

## ENVIRONMENTAL PROTECTION

### **73.000           HAZARDOUS AND REGULATED SUBSTANCES ORDINANCE ORDINANCE NO. 136**

Adopted:       April 10, 1995  
Effective:      May 24, 1995

An Ordinance enacted to provide for the control of potential public water supply pollutants and providing penalties for violations thereof.

WHEREAS, the groundwater in the aquifer underlying Cooper Charter Township is the source of drinking water supply in the area for not only Township residents but residents of the City of Parchment as well and said groundwater is a sensitive natural resource; and

WHEREAS, the Township desires to approach public water supply and wellhead protection in a rational and objective manner by instituting pollution source controls; and

WHEREAS, the Township desires to regulate potential pollutants to the fullest extent authorized by law by enacting this Ordinance as a measure to ensure the protection and availability of public drinking water supplies; and

WHEREAS, the Township desires to assume and maintain a leadership role in protection of regional drinking water resources through its own efforts and in cooperation with other local governments and state and federal agencies; and

WHEREAS, it is determined that such legislation is consistent with the Township's policy of protecting the water resources; and

WHEREAS, the Township has an inter-municipal agreement with the City of Parchment to supply potable water to its residents and the residents of the city; therefore,

#### **A.       General provisions**

1.       *Purpose.* The purpose of Section 73.000 is to safeguard the public health, safety and welfare and to provide for the protection and availability of existing and future potable water supply by instituting rational and objective requirements, standards and criteria for the control of toxic or otherwise hazardous substances within specifically defined areas in and around the present and future public wells and well fields within the Township, thereby enhancing the protection of the public potable water supply from contamination.

2. ***Scope.***

- a. The provisions of Section 73.000 shall be effective within the Cooper Charter Township Wellhead Protection Overlay Zone, except as otherwise provided, this ordinance provides for pollution control pertaining to the public water supply.
- b. Nothing contained in Section 73.000 shall be construed so as to interfere with any existing or future lawful requirements that may be, or heretofore were, imposed by any other public body authorized to enact sanitary, health or water pollution abatement restrictions so long as such requirements are consistent with, or more stringent than, the stated purpose of this ordinance.
- c. Nothing contained in Section 73.000 shall be construed so as to interfere with the duties and powers of the Township or its agents.

3. ***Administration.*** Except as otherwise provided herein, the Utilities Manager for the City of Parchment, or his designated agents, including Township officials, hereinafter referred to as Manager, shall administer, implement and enforce the provisions of Section 73.000.

4. ***Notice of violation.***

- a. Any person found in violation of any provision of Section 73.000 or any order, requirement, rule or regulation issued under the authority of such sections will be served with a written notice stating the nature of the violation and providing reasonable time for compliance; provided however, written notice of violation may be dispensed with under the conditions described in Section 73.000 C.2 and provided further that if the Manager has previously promulgated a schedule of compliance or issued an order addressing the same type of or a similar violation and the time for compliance has passed, the Manager may dispense with establishing another time for compliance.
- b. The notice shall be served by first class mail, return receipt requested. Where the address of the violator is unknown, service may be made upon the owner of the property involved at the tax-mailing address of the owner as shown on the County tax record.

5. **Inspections.** Subject to applicable provisions of law, the Manager or authorized designee bearing proper identification shall be permitted to enter private property at any reasonable time, with reasonable cause or with prior notification, for such purposes as inventorying, inspection, observation, measurement, sampling and records examination pertaining to the requirements in this ordinance to ensure that activities are in accordance with the provisions of Section 73.000. Upon the request of the entity which is the subject of the inspection and if permitted by the Michigan Freedom of Information Act, information obtained as a result of the inspection shall be maintained as confidential. If the owner or tenant does not consent to the entry of the Manager for the above stated purposes, the Manager shall contact the Township Supervisor who shall determine if an appropriate warrant should be sought to enter said property.
6. **Vandalism.** No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, property, or equipment which is a part of or used in conjunction with the water facilities, or which results in the violation of Section 73.000.
7. **Severability.** A finding by any court or other jurisdiction that any part or provision of this Ordinance is invalid shall not affect the validity of any other part or provision of this Ordinance which can be given effect without the invalid parts or provisions.
8. **Subject area.**
  - a. The area subject to the provisions of Section 73.000 is the Wellhead Protection Overlay Zone shown on the Official Zoning Map of Cooper Charter Township.
  - b. Maps designating the Wellhead Protection Overlay Zone shall be included in the Official Zoning Map for Cooper Charter Township.
9. **Determination of applicability.** It shall be the responsibility of any person owning real property and/or owning and operating a business within the Township corporate limits to make a determination of the applicability of sections 1 through 6 as it pertains to the property and/or business under his ownership or operation and his failure to do so shall not excuse any violations of said sections.

**B. Regulated substances**

1. **Definition.** The substances to be regulated, hereinafter referred to as Regulated Substances, are chemicals and mixtures of chemicals which are health hazards. Regulated Substances include:
  - a. Those list of substances as defined by the Michigan Occupation Safety and Health Administration as regulated under Title III of the Superfund Amendments and Reauthorization Act (SARA), currently reported on MIOSHA Material Safety Data Sheets.

- b. Petroleum and non-solid petroleum derivatives (except non-PCB dielectric fluids).

2. ***Management.***

No person shall place, deposit, or permit to be deposited, store, process, use, produce, dispose of, transport, or discharge, hereinafter referred to as "handle" any regulated substance on public or private property within the Cooper Charter Township Wellhead Overlay Zone, except as provided by law, statute, ordinance, rule or regulation.

**C. Reporting and protection requirements**

1. ***Regulated substance activity inventory.***

a. ***Applicability.***

- (1) Except as provided in Section 73.000 C.1b, any owner or occupant of any land in the Wellhead Protection Overlay Zone at the effective date of this section, shall file a Regulated Substance Activity Inventory Report which shall consist of a copy of the MIOSHA Material Safety Data Sheets or a Hazardous Substance Reporting Form issued by the manager. Said report shall be filed within one hundred and eighty (180) days of the effective date of this section and at twenty-four (24) month intervals thereafter.
- (2) Except as provided in Section 73.000 C. 1b, any new owner or occupant of any land in the Wellhead Protection Overlay Zone shall file a Regulated Substance Activity Inventory Report prior to receipt of a Certificate of Occupancy and at twenty-four (24) month intervals following the date of occupancy. For purposes of this section, new shall be defined as subsequent to the effective date of this section.
- (3) Where a person owns, operates or occupies more than one location, Regulated Substance Activity Inventory Reports shall be made for each location.

b. ***Exclusions to activity inventory reporting.***

- (1) Any exclusion set forth in this subsection shall apply provided that said exclusion does not substantially increase any risk or hazard to the public health or water supply, wells or well fields, and provided further that any spill, leak discharge or mishandling shall be subject to the provisions of Section 73.000 C2. Any exclusions granted herein shall not remove or limit the liability and responsibility of any person or activity involved.

- (2) A limited exclusion from Regulated Substance Activity inventory reporting is hereby authorized for incidental uses of Regulated Substances provided the uses are limited as follows:
  - (a) The aggregate of Regulated Substances in use may not exceed twenty (20) gallons or one hundred and sixty (160) pounds at any time.
  - (b) The total use of Regulated Substances may not exceed fifty (50) gallons or four hundred (400) pounds in any twelve (12) month period.
- (3) A limited exclusion from Regulated Substance Activity Inventory reporting is hereby authorized for non-routine maintenance or repair of property in the Wellhead Protection Overlay Zone provided the uses are limited as follows:
  - (a) The aggregate of Regulated Substances in use may not exceed fifty (50) gallons or four hundred (400) pounds at any time.
  - (b) The total use of Regulated Substances may not exceed one hundred (100) gallons or eight hundred (800) pounds in any twelve (12) month period.
- (4) A limited exclusion from Regulated Substance Activity Inventory reporting is hereby authorized for Regulated Substances which are cleaning agents, provided however such cleaning agents are packaged for personal or household use or are present in the same form and concentration as a product packaged for use by the general public, and provided the aggregate inventory of such cleaning agents shall not exceed one hundred (100) gallons or eight hundred (800) pounds at any time. In no case shall Regulated Substances claimed under the exclusion include hydrocarbon or halogenated hydrocarbon solvents.
- (5) A limited exclusion from Regulated Substance Activity Inventory Reporting is hereby authorized for medical and research laboratory uses in the Wellhead Protection Overlay Zone, provided however, Regulated Substances shall be stored, handled or used in containers not to exceed five (5) gallons or forty (40) pounds of each substance and the aggregate inventory of Regulated Substances shall not exceed two hundred and fifty (250) gallons or two thousand (2,000) pounds.

- (6) An exclusion from Regulated Substance Activity Inventory Reporting is hereby authorized for the transportation of Regulated Substances through the Wellhead Protection Overlay Zone provided that the transporting vehicle is in compliance with applicable Township ordinances and Federal and Michigan laws and regulations, and provided that the regulated substance is fueling the transporting vehicle or the transporting vehicle is in continuous transit, making delivery, or is stopped for a period of time not to exceed ten (10) hours.
- (7) A limited exclusion from Regulated Substance Activity Inventory Reporting is hereby authorized for owners and occupants of single or two-family residences provided, however, the storage and use of Regulated Substances are related to the maintenance of the residence or vehicles under control or the occupant and provided waste Regulated Substances are appropriately and legally disposed of.

2. ***Spills, leaks or discharges.***

- a. Any person with direct knowledge of a spill, leak or discharge of a Regulated Substance within the Well Field Protection Overlay District shall, if such spill, leak or discharge escapes or has potential to escape containment or contacts a non-impervious ground surface and is not immediately and completely remediated, give notice to the Township Supervisor and the Parchment City Utilities Manager. The notification shall include at a minimum, the location of the incident, name and telephone number, date and time thereof, type of substance(s), concentration and volume, and control or corrective action taken. Such notification shall in no way alleviate other local, state and federal reporting obligations as required by law. Notice to the municipality shall be provided within one hour of the spill, leak or discharge.
- b. Any entity or person who spills, leaks or discharges said substance(s) shall be liable for any reasonable expense, loss or damages incurred by the City in response to such an incident, in addition to the amount of any fines imposed on account thereof under Michigan and Federal law; said entity or person shall document and maintain sufficient records so as to reflect accurately the circumstances related to any such incident and develop and implement procedures to substantially eliminate the likelihood of reoccurrence of such spills, leaks or discharges as soon as practicable following the incident, but no later than one hundred eighty (180) days after the incident.
- c. The Township shall post signs in conspicuous places advising residents and transporters of Regulated Substances of the existence of the wellhead protection zone and of the notification procedures in the event of a spill or accidental discharge.

3. ***Underground storage tanks.***
  - a. ***Definition.*** An underground storage tank is any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of Regulated Substances and the volume of which (including the volume of underground pipes connected thereto) is ten (10) percent or more beneath the surface of the ground. Flow-through process tanks are excluded from the definition of underground storage tanks.
  - b. ***Wellhead Protection Overlay Zone.*** No storage of Regulated Substances, including those for vehicle fuel and vehicle lubricants and fuel for building and/or process heating may occur in underground storage tank systems in the Well Field Protection Overlay District.
  - c. Notwithstanding other provisions of this chapter, non-conforming uses in this district presently utilizing underground storage tanks for fuel and lubricants for vehicle operations and fuel for building and/or processing heating shall be permitted to replace the existing tanks with those constructed as per the specifications of Public Act 451 of 1994 and all Regulations enacted pursuant thereto provided they do not exceed the capacity of existing tanks. Replacement of underground tanks for regulated substances other than the above noted fuels and lubricants is not permitted. Notwithstanding other provisions of this chapter, non-conforming uses in this district presently utilizing underground storage tanks for fuel and lubricants for vehicle operations and fuel for building and/or processing heating shall be permitted to replace existing tanks with those constructed as per the specifications of Public Act 451 of 1994 and all Regulations enacted pursuant thereto and not exceeding the capacity of existing tanks. Replacement of underground tanks for Regulated Substances other than the above-noted fuels and lubricants is not permitted.
4. ***Falsifying information.*** No person shall make any false statement, representation, or certification in any report or other document filed or required to be maintained pursuant to this Ordinance.
5. ***Retention of records.*** Any reports or records compiled or submitted pursuant to this section shall be maintained by the user for a minimum of five (5) years or so long as enforcement or judicial proceedings are being pursued, whichever is longer.

**D. Public water supply protection authorities**

1. ***Application.*** If any activity or use of Regulated Substance is deemed by the Manager to pose a real and present danger of contaminating surface and/or groundwater which would normally enter the public water supply, the Manager is authorized to:
  - a. Cause cessation of said activity or use of Regulated Substance;

- b. Require the provision of administrative controls and/or facilities sufficient to mitigate said danger; and/or
  - c. Cause the provision of pollution control and/or abatement activities. However, no legal action can be taken without the authorization of the Township Supervisor.
2. **Considerations.** When considering the exercise of any of the above authorities or actions, the Manager shall ensure that the City's public water supply is reasonably and adequately protected from contamination for the present and the future. The Manager shall make every reasonable effort to coordinate and act in concert with other regulatory entities in the exercise of the above authorities. The manager may take into consideration any evidence represented by the entity regarding cost effectiveness and the economic effectiveness and the economic impact imposed by the requirements or actions.

**E. Wellhead Protection Appeals Board**

1. **Appeals.** Any person may appeal an action of the Manager made pursuant to Section 73.000 D, by filing with the Township Supervisor a Notice of Appeal within twenty-one (21) days of said action and a statement of appeal within thirty (30) days of the date that the order being appealed was issued. A Notice of Appeal shall include as a minimum: name, address, telephone number, date, and a statement of intent to appeal. A Statement of Appeal shall include all information contained in the Notice of Appeal, a description of the nature of the appeal, and any pertinent documentation.
2. **Appeals Board.** The Board of Wellhead Protection Appeals is hereby established. Said Board shall consist of the Township Supervisor and four (4) designees to be named by the Township Supervisor. Three (3) designees shall be representative of the business and environmental communities. One (1) designee shall be appointed upon the recommendation of the Parchment City Council. No appointment shall be final unless approved by the Cooper Charter Township Board. The four (4) designees shall serve for a term of two (2) years. Said Board shall have the authority to take appeals, investigate matters related to said appeals, deny, uphold, or otherwise modify or waive the Manager's actions on a case by case basis. Said Board shall develop rules and regulations of operation consistent with its authorities, and subject to approval by the Township Supervisor.

**F. Penalties for violations**

Any violation of this Ordinance is hereby determined to be a nuisance. Any person who violates or continues to violate any provisions of the Ordinance beyond the time limit for compliance set forth by the Manager, Notice of Violation or compliance schedule established by the Manager, shall be subject to the following: A fine in an amount not to exceed Five Hundred Dollars (\$500.00) and/or a term of imprisonment of up to ninety (90) days. If the violation is a continuing one, each day of such violation shall constitute a separate violation.



**G. Effective date and repeal**

This Ordinance took effect on May 24, 1995. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.