

PENNFIELD CHARTER TOWNSHIP ORDINANCE No. 103B-08-11

AN ORDINANCE TO AMEND THE PENNFIELD CHARTER TOWNSHIP CODE OF ORDINANCES IN ORDER TO PROHIBIT CERTAIN ACTIVITIES WITHIN THE DELINEATED WELLHEAD PROTECTION AREA

THE CHARTER TOWNSHIP OF PENNFIELD ORDAINS:

SECTION 1. Article 3 of Chapter 30 of the Pennfield Charter Township Code is hereby created to read as follows:

Article III. Wellhead Protection

Sec. 30-51. Intent/Purpose

The intent of this Article is to safeguard the health, safety, and welfare of persons served by the Pennfield Charter Township Water Supply System, the City of Battle Creek Public Water Supply Systems and private wells within Pennfield Charter Township (the "Township") by protecting groundwater that serves as drinking water, thus providing a safe potable water supply now and for future generations.

Sec 30-52. 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.*

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.*

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 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.

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 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 substances, 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."*

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.*

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.*

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

Township means Pennfield Charter Township.

Well means any individual well used for supplying water.

Sec 30-53. Responsibility for Administration

The Pennfield Charter Township Supervisor ("Supervisor") shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the Supervisor may be delegated in writing by the Supervisor to third parties, as said Supervisor deems appropriate.

Sec. 30-54. Prohibitions Within Ten-Year Time-of-Travel to the WHPA

Within the zone designated as a ten-year time-of-travel to the WHPA and as depicted on the WHPA map approved by the Township Board and incorporated herein, 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 Township's "Performance Standards," BMPs, the Township's 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 that meet the conditions of the "Performance Standards";

- b. *The use of current hazardous waste storage areas at RCRA permitted facilities; or*
 - c. *Laboratory activities consistent with all federal, state, and local regulations.*
3. *Use oil, waste oil, or similar liquid petroleum-type products for dust suppression;*
 4. *Install a private water well for the purpose of drinking water or irrigation if public water service is reasonably available. Public water service shall be deemed reasonably available if the nearest point of the structure to which water is to be provided is not more than 200 feet from any street, alley or right-of-way in which there is now located or may in the future be located a public water line of the Township.*
 5. *Use a private well, if said use is likely to cause an adverse impact to the public water supply;*
 6. *Install or use a water well not installed for the purpose of drinking water or irrigation, unless it is determined by the Supervisor that the well owner (or representative) has scientifically demonstrated that the well will not cause an adverse impact to the public water supply;*
 7. *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 Supervisor's satisfaction that the activity will not cause an adverse impact to the public water supply;*
 8. *Allow the presence of an abandoned well, which is defined as any well that has either been discontinued for more than one (1) 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*

Sec. 30-55. Prohibitions Within One-Year Time-of-Travel to the WHPA

Within the zone designated as a one-year time-of-travel to the WHPA and as depicted on the WHPA map approved by the Township Board and incorporated herein, no person shall, nor cause or allow another over whom he or she has control to:

1. *Engage in any activity prohibited in the ten-year time-of-travel;*
2. *Drill for natural gas or petroleum, whether for exploration, production, or otherwise;*

3. *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, unless prepackaged and intended for retail sale or for commercial or household use (such as salt used in water softeners, fertilizers, pesticides, herbicides, etc.), 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.*

Sec. 30-56. Well Isolation Distance Restrictions

Within 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, which, for the purpose of this section, shall be deemed to apply to all persons, unless approved in writing by the MDEQ Director or his or her designee.

Sec. 30-57. Determination of WHPA Boundaries

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

1. *Where a WHPA 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 WHPA line and the 10-year time-of-travel and one-year time-of-travel zones are as depicted in the WHPA map approved by the Township Board and incorporated herein.*

Sec. 30-58. 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 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 greater than ninety*

(90) days must be reported to, and approval obtained from, the Supervisor or designee by said persons.

2. *All releases shall be documented in writing and mailed to the Supervisor within ten (10) business days of said incident. Initial release notification shall include, at a minimum, the following:*
 - a. *Location of the release (name, address, and telephone number);*
 - b. *Reporting party's name, address, and telephone number (if different from above);*
 - c. *Emergency contact and telephone number;*
 - 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 Supervisor 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 (3) years.*

Sec. 30-59. Inactive Operations

This section applies to any business or other operation ("operation") that is inactive, is within a WHPA, and at which there are Regulated Substances. For purposes of this section, "inactive" is defined to include those businesses/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 seven (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 thirty (30) days of the operation becoming inactive, provide to the Supervisor 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 six (6) months of the operation becoming inactive, remove all regulated substances from the site; this does not included those substances used for heating, cooling, or electrical lighting.*

Sec. 30-60. Hazardous Chemicals Survey; Material Safety Data Sheets

Upon written request of the fire chief, an employer within the Township shall, within 10 working days, provide a completed Hazardous Chemicals Survey to the fire chief, and for hazardous chemical quantities meeting or exceeding the threshold requirements stated in Section 30-65 shall provide the list required to be prepared pursuant to 29 CFR 1910.1200 and Section 14a of the Michigan Occupational Safety and Health Act (MCL 408.1014a). In addition, when requested, an employer shall provide the fire chief with a Material Safety Data Sheet for each hazardous chemical identified on the list.

Sec.30-61. Quantity and Location of Hazardous Chemicals

Upon written request of the fire chief, an employer within the Township shall, within ten (10) working days, provide a description of the quantity and location (by floor plan or diagram) of any hazardous chemicals specified by the fire chief after review of the lists provided under Section 30-60. Reporting of quantities shall include the maximum quantities expected at any given time. Upon request, the fire chief may extend the period for providing the information described in this section by an additional five (5) working days. The requirement for this information may be satisfied in conjunction with the filing of the completed Hazardous Chemicals Survey as provided in Section 30-62. Pursuant to Section 5p of the Michigan Fire Prevention Code, (MCL 29.5p), information obtained by the fire chief under Sections 30-60 and 30-61 of this Ordinance may be made available to a public official, agency, or employee, but is exempt from disclosure under the Freedom of Information Act, as amended. (MCL 15.231, et seq.).

Sec. 30-62. Hazardous Chemicals Survey

1. *The fire chief shall promulgate and make available a hazardous chemicals survey form to be utilized in accordance with this section.*
2. *All developers of property, all businesses or all employers shall complete and file with the Township a hazardous chemicals survey:*
 - a. *Upon submission of a preliminary site plan for the development of any property within the Township;*
 - b. *Upon any change of use or occupancy of a structure or premises within the Township; and*

c. Upon request of the fire chief pursuant to Section 30-60.

Sec. 30-63. Updating of Information.

A person subject to Sections 30-60, 30-61, and 30-62 shall provide the fire chief a written update of the information required by those sections when there is a change in the quantity, location or presence of hazardous chemicals in the work place, or any other of the information required to be transmitted under those sections.

Sec. 30-64. Outdoor Storage of Hazardous Chemicals

The outdoor storage of hazardous chemicals is prohibited except in approved, product-tight containers which are protected from weather, leakage, accidental damage and vandalism. No outdoor storage shall be permitted in violation of the Township Zoning Ordinance. No indoor storage shall be permitted in violation of the State Construction Code or Township Fire Prevention Code.

Sec. 30-65. Hazardous Chemical Thresholds

The requirements for submission of the hazardous chemical list shall apply where the aggregate quantity of any given hazardous chemical type meets or exceeds the quantities listed below. If a substance falls into more than one hazardous chemical type, it shall be treated as that type subject to greater restrictions:

	Chemical type	Quantity
(1)	Poison A	Any Quantity
(2)	Highly Toxic Material	Any Quantity
(3)	Explosives and Blasting Agents (Including Class C Explosives)	Any Quantity
(4)	Radioactive Material (Yellow III Label)	Any Quantity
(5)	Carcinogens	Any Quantity
(6)	Used oil of any type	100 kilograms
(7)	Other Hazardous Chemicals	100 kilograms

Material safety data sheets shall be provided as requested by the fire chief.

Sec. 30-66. Enforcement

1. *Whenever the Supervisor determines that a person has violated a provision of this Ordinance, the Supervisor may order compliance by issuing a written Notice of Violation to the responsible person/facility.*
2. *If the Supervisor 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 designation of the Supervisor, with the resulting expense charged to the violator.*

Sec. 30-67. Abatement/Remedial Activities by the Township

1. *The Township is authorized to take or contract with others to take reasonable and necessary abatement or remedial activities whenever it is determined that 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.*
2. *If the Township desires the responsible party to reimburse it for reasonable abatement activity expenses, the Township shall, within ninety (90) days of the completion of said activities, mail to that person 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 Supervisor, said person may file, within the same thirty (30)-day period, a written objection so stating. The Supervisor shall, within thirty (30) days of receipt of the objection, provide an opportunity for the objecting party to present facts or arguments supporting said objection. If the Supervisor determines that some or the entire amount originally billed is appropriate, the person shall pay said sum within thirty (30) days of receipt of that determination. If the amount due is not timely paid, the Township may cause the charges to become a special assessment against the property and shall constitute a lien on the property. In the alternative, the Township may attempt collection of the sum due by filing a civil lawsuit.*

Sec. 30-68. Injunctive Relief

If a person has violated or continues to violate the provisions of this Ordinance, the Township, through its legal counsel, 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.

Sec. 30-69. Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties provided, 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, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Township.

Sec. 30-70. Criminal Prosecution

Any violation of this Ordinance shall be considered a misdemeanor, punishable by a fine of not more than \$500 or imprisonment of not more than ninety (90) days. Each day a violation exists shall be deemed a separate violation. A citation charging such a misdemeanor may be issued by the Supervisor, his or her designee, or a member of Public Safety.

Sec. 30-71. Remedies Not Exclusive

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 Supervisor to seek cumulative remedies.

SECTION 2. Repealer.

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

SECTION 3. 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.

SECTION 4. Effective date.

This Ordinance shall take effect on the date of publication pursuant to MCL 42.22, which publication shall take place within thirty days from the date of adoption and shall be in a local newspaper of general circulation. Publication of a summary of this Ordinance, as part of the published proceedings of the Township Board, shall constitute publication of the Ordinance.

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.

Robert P. Behnke, Supervisor

ATTEST:

Kathy Case, Clerk

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