

CHAPTER 4

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WELLHEAD PROTECTION

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Sec. 13-4-1. TITLE OF ORDINANCE.

This Ordinance shall be known, cited and referred to as the "Wellhead Protection Ordinance" (herein after referred to as "WHP Ordinance".)

SEC. 13-4-2. PURPOSE, AUTHORITY AND APPLICATION.

- (a) Residents in the Village of Marshall 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 WHP Ordinance is to institute land use regulations and restrictions to protect the Village's Municipal water supply and well fields, and to promote the health, safety and general welfare of the residents of the Village of Marshall.
- (b) Statutory authority of the Village to enact these regulations was established by the Wisconsin Legislature in ss. 62.23(7)(a) and (c), Wis. Stats. Under these statutes, the Village has the authority to enact this ordinance, effective in the incorporated areas of the Village, to encourage the protection of groundwater resources.
- (c) The regulations specified in this WHP Ordinance shall apply within the Village's corporate limits.

SEC. 13-4-3 DEFINITIONS.

- (a) Conditional Use. Land use or development that either by design or operation requires additional technical or regulatory review and permitting in order to exist within the groundwater protection overlay district.
- (b) Exemption. An exemption granted by the village allows a prohibited use to exist within the groundwater protection overlay district as a conditional use.
- (c) Existing facilities. "Existing facilities" means current facilities, practices and activities which may cause or threaten to cause environmental pollution within that portion of the Village's wellhead protection area that lies within the corporate limits of the Village.
- (d) Recharge Area. "Recharge area" means the land area which contributes water to a well by infiltration of water into the subsurface and movement with groundwater

- toward the well. This area extends beyond the corporate limits of the Village of Marshall.
- (e) Toxic or Hazardous or Hazardous Substances. Any substance which is ignitable, corrosive, acute hazardous, reactive, EPA toxic, or toxic as defined in the State Code NR 181.
 - (f) Groundwater Protection Overlay District. "Groundwater Protection Overlay District" means that area described in the Village of Marshall wellhead protection plan as the "Wellhead Protection Area", adopted here by reference, becoming part of this ordinance as if fully described herein.
 - (g) Well Field. "Well field" means a piece of land used primarily for the purpose of supplying a location for construction of wells to supply a municipal water system.

SEC. 13-4-4 GROUNDWATER PROTECTION OVERLAY DISTRICT.

- (a) Separation Distances. Uses within the Groundwater Protection Overlay District shall maintain the following minimum separation distances as specified in s. NR 811.12(5), Wis. Adm. Code.
 - (1) Fifty feet between a well and storm sewer main or a sanitary sewer main where the sanitary sewer main is constructed of water main class materials and joints.
 - (2) Two hundred feet between a well and any sanitary sewer main not constructed of water main class materials, sanitary sewer manhole, lift station, one or two family residential heating fuel oil underground storage tank or above ground storage tank or private onsite wastewater treatment system (POWTS) treatment tank or holding tank component and associated piping.
 - (3) Three hundred feet between a well and any farm underground storage tank system or other underground storage tank system or other underground storage tank system with double wall and with electronic interstitial monitoring for the system, which means the tank and any piping connected to it. These installations shall meet the most restrictive installation requirements of s. Comm 10.260, Wis. Admin. Code. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substance.
 - (4) Three hundred feet between a well and any farm above ground storage tank with double wall, or single wall tank with other secondary containment and under a canopy; other above ground storage tank system with double wall, or single wall tank with secondary containment and under a canopy and with electronic leakage monitoring for a single wall tank secondary containment structure. These installations shall meet the most restrictive installation requirements of s. Comm 10.260, Wis. Admin. Code, and receive written approval from the department of commerce or its designated Local Program Operator under s. Comm 10.110, Wis. Admin. Code. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.
 - (5) Four hundred feet between a well and a POWTS dispersal component with a design capacity of less than 12,000 gallons per day, a cemetery or a storm water retention or detention pond.
 - (6) Six hundred feet between a well and any farm underground storage tank system or other underground storage tank system or other underground storage tank system with double wall and with electronic interstitial

monitoring for the system, which means the tank and any piping connected to it; any other secondary containment and under a canopy or other above ground storage tank system with double wall, or single wall tank with secondary containment and under a canopy; and with electronic interstitial monitoring for a double wall tank or electronic leakage monitoring for a single wall tank secondary containment structure. These installations shall meet the standard double wall tank or single wall tank secondary containment installation requirements of s. Comm 10.260, Wis. Admin. Code, and receive written approval from the department of commerce or is designated Local Program Operator under s. Comm 10.110, Wis. Admin. Code. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances.

- (7) One thousand feet between a well and land application of municipal commercial, or industrial waste; the boundaries of a land spreading facility for spreading of petroleum-contaminated soil regulated under state administrative regulations while that facility is in operation; agricultural, industrial, commercial or municipal waste water treatment plant treatment units, lagoons, or storage structures' manure stacks or storage structures; or POWTS dispersal component with a design capacity of 12,000 gallons per day or more.
 - (8) 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; any single wall farm underground storage tank or single wall farm above ground storage tank or other single wall underground storage tank or above ground storage tank that has or has not received written approval from the department of commerce or its designated Local Program Operator under s. Comm 10.110, Wis. Admin. Code, for a single wall tank installation. These requirements apply to tanks containing gasoline, diesel, bio-diesel, ethanol, other alternative fuel, fuel oil, petroleum product, motor fuel, burner fuel, lubricant, waste oil, or hazardous substances; and bulk pesticide or fertilizer handling or storage facilities.
- (b) Permitted Uses. Subject to the exemptions listed in section (3)(e), the following are the only permitted uses within the Wellhead Protection Overlay District. Uses not listed are to be considered non-permitted uses.
- (1) Playgrounds/Parks, provided there is no on-site waste disposal or fuel storage tank facilities associated with this use.
 - (2) Wildlife areas
 - (3) Non-motorized trails, such as biking, skiing, nature and fitness trails.
 - (4) Municipally sewered residential development, free of flammable and combustible liquid underground storage tanks.
 - (5) Agricultural uses in accordance with the county soil conservation department's best management practices guidelines.
 - (6) Residential, commercial and industrial property which is municipally sewered, or has a state-approved sewer and septic system, with the exception for the following uses:
 - a. Any use determined by the Village to be a threat to the water quality of the village water supply, recharge area or well fields.

SEC. 13-4-5 REVIEW OF PERMIT APPLICATION.

- (a) Individuals and/or facilities may request the Village in writing, for an exemption through the village building permit process. Any exemptions granted may be subject to the conditions under sec. 13-4-5(d).
- (b) The Village of Marshall Board shall review all requests for approval of permits for land uses in the Groundwater Protection Overlay District. All determinations shall be made by the Village of Marshall Board within sixty (60) days of any request for approval, provided however, that this sixty (60) day period of limitation may be extended by the Village of Marshall Board for "good cause", as determined in the sole and absolute discretion of the Village of Marshall Board.
- (c) Upon reviewing all requests for approval, the Village Board shall consider all of the following factors:
 - (1) The Village's responsibility, as a public water supplier, to protect and preserve the health, safety and welfare of its citizens.
 - (2) The degree to which the proposed land use practice, activity or facility may seriously threaten or degrade groundwater quality in the Village of Marshall's recharge area.
 - (3) The economic hardship, which may be faced by the landowner if the application is denied.
 - (4) The availability of alternative options to the applicant, and the cost, effect and extent of availability of such alternative options.
 - (5) The proximity of the applicant's property to other potential sources of contamination.
 - (6) The then existing condition of the Village's groundwater, public water wells and well fields, and the vulnerability to further contamination.
 - (7) The direction of flow of groundwater and other factors in the area of the applicant's property, which may affect the speed of the groundwater, flow, including topography, depth of soil, extent of aquifer, depth to water table and location of private wells.
 - (8) Any other hydro geological data or information, which is available from any public or private agency or organization.
 - (9) The potential benefit, both economic and social from the approval of the applicant's request for a permit.
- (d) Any exemptions granted will be made conditional and may include environmental and/or safety monitoring which indicates whether the facility may be emitting any releases or harmful contaminants to the surrounding environment. The facility will be held financially responsible for all environmental cleanup costs. The Village Board may require that a bond be posted for future monitoring and cleanup costs if deemed necessary at the time of granting an exemption.
- (e) The applicant shall be solely and exclusively responsible for any and all costs associated with the application, including all of the following:
 - (1) The cost of an environmental impact study if so required by the Village of Marshall or its designee.
 - (2) The cost of groundwater monitoring or ground water wells if required by the Village or its designee.
 - (3) The costs of an appraisal for the property or other property evaluation expense if required by the Village or its designee.
 - (4) The costs of City's employee's time associated in any way with the application based on the hourly rate paid to the employee multiplied by a factor, determined by the Village, representing the Village's costs for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and other similar benefits.
 - (5) The cost of Village equipment employed.

- (6) The cost of mileage reimbursed to the Village employees.

SEC 13-4-6 REQUIREMENTS FOR EXISTING FACILITIES AND LAND USES.

- (a) Existing facilities shall provide copies of all Federal, State and Local facility operation approvals or certificates and ongoing environmental monitoring results in the Village of Marshall.
- (b) Existing facilities shall provide additional environment or safety monitoring as deemed necessary by the Village of Marshall Board, specifically including the production of any and all environmental statements detailing the extent of chemical use and storage on the property.
- (c) When repair, replacement or expansion of existing facilities is made, repair or replacement of equipment or expansion shall be done in a manner that improves the environmental and safety technologies of the existing facilities, applying technologies generally used in facilities being constructed at the time of the repair, replacement or expansion.
- (d) Existing facilities shall have the responsibility of devising and/or filing with the Village, a contingency plan satisfactory to the Board for the immediate notification of the appropriate Village of Marshall officers in the event of an emergency.
- (e) Property owners with an existing agricultural use shall be exempt from requirements of this Ordinance as they relate to restrictions on agricultural uses, provided however, that such exemption shall only apply to the property owners in existence at the time of passage of the Ordinance and this exemption shall not constitute a covenant running with the land.

SEC. 13-4-7 ENFORCEMENT AND PENALTIES.

- (a) In the event an individual and/or facility causes the release of any contaminants which endanger the Groundwater Protection Overlay District, the individual/facility causing said release shall immediately cease and desist, and provide clean-up satisfactory to the Village.
- (b) The individual/facility shall be responsible for all costs of cleanup and the Village of Marshall consultant fees at the invoice amount plus administrative cost for oversight, review and Documentation, including all of the following:
- (1) The cost of Village employees' time associated in any way with the clean up based on the hourly rate calculated in Section 5. (4)(d).
 - (2) The cost of Village equipment employed.
 - (3) The cost of mileage reimbursed to the Village employees attributed to the cleanup.
- (c) Following any such discharge, the Village may require additional test monitoring or other requirements as outlined in Section 6 and 7 herein.
- (d) Violations: It shall be unlawful to construct or use any structure, land or water in violation of this Ordinance. Any person who is specifically damaged by such violations may institute appropriate action or proceeding to enjoin a violation of this Ordinance.
- (e) Penalties. Any person, firm or corporation who fails to comply with the provisions of this Ordinance shall, upon conviction thereof, forfeit not less than One Hundred and 00/100 Dollars (\$100.00) nor more than Five Hundred and 00/100 Dollars (\$500.00) plus the costs of the prosecution for each violation, and in default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until payment thereof, but not exceeding thirty (30) days, or in the alternative,

shall have such costs added to their real estate property tax bill as a lien against the property. Each day a violation exists or continues shall constitute a separate offense.

SEC. 13-4-8 SEVERABILITY CLAUSE.

If any section, subsection, sentence, clause paragraph or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or other applicable administrative or governing body, such decision shall not affect the validity of any other section, subsection, sentence, clause, paragraph or phrase or portion thereof. The Village Board of the Village of Marshall hereby declares that they would have passed this Ordinance and each section, subsection, sentence, clause, paragraph or phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses, paragraphs, or phrases may be declared invalid or unconstitutional.

SEC. 13-4-9 CONFLICTING ORDINANCES.

All Ordinances in conflict with the foregoing are hereby repealed or amended to read consistent with this Ordinance.