

## **CHAPTER XXXIV**

### **WELLHEAD PROTECTION**

- 34.01 Purpose and Authority
- 34.02 Application or Regulations
- 34.03 Definitions
- 34.04 Groundwater Technical Review Committee
- 34.05 Groundwater Protection Overlay District
- 34.06 Supremacy of This District
- 34.07 Zones
- 34.08 Groundwater Protection Overlay Districts Boundaries
- 34.09 Permitted Uses
- 34.10 Separation Distance Requirements
- 34.11 Prohibited Uses
- 34.12 Conditional Uses
- 34.13 Requirements for Existing Facilities Which May  
Cause or Threaten to Cause Environmental Pollution
- 34.14 Changing Technology
- 34.15 Enforcement and Penalty
- 34.16 Conflict, Interpretation and Severability

## WELL HEAD PROTECTION 34.01

### **34.01 PURPOSE AND AUTHORITY.**

- (1) **PURPOSE.** The residents of the Village of Elkhart Lake depend exclusively on groundwater for a safe drinking water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of this Wellhead Protection Ordinance is to institute land use regulations and restrictions protecting the municipal water supply of the Village of Elkhart Lake and promote the public health, safety and general welfare of the residents.
- (2) These regulations are established pursuant to the authority granted by the Wisconsin Legislature in 1983, Wisconsin Act 410 (effective May 11, 1984), which specifically added groundwater protection to the statutory authorization for municipal planning and zoning in order to protect the public health, safety and welfare.

### **34.02 APPLICATION OF REGULATIONS.**

- (1) The regulations specified in this Wellhead Protection Ordinance shall apply to the incorporated areas of Elkhart Lake that lie within the recharge areas for municipal water supply wells as defined in section 29.05, and are in addition to the requirements in the underlying zoning district, if any. If there is a conflict between this ordinance and the zoning ordinance, the more restrictive provision shall apply.

### **34.03 DEFINITIONS.**

- (1) **AQUIFER.** A saturated, permeable geologic formation that contains and will yield significant quantities of water.
- (2) **CONE OF DEPRESSION.** The area around a well, in which the water level has been lowered at least one-tenth of a foot by pumping of the well.
- (3) **FIVE-YEAR TIME OF TRAVEL.** The recharge area up gradient of the cone of depression, the outer boundary of which it is determined or estimated that groundwater will take five years to reach a pumping well.
- (4) **MUNICIPAL WATER SUPPLY.** The municipal water supply of the Village of Elkhart Lake.
- (5) **PERSON.** An individual, partnership, association, corporation, municipality or state agency, or other legal entity.

## **WELLHEAD PROTECTION 34.03**

- (6) RECHARGE AREA. The area which encompasses all areas or features that, by surface infiltration of water that reaches the zone of saturation of an aquifer, supplies groundwater to a well.
- (7) THIRTY-DAY TIME OF TRAVEL. The recharge area up gradient of a well, or its cone of depression, the outer boundary of which it is determined or estimated that groundwater will take thirty days to reach a pumping well.
- (8) WELL FIELD. A piece of land used primarily for the purpose of locating wells to supply a municipal water system.
- (9) ZONE OF SATURATION. The area of unconsolidated, fractured or porous material that is saturated with water and constitutes groundwater.

### **34.04 GROUNDWATER TECHNICAL REVIEW COMMITTEE.**

- (1) The Elkhart Lake Groundwater Technical Review Committee shall consist of all of the following:
  - (a) The Village Planner.
  - (b) The Village Engineer/Director of Public Works
  - (c) The Village Inspector.
  - (d) A local representative from the Department of Natural Resources with expertise in groundwater or groundwater contamination issues appointed by their Department and approved by the Village Council.
  - (e) One member, who has at least one of the following qualifications:
    - 1. Is a hydrogeologist, hydrologist or a professional engineer with a background in groundwater; or
    - 2. Is a certified groundwater professional.
- (2) The purpose of the Elkhart Lake Groundwater Technical Review Committee is to provide objective and scientific technical review of requests for conditional use permits and make recommendations to the Plan Commission to grant or deny conditional use permits based upon the facts discovered in that review, to make recommendations on any and all conditions placed on a conditional use permit, and to give advice on matters concerning groundwater.

## WELLHEAD PROTECTION 34.05

### **34.05 GROUNDWATER PROTECTION OVERLAY DISTRICT.**

A Groundwater Protection Overlay District may be created to institute land use regulations and restrictions within a defined area that contributes water directly to a municipal water supply and thus promotes public health, safety, and welfare. The district is intended to protect the groundwater recharge area for the existing or future municipal water supply from contamination.

### **34.06 SUPREMACY OF THIS DISTRICT.**

The regulations of an overlay district will apply in addition to all other regulations, which occupy the same geographic area. The provisions of any zoning districts that underlay this overlay district will apply except when provisions of the Groundwater Protection Overlay District are more stringent.

### **34.07 ZONES.**

The Groundwater Protection Overlay District is divided into Zone 1 and Zone 2 as follows:

- (1) **ZONE 1 OF GROUNDWATER PROTECTION OVERLAY DISTRICT.** Zone 1 is the area of land, which contributes water to the well in question, out to a 30-day time of travel to the well.
- (2) **ZONE 2 OF THE GROUNDWATER PROTECTION OVERLAY DISTRICT.** Zone 2 encompasses the area of land which contributes water to the well starting at the line which delineates the 30-day time of travel and ends at the line delineating the 5-year time of travel to the well.

### **34.08 GROUNDWATER PROTECTION OVERLAY DISTRICTS BOUNDARIES.**

The boundaries of the Groundwater Protection Overlay Districts shall be shown on the Elkhart Lake zoning map. The locations and boundaries of the zoning districts established by this ordinance are set forth on the Village of Elkhart Lake Municipal Wellhead Protection Areas Maps, Exhibit A & Exhibit B, which is incorporated herein and hereby made a part of this ordinance. Exhibit A provides the boundaries of the overlay district for Well #3 and Exhibit B provides the boundaries of the overlay district for Well #1. Said maps, together with everything shown thereon and all amendments thereto, shall be as much a part of this ordinance as though fully set forth and described herein.

### **34.09 PERMITTED USES.**

- (1) The following permitted uses in Zone 1 are subject to the separation distance requirements, section 29.10 and prohibited uses, section 29.11:

## WELLHEAD PROTECTION 34.09

- (a) Public and private parks, playgrounds and beaches, provided there are no on-site wastewater disposal systems or holding tanks.
  - (b) Wildlife and natural and woodland areas.
  - (c) Biking, hiking, skiing, nature, equestrian and fitness trails.
  - (d) Residential which is municipally sewered.
  - (e) Routine tillage, planting, and field management operations in support of agricultural crop production, where nutrients from legume, manure, and commercial sources are accounted for and credited toward crop nutrient need. The combination of all nutrient sources applied or available on individual fields may not exceed University of Wisconsin soil test recommendations for that field.
- (2) The following permitted uses in Zone 2 are subject to the separation distance requirements, section 29.10 and prohibited uses, section 29.11:
- (a) All of the uses permitted in Zone 1.
  - (b) Single-family residences on a minimum lot of 20,000 square feet with a private on-site sewage treatment system receiving less than 8,000 gallons per day, which meets the County and State health standards for the effluent, and is in conformance with ch. Comm 83, Wis. Adm. Code.
  - (c) Commercial establishments which are municipally sewered.
  - (d) Industrial establishments which are municipally sewered.
  - (e) Residential use of above ground LP gas tanks for heating, not to exceed 1,000 gallons.

### **34.10 SEPARATION DISTANCE REQUIREMENTS.**

- (1) The following separation distances as specified in s. NR 811.16(4)(d), Wis. Adm. Code, shall be maintained:
- (a) Fifty feet between a public water supply well and a storm water sewer main or any sanitary sewer main constructed of water main materials and joints which is pressure tested in place to meet current AWWA 600 specifications. NOTE: Current AWWA 600 specifications
  - (b) Two hundred feet between a public water supply well and any sanitary sewer main not meeting the above specifications, any sanitary sewer lift station or single-family residential fuel oil tank.
  - (c) Four hundred feet between a public water supply well and a septic system receiving less than 8,000 gallons per day, or a storm water detention, retention, infiltration or drainage basin.
  - (d) Six hundred feet between a well and any gasoline or fuel oil storage tank installation that has received written approval from the Wisconsin Department of Commerce (hereafter Commerce) or its designated agent under s. Comm 10.10, Wis. Adm. Code.

## WELLHEAD PROTECTION 34.10

- (e) One thousand feet between a well and land application of municipal, commercial or industrial waste; industrial, commercial or municipal waste water lagoons or storage structures; manure stacks or storage structures; and septic tanks or soil adsorption units receiving 8,000 gallons per day or more.
- (f) Twelve hundred feet between a well and any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time disposal or small demolition facility; sanitary landfill; coal storage area; salt or deicing material storage area; gasoline or fuel oil storage tanks that have not received written approval from Commerce or its designated agent under s. Comm 10.10, Wis. Adm. Code; bulk fuel storage facilities; and pesticide or fertilizer handling or storage facilities.

### 34.11 PROHIBITED USES.

- (1) The following uses are prohibited in Zones 1 and 2:
  - (a) Buried hydrocarbon, petroleum or hazardous chemical storage tanks.  
(Hazardous chemicals are identified by OSHA criteria under 40CFR Part 370.)
  - (b) Cemeteries.
  - (c) Chemical manufacturers (Standard Industrial Classification Major Group 28).
  - (d) Coal storage.
  - (e) Dry cleaners.
  - (f) Industrial lagoons and pits.
  - (g) Landfills and any other solid waste facility, except post-consumer recycling.
  - (h) Manure and animal waste storage except animal waste storage facilities regulated by the County.
  - (i) Nonmetallic earthen materials extraction or sand and gravel pits.
  - (j) Pesticide and fertilizer dealer, transfer or storage.
  - (k) Railroad yards and maintenance stations.
  - (l) Rendering plants and slaughterhouses.
  - (m) Salt or deicing material storage.
  - (n) Salvage or junkyards.
  - (o) Septage or sludge spreading, storage or treatment.
  - (p) Septage, wastewater, or sewage lagoons.
  - (q) Private on-site wastewater treatment systems or holding tanks receiving 8,000 gallons per day or more.
  - (r) Stockyards and feedlots.
  - (s) Motor vehicular services, including filling and service stations, repair, renovation and body working.
  - (t) Wood preserving operations.

## WELLHEAD PROTECTION 34.11

- (2) In Zone 1, the conditional uses of section 29.12(2) are prohibited.

### **34.12 CONDITIONAL USES.**

- (1) Any person may request a conditional use permit for certain uses, activities and structures within Zone 2 of the Groundwater Protection Overlay District not prohibited in section 29.11.
- (2) The uses, activities, and structures that may be conditionally allowed within Zone 2 are:
- (a) Jewelry plating and metal plating.
  - (b) Machine or metal working shops.
  - (c) Commercial establishments utilizing a private on-site wastewater treatment system receiving less than 8,000 gallons per day, which is in conformance with ch. Comm 83, Wis. Adm. Code.
  - (d) Research labs, universities and hospitals.
  - (e) Exposed hydrocarbon, petroleum or hazardous chemical storage tanks. (Hazardous chemicals are identified by OSHA criteria under 40 CFR Part 370.) This shall not apply to residential LP gas tanks which are permitted under section 29.09(2)(e).
  - (f) Storage or processing of extremely hazardous substances, radioactive materials or substances listed in Table 1, ch. NR 140, Wis. Adm. Code (Extremely hazardous substances are identified by SARA/EPCRA criteria under 40 CFR Parts 302 and 355.)
- (3) All requests for a conditional use permit shall be submitted in writing to the Village of Elkhart Lake and shall include all of the following:
- (a) A site plan map with all building and structure footprints, driveways, sidewalks, parking lots, storm water management structures, groundwater monitoring wells, and 2-foot ground elevation contours.
  - (b) A business plan and/or other documentation which describes in detail the use, activities, and structures proposed.
  - (a) An environmental assessment report prepared by a licensed environmental engineer which details the risk to, and potential impact of, the proposed use, activities, and structures on groundwater quality.

## WELLHEAD PROTECTION 34.12

- (b) An operational safety plan, which details the operational procedures for material processes and containment, best management practices, storm water runoff management, and groundwater monitoring.
  - (c) A contingency plan which addresses in detail the actions that will be taken should a contamination event caused by the proposed use, activities, or structures occur.
- (4) The person making the request shall reimburse the Village for consultant fees and technical review committee expenses associated with this review at the invoiced amount, plus administrative costs.
- (5) All conditional use permits granted shall be subject to conditions that will include environmental and safety monitoring determined necessary to afford adequate protection of the public water supply. These conditions shall include all of the following:
- (a) Provide current copies of all federal, state and local facility operation approval or certificates and on-going environmental monitoring results to the Village.
  - (b) Establish environmental or safety structures/monitoring to include an operational safety plan, material processes and containment, operations monitoring, best management practices, storm water runoff management, and groundwater monitoring.
  - (c) Replace equipment or expand in a manner that improves the environmental and safety technologies being utilized.
  - (d) Prepare, file and maintain a current contingency plan which details the response to any emergency which occurs at the facility, including notifying municipal, county and state officials. Provide a current copy to the Village.
- (6) The Elkhart Lake Plan Commission shall decide upon a request for a conditional use permit only after full consideration of the recommendations made by the Elkhart Lake Groundwater Technical Review Committee. Any conditions above and beyond those specified in Conditional Uses, subsection (5) herein, that are recommended by the Elkhart Lake Groundwater Technical Review Committee may be applied to the granting of the conditional use permit.



## WELLHEAD PROTECTION 34.13

### **34.13 REQUIREMENTS FOR EXISTING FACILITIES WHICH MAY CAUSE OR THREATEN TO CAUSE ENVIRONMENTAL POLLUTION.**

Existing facilities within the Groundwater Protection Overlay District at the time of enactment of such district which may cause or threaten to cause environmental pollution include, but are not limited to, those types listed in the Department of Natural Resources' form 3300-215, Public Water Supply Potential Contaminant Use Inventory Form and all other facilities which are considered a prohibited use in prohibited uses, section 29.11, or a conditional use in conditional uses, section 29.12, all of which are incorporated herein as if fully set forth. [Consult your municipal attorney regarding incorporation by reference of Form 3300-215].

- (a) Such facilities as above which exist within the district at the time of enactment of a district shall provide copies of all current, revised or new federal, state and local facility operation approvals, permits or certificates; operational safety plans; and on-going environmental monitoring results to the Village.
- (b) Such facilities as above which exist within the district at the time of enactment of a district shall have the responsibility of devising, filing and maintaining, with the Village, a current contingency plan which details how they intend to respond to any emergency which may cause or threaten to cause environmental pollution that occurs at their facility, including notifying municipal, county and state officials.
- (c) Such facilities as above cannot engage in or employ a use, activity, or structure listed in prohibited uses, section 29.11, or in conditional uses, section 29.12, which they did not engage in or employ at the time of enactment of a district, and can only expand, replace or rebuild those present uses, activities, equipment, or structures on the site or property of record associated with the facility at the time of enactment of a district, and in a manner that improves the environmental and safety technologies already being utilized. No existing use, activity, or structure listed as a prohibited use or conditional use shall be expanded, replaced, or rebuilt unless a conditional use permit is granted for such expansion, replacement, or rebuilding. This section does not apply to normal maintenance or minor repairs.

### **34.14 CHANGING TECHNOLOGY.**

- (1) The uses prohibited by this district are prohibited based upon the combined pollution experience of many individual uses, and the technology generally employed by a particular use considered being of a high risk for pollution to the groundwater resource. As the technology of other uses change to low or non-risk

## **WELLHEAD PROTECTION 34.14**

materials or methods, upon petition from such use, after conferring with the Groundwater Technical Review Committee or other expert opinion, and after appropriate public notice and hearing, the Village through appropriate procedures and actions to change these provisions of the Elkhart Lake Municipal Code may remove from the designated prohibited uses such uses as are demonstrated convincingly that they no longer pose a groundwater pollution hazard.

- (2) In dealing with uses which attempt to become permissible, under the terms of this district, by continuing to utilize pollutant materials but altering their processing, storage and handling, it is not the intention to accept alternate or reduced hazards as the basis for making a use permissible. It is the intention to continue a prohibition on such uses until the technology of the use removes reliance upon the pollutant materials or processes deemed to be a groundwater hazard.

### **34.15 ENFORCEMENT AND PENALTY.**

- (1) **PENALTY.** Any person who violates, neglects or refuses to comply with any of the provisions of this ordinance shall be subject to a penalty as provided in Chapter 25 of this Municipal Code.
- (2) **INJUNCTION.** The Village of Elkhart Lake may, in addition to any other remedy, seek injunction or restraining order against the party alleged to have violated the provisions herein, the cost of which shall be charged to the defendant in such action.
- (3) **CLEANUP COSTS.** As a substitute for, and in addition to any other action, the Village of Elkhart Lake may commence legal action against both the person who releases the contaminants and the owner of the facility whereupon the contaminants were released to recover the costs, together with the costs of prosecution. Any person who causes the release of any contaminants which may endanger or contaminate the municipal water supply system associated with a Ground Water Protection Overlay District shall immediately cease such discharge and immediately initiate clean up satisfactory to the Village of Elkhart Lake and the other state and federal regulatory agencies. The person who releases such contaminants and the person who owns the facility whereon the contaminants have been released shall be jointly and severally responsible for the cost of cleanup, consultant, or other contractor fees, including all administrative costs for oversight, review and documentation, including the Village employees, equipment, and mileage.

## WELLHEAD PROECTION 34.16

### **34.16 CONFLICT, INTERPRETATION AND SEVERABILITY.**

- (1) **CONFLICT AND INTERPRETATION OF PROVISIONS.** If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum and are not deemed a limitation or repeal of any other power granted by Wisconsin Statutes. Where any terms or requirements of this ordinance may be inconsistent or conflicting, the most restrictive requirements or interpretations shall apply.
  
- (2) **SEVERABILITY OF CODE PROVISIONS.** If any section, subsection, sentence, clause or phrase of the Code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The Village Council hereby declares that they would have passed this Code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions may be declared invalid or unconstitutional.