can be identified. The responsible person(s) shall reimburse the City for all reasonable expenses thus incurred by the City. The City may seek full reimbursement from one or more of the responsible persons.
- (2) Within ninety (90) days of the completion of said activities, the City will mail to the responsible person(s) a Notice of Claim outlining the expenses

incurred, including reasonable administrative costs, and the amounts thereof. The person billed shall pay said sum in full within thirty (30) days of receipt of the claim. If the person billed desires to object to all or some of the amount sought by the Department, said person may file with the Department, within the same thirty (30)-day period, a written objection setting forth the specific reasons for the objection and any supporting documentation. The Director shall, within thirty (30) days of its receipt of the objection, provide the person objecting with a written determination of the objection. If the Director determines that some or the entire amount originally billed is appropriate, the person shall pay the sum determined to be appropriate within thirty (30) days of receipt of that determination. If the amount due is not timely paid, the City may cause the charges to become a special assessment against the property and shall constitute a lien on the property and/or the City may collect the sum due through any means provided by law.

#### **1041.15. Injunctive Relief**

If a person has violated or continues to violate the provisions of this Ordinance, the City may petition the appropriate court for injunctive relief restraining the person from activities that would create further violations or compelling the person to perform necessary abatement or remediation.

#### **1041.16 Violations Deemed a Public Nuisance**

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

#### **1041.17 Criminal Prosecution**

Unless otherwise specifically provided, a violation of this Ordinance is a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment of not more than ninety (90) days. Each day a violation exists shall be deemed a separate violation.

#### **1041.18 Remedies Not Exclusive**

The remedies listed in this Ordinance are not exclusive among themselves nor of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the City to seek cumulative remedies.

#### **1041.19 Repealer**

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this Ordinance are hereby repealed saving any prosecution, criminal or administrative appeal pending on, or violation cited on or before the effective date of this ordinance, which shall remain subject to the ordinance provision existing at the time of the alleged violation.

#### **1041.20      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.