

## **PENNFIELD CHARTER TOWNSHIP ORDINANCE No. 104J-08-11**

### **AN ORDINANCE TO AMEND APPENDIX B OF THE CODE OF ORDINANCES OF PENNFIELD CHARTER TOWNSHIP BY ADDING CHAPTER 5C CREATING A WELLHEAD PROTECTION OVERLAY DISTRICT.**

#### **THE CHARTER TOWNSHIP OF PENNFIELD ORDAINS:**

SECTION 1. Chapter 5C of Appendix B of the Pennfield Charter Township Code is hereby created as follows:

#### ***CHAPTER 5C. WELLHEAD PROTECTION OVERLAY DISTRICT***

**5C.01. Purpose.** *The purpose of the Wellhead Protection Overlay District is to provide supplemental development regulation in the designated areas so as to permanently protect the Pennfield Charter Township drinking water source from long-term contamination originating from land use activities on the earth's surface. Due to the vulnerability of groundwater to contamination, the need of public health protection, and the significant public investment in the municipal water system, these regulations contain protective measures which do not apply to other areas of the community.*

**5C.02. Definitions.** *The following definitions apply to this Ordinance:*

A. **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.*

B. **Delineated Wellhead Protection Area (WHPA)** *means that area through which water travels below the surface and reaches a Township well or well field within a specified period of time (under specified conditions set by the Michigan Department of Environmental Quality [MDEQ]). This Ordinance addresses both a one-year and ten-year time-of-travel to the WHPA.*

C. **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.*

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

E. **Performance Standards** means those BMPs and engineering controls contained within the document “ Wellhead Protection Ordinance Site Plan Review Checklist”, dated AUGUST 2011 and prepared by Civil Engineers, Inc. of Battle Creek, Michigan.

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

G. **Regulated Substances** shall include a chemical or other material which is or may become injurious to the public health, safety or welfare or to the environment including, but not limited to, the following:

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 RCRA 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. Environmental Protection Agency (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 2,200 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 capable of treating the released substance(s), excluding septic tank systems;
2. Substances in a parked or stopped vehicle in transit, provided the vehicle is stopped or parked for less than seventy-two (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."*

H. **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:*

1. *Disposal, in accordance with all applicable legal requirements and in accordance with the requirements of RCRA regulations, of hazardous wastes in a Facility that has received and maintained all necessary legal approvals for that purpose;*
2. *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;*
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 the Calhoun County Environmental Health Department;*
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 U.S. EPA or the Michigan Department of Agriculture.*

I. **Spill Contingency Plan** *means 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.*

J. **Time of Travel** marks the time it will take a particle of water to travel through the wellhead protection area and into a well.

K. **Township** means Pennfield Charter Township.

L. **Well** means any individual well used for supplying water.

**5C.03. Application to Land Use Activities.** Requirements of this Chapter apply to any person, firm or corporation within the Wellhead Protection Overlay zone when new or expanded land uses are proposed.

**5C.04. Permitted Uses.** Subject to Section 5C.06 of this Chapter, all permitted uses within the underlying district are permitted within the Wellhead Protection Overlay District except for the following uses which are not permitted regardless of the underlying district:

A. Sanitary and/or solid waste landfills;

B. Scrap or recycling yards;

C. Sand, gravel, bedrock, or other types of mining operations or quarry operations involving the excavation and/or extraction of naturally occurring ores, stone, salt, sand or other naturally occurring minerals;

D. Drilling for natural gas or petroleum, whether for exploration, production or otherwise within the 1 year WHPA

**5C.05. Continuation of Existing Non-Conforming Facilities and Land Uses.**

A. Existing non-conformities for land uses/activities will be allowed within the WHPA only if in accordance with Section 3.23 of the Pennfield Charter Township Zoning Ordinance (Appendix B of the Pennfield Charter Township Code of Ordinances).

B. In addition, the facility must meet the requirements of Chapter 30 of the Pennfield Charter Township Code of Ordinances dealing with the requirements for wellhead protection.

**5C.06. Special Land Use Permit Required.** Except for single-family dwellings and accessory buildings located within appropriately zoned districts, no land uses within the Wellhead Protection Overlay zone shall be constructed or expanded unless a special use permit has been granted by the Planning Commission.

**5C.07. Wellhead Protection Area map.** The Wellhead Protection Overlay zone shall be mapped and the land area where water infiltrates into the soils and reaches groundwater used by the public water supply wells shall be delineated. The Wellhead Protection Overlay zone map shall be periodically reviewed. The Wellhead Protection Overlay zone map is hereby incorporated into this zoning district regulation.

**5C.08. Site Plan Review Requirements.** All land uses proposed or expanded within the Wellhead Protection area shall meet the site plan review standards specified in Section 16.01.C.2.p of the Pennfield Charter Township Zoning Ordinance.

**5C.09. Data Submission Requirements.** Data required for special land use review purposes includes the following:

A. Listing of types and quantities of regulated substances which shall be used or stored on site at the facility in quantities of greater than 55 gallons aggregate for liquid materials or 440 pounds aggregate for dry weights.

B. Completion of the "Hazardous Substances Reporting Form" as provided by the Zoning Administrator.

C. Location of the site within the Wellhead Protection area.

D. Areas to be used for the storage, use, loading/unloading, recycling, or disposal of hazardous substances, including interior and exterior areas.

E. Location of existing wetlands and water courses, including lakes, ponds, rivers, on or within a quarter mile of the site.

**5C.10. Standards for Special Land Uses.** All projects proposed for special land use approval within the Wellhead Protection area shall meet the following minimum standards:

A. Sites at which hazardous substances are stored, used or generated shall be designed to prevent spills and discharges to the air, surface of the ground, groundwater, lakes, streams, rivers, or wetlands.

B. Secondary containment of hazardous substances shall be provided for areas where such substances are stored or used. Secondary containment shall be sufficient to store the substance for the maximum anticipated period of time necessary for the recovery of any released substance.

C. General purpose floor drains shall be approved for connection to a public sewer system, an on-site holding tank, or a system authorized through a state groundwater discharge permit.

D. State and federal agency requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of hazardous substances shall be met, including but not limited to the following:

(1) A Michigan Groundwater Discharge Permit shall be required for any discharge to groundwater.

(2) A Pollution Incident Prevention Plan shall be prepared by facilities which store any quantity of materials listed on the Michigan Critical Materials list.

E. Commercial or industrial land uses shall have specially-designed storm water facilities in areas where hazardous substance spills may occur. Such facilities shall be designed to:

(1) Prevent the commingling of storm water runoff and hazardous substances;

(2) Enhance spill cleanup procedures; and

(3) Meet all county, state and federal agency requirements.

F. All guidelines and requirements of federal, state, county and local agencies specified in the state-approved wellhead protection plan for Pennfield Charter Township shall be met. (Note: the guidelines specified in the wellhead protection plan could include: underground storage tank requirements which duplicate or exceed requirements of the State Police Fire Marshal Division; septic system density requirements which duplicate or exceed the county sanitary code; additional secondary containment and spill prevention measures which are developed through the wellhead protection program).

**5C.11. Maintenance Plan Required.** All special land uses proposed for the wellhead protection area shall have an approved maintenance plan recorded with the Township Clerk.

The maintenance plan may include standards and operational requirements related to:

A. The application rate and timing of lawn fertilizers;

B. The pumpout and operation of on-site septic systems;

C. The repair and reconstruction of secondary containment dikes and other spill protection measures;

D. The application of de-icing chemicals to road surfaces and parking lots;

E. Maintenance of storm water management facilities located on-site; and

F. Other topics identified in the Pennfield Charter Township Wellhead Protection Plan.

**5C.12. Administrative Review Fees.** All applicants for special use permits shall pay an administrative fee sufficient to cover the expense of reviewing and approving the proposal, including, but not limited to, the cost of planning and engineering site reviews.

**SECTION 2. SEVERABILITY OF INVALID PROVISIONS.** If any provision of this Ordinance shall be held invalid, its invalidity shall not effect any other provisions of this Ordinance

that can be given effect without the invalid provision, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

SECTION 3. SAVINGS CLAUSE. A prosecution which is pending on the effective date of this ordinance and which arose from a violation of an ordinance repealed by this ordinance, or a prosecution which is started within one (1) year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance and which was committed prior to the effective date of this ordinance, shall be tried and determined exactly as if the ordinance had not been repealed.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect seven (7) days after publication of either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment which publication shall occur within fifteen (15) days of adoption.

This Ordinance is hereby declared to have been passed and adopted by the Pennfield Charter Township, County of Calhoun, State of Michigan, at a regularly scheduled meeting thereof duly called and held on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Robert P. Behnke, Supervisor

ATTEST:

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Kathleen R. Case, Clerk

Prepared by:  
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