

§ 240-10. Wellhead protection.

A. Statement of findings. The Town of Newton finds that:

- (1) The groundwater underlying this municipality is a major source of existing and future water supplies, including drinking water. The groundwater underlying this municipality lies within the Northwest New Jersey Aquifer system, which is designated as a "sole source" aquifer under Section 1424(e) of the Federal Safe Drinking Water Act of 1974.
- (2) The groundwater aquifers are integrally connected with, are recharged by, and flow into the surface waters, lakes and streams, which also constitute a major source of water for drinking, commercial and industrial needs.
- (3) Spills and discharges of toxic or hazardous materials may contaminate or pollute groundwater supplies and related water sources.
- (4) Contaminated water from any source is a detriment to the health, welfare and comfort of the residents of this municipality, and other users of these water resources.

B. Purpose. The purpose of this section is to protect the public health, safety and welfare through the protection of the groundwater resources underlying the municipality to ensure a supply of safe and healthful drinking water for the present and future generations of local residents, employees and the general public in this municipality, as well as users of these water supplies outside this municipality. Areas of land surrounding each public community well and nontransient noncommunity well, known as wellhead protection areas, from which contaminants may move through the ground to be withdrawn in water taken from the well, have been delineated. Through regulation of land use, physical facilities, placement of toxic and hazardous materials, and other related activities within these areas, the potential for groundwater contamination can be reduced and any such contamination can be more readily found and remediated before reaching a public well. The purpose of the regulations contained in this section is to protect public community wells and public nontransient noncommunity wells from contamination.

C. Statutory authority. The Town of Newton is empowered to regulate these activities under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use to secure a safe and adequate drinking water supply for its residents. Under provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 13:1D et seq., a municipality may adopt, with state approval, a municipal ordinance that is more stringent than N.J.A.C. 7:14B but is obligated to ensure the provisions of the ordinance are not carried out in a manner that is inconsistent with N.J.A.C. 7:14B. The Board of Health of this municipality has autonomous power granted by the state Legislature to develop this section to protect public health, safety and welfare, as set forth in the New Jersey Local Boards of Health Law, N.J.S.A. 26:3-1 et seq., and the New Jersey County Environmental Health Act, N.J.S.A. 26:3A2-21

et seq.

D. Establishment of wellhead protection areas and maps.

(1) Well head protection area maps:

- (a) The delineations of wellhead protection area maps for public community wells and public nontransient noncommunity wells, which were published by the New Jersey Geological Survey of the New Jersey Department of Environmental Protection, are incorporated herein and made a part of this section. The Department of Environmental Protection will periodically update the wellhead protection area maps and these maps, published by the New Jersey Geological Survey, will be available at the website: www.state.nj.us/dep/njgs/geodata/. The most recent wellhead protection area maps available through the New Jersey Geological Survey should replace the maps used for reference in this section. A map of the wellhead protection areas located within the Town of Newton is included as part of this section, is appended as Schedule D.¹ Maps of the municipality on which these delineations have been overlain shall be on file and maintained by the office of the Clerk of the Town of Newton, and the Construction Office of the Town of Newton.
- (b) Wellhead protection areas, as shown on the maps described in Subsection D(1)(a), or as periodically updated and delineated by the Department of Environmental Protection and published by the New Jersey Geological Survey shall be considered to be superimposed over any other established zoning district. Land in a wellhead protection area may be used for any purpose permitted in the underlying district, subject to the additional restrictions presented herein.

(2) Assignment of restrictions within wellhead protection areas:

- (a) Properties located wholly or partially within a wellhead protection area shall be governed by the restrictions applicable to the more restrictive wellhead protection area tier, if partially within one or more tiers.

E. Regulation of wellhead protection areas for public wells.

- (1) The administrative authority for administering the provisions of this section shall be the Planning Board and the Board of Health of the Town of Newton acting jointly and in consultation.
- (2) Any applicant for a permit requesting a change in land use or activity which is subject to review under the provisions of the Municipal Land Use Law² and other pertinent regulations of the Town of Newton and which is located within a delineated wellhead protection area as defined in § 240-10D, and involves a potential pollutant source as defined in § 240-10F, shall comply with the

1. Editor's Note: Schedule D is included at the end of this chapter.

2. Editor's Note: See N.J.S.A. 40:55D-1 et seq.

requirements of this section.

- (3) Any applicant for a permit requesting a change in land use or activity, which is subject to the requirements of this section, shall file an operations and contingency plan, as required by § 240-10H, with the administrative authority. No permit that allows a change in land use or activity, which is subject to the requirements of this chapter, shall be granted unless an Operations and Contingency Plan for the proposed change has been approved by the administrative authority. Any plan approved by the administrative authority shall be kept on file in the office of the Town Clerk of the Town of Newton, and shall be available to the public for inspection.
 - (4) Any change in land use or activity that introduces a major or minor potential pollutant source (PPS), as defined in § 240-10F, shall be prohibited within a Tier 1 wellhead protection area.
 - (5) Any change in land use or activity that introduces a major PPS, as defined in § 240-10F, shall be prohibited within a Tier 2 wellhead protection area.
 - (6) Any change in land use or activity that involves any major or minor PPS, as defined in § 240-10F, within any wellhead protection area, that is not prohibited pursuant to § 240-10E(4) or (5), shall comply with the best management practice standards, as defined in § 240-10G.
 - (7) This section is supplementary to other laws and ordinances in this municipality. Where this chapter or any portion thereof imposes a greater restriction than is imposed by other regulations, the provisions of this chapter shall supersede. These rules and regulations shall in no way affect the limitations or requirements applicable in the underlying municipal land use and zoning districts.
 - (8) The use limitations noted herein shall be considered as limitations stipulated in the permitted list of uses in each zone. The activities regulated herein shall be considered limitations accessory to permitted uses in each zone.
- F. Potential pollutant sources listed. The following are major and minor potential pollutant sources subject to the requirements of this chapter. These listings are consistent with the New Jersey Safe Drinking Water Act regulations [N.J.A.C. 7:10-11.4(a)4].
- (1) Major potential pollutant sources include the types of facilities and land uses listed in Schedule B.³
 - (2) Minor potential pollutant sources include the types of facilities and land uses listed in Schedule C.⁴
 - (3) The administrative authority of the Town of Newton may determine whether

3. Editor's Note: Schedule B is included at the end of this chapter.

4. Editor's Note: Schedule C is included at the end of this chapter.

any other proposed change in land use or activity is of sufficient risk to the water supply to be considered a major or minor potential pollutant source.

G. Best management practice performance standards.

- (1) Any applicant proposing any change in land use or activity that involves any major or minor PPS, as defined in § 240-10F, which would be located either wholly or partially within any wellhead protection area shall demonstrate that they have applied for all required state permits or control documents. No final approvals under the authority of the Municipal Land Use Law⁵ shall be issued until all required state permits or control documents are issued final. Underground storage tanks regulated at N.J.A.C. 7:14B shall also be operated in a manner consistent with N.J.A.C. 7:14B.
- (2) Any new or modified activity that involves a major or minor PPS located wholly or partially within any wellhead protection area shall comply with and operate in a manner consistent with the following best management practices:
 - (a) All portions or areas of a facility in which hazardous substances or hazardous wastes are stored, processed, manufactured or transferred outdoors shall be designed so that the discharges of hazardous substances will be prevented from overflowing, draining, or leaching into the groundwater or surface waters.
 - (b) Outdoor storage, dispensing, loading, manufacturing or processing areas of hazardous substances or hazardous wastes must be protected from precipitation, stormwater flows or flooding.
 - (c) Wherever hazardous substances are stored, processed, manufactured or transferred outdoors, the design features shall include secondary containment and/or diversionary structures which may include but not be limited to:
 - [1] Containers, dikes, berms or retaining walls sufficiently impermeable to contain spilled hazardous substances for the duration of a spill event.
 - [2] Curbing.
 - [3] Gutter, culverts and other drainage systems.
 - [4] Weirs, booms and other barriers.
 - [5] Lined diversion ponds, lined lagoons and lined retention basins, holding tanks, sumps, slop tanks and other collecting systems.
 - [6] Drip pans.
 - (d) Secondary containment and/or diversionary systems, structures or

5. Editor's Note: See N.J.S.A. 40:55D-1 et seq.

equipment must meet the following standards:

- [1] The system must block all routes by which spilled hazardous substances could be expected to flow, migrate, or escape into the groundwater or surface waters.
 - [2] The system must have sufficient capacity to contain or divert the largest probable single discharge that could occur within the containment area, plus an additional capacity to compensate for any anticipated normal accumulation of rainwater.
 - [3] In order to prevent the discharge of hazardous substances into groundwater, all components of the system shall be made of or lined with impermeable materials sufficient to contain the substance for the duration of a spill event. Such material or liner must be maintained in an impermeable condition.
 - [4] No manufacturing area, processing area, transfer area, dike storage area or other storage area, or secondary containment/diversion system appurtenant thereto shall drain into a watercourse or into a ditch, sewer, pipe or storm drain that leads directly or indirectly into a surface or subsurface disposal area, unless provision has been made to intercept and treat any spilled hazardous substances in an NJDEP-approved industrial wastewater treatment or pretreatment facility, or other NJDEP-approved facility.
 - [5] Catchment basins, lagoons and other containment areas that may contain hazardous substances should not be located in a manner that would subject them to flooding by natural waterways.
- (e) Stormwater shall be managed so as to prevent contamination of groundwater and so as to be in accordance with applicable laws and regulations of the State of New Jersey and of the Town of Newton.

H. Operations and contingency plan.

- (1) An applicant proposing a change in land use or activity that involves a PPS, as defined in § 240-10F, that would be located either wholly or partially within any wellhead protection area shall submit an operations and contingency plan to the administrative authority. This operations and contingency plan shall inform the administrative authority about the following aspects of the proposal:
 - (a) Types of PPS proposed for the site;
 - (b) Types and quantities of hazardous substances or hazardous wastes that may be used or stored on site;
 - (c) Means to be employed to contain or restrict the spillage or migration of hazardous substances or hazardous wastes from the site into groundwater;

- (d) Means to be used to remediate accidental spillage of such materials;
 - (e) Means to notify administrative authority about any accidental spillage of such materials;
 - (f) Demonstration that the proposed use and/or activity would employ, to the maximum extent possible, best management practices as set forth in Subsection G to protect groundwater quality in the wellhead protection area and minimize the risk of potential groundwater contamination.
 - (2) The administrative authority shall review and approve any operations and contingency plan prior to final approval of the application for a land use change or activity.
 - (3) Any operations and contingency plan submitted shall be available for public review and comment.
- I. Enforcement. A prompt investigation shall be made by the appropriate personnel of the Construction or Engineering Office of the Town of Newton of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this section is discovered, a civil action may be instituted in the Special Civil Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this section shall be construed to preclude a municipality's right, pursuant to N.J.S.A. 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any subsection of this section shall constitute a separate and distinct offense independent of the violation of any other subsection, or of any order issued pursuant to this section. Each day a violation continues shall be considered a separate offense.
- J. Nonconforming regulated activities.
- (1) An otherwise lawful usage or activity which exists at the time of the effective date of this section that does not conform to this section shall be considered an allowed nonconforming activity and may continue.
 - (2) No allowed nonconforming activity shall be expanded, enlarged or modified in any way which is deemed by the Zoning Officer to increase its threat to groundwater or otherwise contravene the purposes and intent of this section.
 - (3) In the event that an allowed nonconforming activity is stopped, suspended or abandoned for a period of 12 months or longer, the activity shall permanently desist and shall be subject to the requirements of this section.
 - (4) Notwithstanding the foregoing, if any allowed nonconforming activity is found to pose an imminent health hazard or threat to the municipality's water supply, it shall be deemed a violation of this section.
- K. Severability. If any section, sentence, clause or phrase of this section is held to be

invalid or unconstitutional by any court of competent jurisdiction, then said holdings shall in no way affect the validity of the remaining portions of this section.