

Chapter 13A.34

WELLHEAD PROTECTION PLAN

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**13A.34.010 Purpose and Preamble.** The purpose of this Ordinance is to protect aquifers used as potable water sources from contamination by harmful substance. This Ordinance establishes methods to protect the City's water sources through implementation and enforcement of existing Federal, State, and local regulations, wherever possible. The Ordinance will not affect land use outside the zone of protection established for each source of supply.

- A. Intent. It is the intent of this Ordinance to provide a method:
  - 1. To protect the groundwater resources of the City of Benton City.
  - 2. To provide a means of regulating specific land uses within Wellhead Protection Areas consistent with existing regulations and policies.

3. To protect the City's drinking water supply from impacts by facilities that store, handle, treat, use, or produce substances that pose a hazard to groundwater quality through the enforcement of existing regulations, where possible.
4. To protect the public health and the environment by implementing the State Environmental Policy Act (RCW 43.21.C).

**B. Other Sources of Authority.**

1. Cleanups, monitoring and/or studies undertaken under supervision of the Washington Department of Ecology or the United States Environmental Protection Agency are established by State and Federal laws and are not covered by this Ordinance.
2. The generic Regulated Substances List attached and incorporated as Exhibit 1 to this Ordinance is provided for information purposes. Persons that store, handle, treat, use, or produce a substance on the Generic Regulated Substance List may be storing, handling, using, or producing a Regulated Substance as defined by this Ordinance and, therefore, may be subject to the requirements of this Ordinance. (Ord. 707, July 2000.)

**13A.34.020 Definitions.**

- A. "Administrator" shall mean the Mayor of Benton City or his/her designee.
- B. "Aquifer" shall mean a groundwater-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells.
- C. "City" shall mean the City of Benton City, Washington.
- D. "City Standards" shall mean standard design and construction practices adopted by the City.
- E. "Construction Activity" means construction and all activities associated with construction, to include, but not be limited to: mining; grading; land filling; excavating; and repair and maintenance of structures, equipment, and other appurtenances.
- F. "Containment Device" means a device that is designated to contain an unauthorized release, retain it for cleanup, and prevent released materials from penetrating into the ground.
- G. "EPA" shall mean the United States Environmental Protection Agency.

- H. “Facility” means all contiguous land within a Wellhead Protection Area, structures, other appurtenances, and improvements on the land wherein regulated substances are stored, handled, treated, used, or produced in quantities greater than the threshold amounts specified in Section 13A.34.030(H)(2) of this Ordinance. Pipelines including storm and sanitary sewers, interstate freeways, state highways, arterials, and railroads are not prohibited in Zone 1, and do not require a Wellhead Protection Area Operating Permit. These facilities may, however, be subject to special requirements that are supportive of wellhead protection, contained in relevant sections of the City code, and applied during the construction standards and operations review process.
- I. “Groundwater” means water below the land surface in the zone of saturation.
- J. “Groundwater Monitoring Plan” shall mean a plan containing procedures to be followed to assess groundwater quality for concentration of those chemicals identified in the operating permit.
- K. “Groundwater Monitoring Well” means a small-diameter well installed for purposes of sampling and monitoring groundwater.
- L. “Hazardous Waste Treatment, Storage, and Disposal Facility” means any facility regulated pursuant to 40 CFR 264 or 265, WAC 173-303-280 through WAC 173-303-670.
- M. “Operator” means any person in control of, or having responsibility for, the daily operation of a facility.
- N. “Owner” may include a duly authorized agent or attorney, a purchaser, devisee, fiduciary, and/or a person having vested or contingent interest in the property and/or facility in question.
- O. “Person” shall mean any person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, owner, lessee, tenant, or any other entity whatsoever or any combination of such, jointly or severally.
- P. “Pipeline” shall mean buried pipe system (including all pipe, pipe joints, fittings, valves, manholes, sumps and appurtenances that are in contact with the substance being transported) utilized for the conveyance of regulated substances. Pipelines include, but are not limited to, sanitary sewers, side sewers, leachate pipelines, and product pipelines.

- Q. "Potable Water" shall mean water that is satisfactory for drinking, culinary, and domestic purposes meeting current county, state, and federal drinking water standards.
- R. "Regulated Substances" shall mean any flammable liquids, combustible liquids, hazardous materials, and other substances, which are more particularly defined as:
1. "Flammable Liquid" is any liquid having a flash point below 100 degrees F and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees F.
  2. "Combustible Liquid" is a liquid having a flash point at or above 100 degrees F.
  3. "Hazardous Materials" shall include such materials as flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hyperbolic materials, and pyrophoric materials as defined in Article 9 of the Uniform Fire Code and any substance or mixture of substances which is an irritant or a strong sensitizer or which generates pressure through exposure to heat, decomposition, or other means.
  4. "Other Substances" shall mean:
    - a. A hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or (1) any substance designated pursuant to Section 311(b)(2)(A) of the Clean Water Act (CWA); (2) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of CERCLA; (3) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (not including any waste, the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress; (4) any toxic pollutant listed under Section 307(a) of the CWS; and (5) any imminently hazardous chemical substance or mixture with respect to which EPA has taken action pursuant to Section 7 of the Toxic Substances Control Act.
    - b. Hazardous substances that include any liquid, solid gas, or sludge, including any material, substance, product, commodity, or waste regardless of quantity, that exhibits any of the physical, chemical, or biological properties described

in WAC 173-303-090, 173-303-101, 173-303-102, or 173-303-103.

- c. Hazardous waste as designated in WAC 173-303 as dangerous or extremely hazardous waste.
  - d. Any material that may degrade groundwater quality when improperly used, stored, disposed of, or otherwise mismanaged.
- S. “Regulated Substances Management Plan” shall mean a plan containing procedures to be followed to prevent, control, collect, and dispose of any unauthorized release of a regulated substance.
- T. “Solid Waste” shall be defined as per Chapter 173-304 WAC, Minimal Functional Standards for Solid Waste Handling, WAC 173-304-100(73).
- U. “Unauthorized Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance in a quantity greater than 1 gallon (5 pounds) per incident from a facility into a containment system, into the air, into groundwater, surface water, surface soils or subsurface soils. Unauthorized release does not include: intentional withdrawals of regulated substances for the purpose of legitimate sale, use, or disposal; and discharges permitted under Federal, State, or local law.
- V. “Underground Storage Tank” shall be defined as per WAC Chapter 173-360, Underground Storage Tank Regulations.
- W. “Underlying Permits” shall mean permits required by the City, including but not limited to building permits; conditional use permits; mining, excavation, and fill and grade permits; shoreline development permits; site plan reviews; variance rezones; planned unit developments; and subdivisions, short subdivision, and land use permits.
- X. “Wellhead Protection Area (WPA)” shall be the portion of an aquifer within the zone of capture and recharge area for a well or well field owned or operated by the City, as defined in Exhibit 2 to this Ordinance.
- Y. “Wellhead Protection Area Permit” shall mean an authorization by the City for a person to store, handle, treat, use or produce a regulated substance within a WPA. The two types of permits that will be issued pursuant to this Ordinance are an Operating Permit and a Closure Permit.

- Z. "Wellhead Protection Zones" are zones of a WPA designated to provide graduated levels of aquifer protection. Each WPA may be subdivided into three aquifer protection zones:
1. Zone 1 - The land area situated between a well or well field owned by the City and the one-year groundwater travel time contour.
  2. Zone 2 - The land area situated between the one-year groundwater travel time contour and five-year travel time contour for a well or well field owned or operated by the City.
  3. Zone 3 - The land area situated between the five-year groundwater travel time contour and the ten-year groundwater travel time boundary for a well or well field owned or operated by the City.
- AA. "Well Field" shall mean an area which contains one or more wells for obtaining a potable water supply. (Ord. 707, July 2000.)

**13A.34.030 Applicability.**

- A. Persons who own and/or operate one or more facilities in a WPA shall comply with this Ordinance except as preempted by Federal or State law. If the operator of the facility is not the owner, then the owner shall enter into a written contract with the operator requiring the operator to comply with this Ordinance. Execution of this contract between the owner and operation shall not absolve the owner of the legal responsibility for compliance.
- B. The effective date for permit application is January 1, 1998.
- C. Within six (6) months of the effective date for permit applications, all existing facilities located in Zone 1 of WPA must file a WPA Operating Permit or Closure Permit with the City.
- D. Within one (1) year of the effective date for permit applications, all existing facilities located in Zone 2 of a WPA must file a WPA Operating Permit or Closure Permit application with the City. Within two (2) years of this effective date, all existing facilities located in Zone 2 of a WPA must comply with the permitting requirements of this Ordinance including construction, containment, monitoring and inspection, and must have an approved Regulated Substances Management Plan.
- E. All proposals for new facilities within any zone of an Aquifer Protection Area must be reviewed for compliance with this Ordinance including obtaining an Operation Permit pursuant to this Ordinance, prior to issuance of any underlying permits.

- F. All owners and/or operators of facilities which store, handle, treat, use or produce regulated substances or have done so in the past, must comply with the permit requirements, release reporting requirement, and closure requirements set forth in this Ordinance.
- G. All WPA operating permits must be renewed by the City on an annual basis.
- H. Exemptions.
  - 1. The storage and handling of regulated substances for resale in their original unopened containers of 220 pounds or less shall be exempt from the permit requirements of this Ordinance.
  - 2. Threshold usage of Regulated Substances: facilities that generate store or accumulate regulated substances in aggregate quantities of 200 pounds or less shall be exempt from the permit requirements of this Ordinance.

Where regulated substances are dissolved in or mixed with other nonregulated substances, only the actual quantity of the regulated substance present shall be used to determine compliance with the provisions of this Ordinance.

- 3. Single family residences and other strictly residential uses are exempt from the operating permit requirements of this Ordinance.
- 4. Fuel tanks and fluid reservoirs attached to a private or commercial motor vehicle and used directly in the operation of that vehicle shall be exempt from the permit requirements of this Ordinance.
- 5. Existing heating systems using fuel oil are exempt from the requirements of this Ordinance.
- 6. If the City determines that an existing or proposed activity, that is exempt from the permit requirements of this Ordinance pursuant to this section, has a significant or substantial potential to degrade groundwater quality, then the City may classify that activity as a facility as defined by this Ordinance, and therefore, require that facility to comply with the permit requirements of this Ordinance. Such determinations will be used upon site-specific data and shall be eligible for appeal pursuant to Section 13A.34.220 of this Ordinance.

7. Public interest emergency use and storage of regulated substances by governmental organizations is exempt from the permit requirements of this Ordinance.
8. Regulated substances used by the City water or wastewater treatment processes are exempt from the permit requirements of this Ordinance.
9. Fueling of equipment not licensed for street use is exempt from the permit requirements of this Ordinance, provided that such fueling activities are conducted in a containment area that is designated and maintained to prevent leakage.
10. Regulated substances contained in properly operating sealed units (transformers, refrigeration units, etc.) that are not opened as part of routine use are exempt from the permit requirements of this Ordinance. (Ord. 707, July 2000.)

**13A.34.040 Provisions for Certain Regulated Substances Used in the WPA.**

- A. The generation, accumulation, storage or use of perchloroethylene within the WPA is expressly forbidden.
- B. The application of regulated substances such as pesticides, herbicides, and fungicides in recreational, agricultural, pest control, and weed control activities, and in quantities greater than the threshold amounts specified in Section 13A.34.030 (H)(2) of this Ordinance, shall be allowed in a WPA provided that:
  1. The application is in strict conformity with the use requirements as set forth by the EPA and as indicated on the containers in which the substances are sold.
  2. Applicators of these regulated substances apply for a Wellhead Protection Area Operating Permit.
- C. The application of fertilizers containing nitrates, and in quantities greater than the threshold amounts specified in Section 13A.34.030(H)(2) of this Ordinance, shall be allowed in a WPA provided that:
  1. No obligation of nitrate containing materials shall exceed one-half (0.5) pound of nitrogen per thousand square feet per single application or a total yearly application of five (5) pounds of nitrogen per thousand square feet; except that an approved slow-release nitrogen may be applied in quantities of up to nine-tenths (0.9) pound of nitrogen per thousand square-feet per single application



or eight (8) pounds of nitrogen per thousand square feet per year;  
and

2. Applicators of these regulated substances apply for a Wellhead Protection Area Operating Permit.
- D. Storage of required substances described in Section 13A.34.040(A), in quantities greater than the threshold amounts specified in Section 13A.34.030(H)(2) of this Ordinance, shall be subject to the full Wellhead Protection Area Operating Permit requirements specified in this Ordinance. (Ord. 707, July 2000.)

**13A.34.050 Wellhead Protection Areas and Zones.**

- A. The locations of WPA in the City are defined in Exhibit 2 to this Ordinance. WPA maps are on file with the City Clerk and the City Engineer.
- B. Determination of location within a Zone of a WPA. In determining the location of facilities within the zones defined by Exhibit 2, the following rules shall apply:
  1. Facilities located wholly within a WPA zone shall be governed by the restrictions applicable to that zone.
  2. Facilities having parts lying within more than one of a WPA shall be governed as follows: each part of the facility shall be reviewed and regulated by the requirements set forth in this Ordinance for the zone in which that part of the facility is actually located.
  3. Facilities having parts lying both in and out of a WPA shall be governed by this Ordinance.
    - a. That portion which is within WPA shall be governed by the applicable restrictions in this Ordinance; and
    - b. That portion which is not in a WPA shall not be governed by this Ordinance.
- C. The WPA which is identified herein is designated as an Environmentally Sensitive Area pursuant to the State Environmental Policy Act, WAC 197-11-908. The following SEPA categorical exemptions shall not apply within said area: WAC 197-11-800 (1), (2) c through g, (3), (5), 6(a), 14(c), 24, c, e, f and 25(h). (Ord. 707, July 2000.)

**13A.34.060 Regulations Which Apply Within Zone 1 of a WPA.**

A. Existing Facilities.

1. Existing facilities located in Zone 1 of a WPA and using, storing, or producing regulated substances over the threshold quantity must apply for an operating permit.
2. Closure of a facility or termination of any or all facility activities shall be conducted in accordance with Section 13A.34.140, Closure Permits and Permit Conditions, of this Ordinance.

B. Review of Proposed Activities.

1. Within Zone 1 of WPA, no changes in land use and no construction activities shall be allowed unless a finding is made by the City that the proposal will not impact the long term, short term or cumulative quantity or quality of the aquifer. The findings shall be based on the present or past activities conducted at the facility; regulated substances stored, handled, treated, used or produced; and the potential for the activities or regulated substances to degrade groundwater quality.
2. All applications for changes in land uses and for all underlying permits in Zone 1 of the WPA must be reviewed for compliance with this Ordinance. The focus of review for all permits will be to ensure compliance with existing underlying regulatory and permitting requirements; and the potential for these substances to degrade groundwater quality. All permits required pursuant to this Ordinance must be issued prior to or concurrent with the issuance of permits for construction activities or underlying permits for these activities.
3. All proposals for changes in land use or for construction activities shall be subject to site plan review.
4. In Zone 1 of a WPA, no change in operations at a facility shall be allowed that increases the quantities of regulated substances stored, handled, treated, used or produced in excess of quantities reported in the Wellhead Protection Area Operating Permit, unless a new permit is obtained.
5. Facilities which propose to generate, store, accumulate or use hazardous substances above the threshold quantity specified in Section 13A.34.030(H)(2) must obtain hazardous waste insurance as a condition of the operating permit.

6. In Zone 1 of a WPA, the installation of underground storage tanks for the purpose of containing hazardous substances shall be prohibited.

C. Wastewater Disposal Requirements.

1. New developments (residential and nonresidential) in Zone 1 shall, as a condition of the building permit, be required to connect a central sanitary sewer system prior to occupancy.
2. Existing developments (residential and nonresidential) may be required to connect to a central sewer system as requirements of any Building Permit issued after the effective date of this Ordinance for the property.
3. All existing developments (residential and nonresidential) which are within 300 feet of an existing gravity sanitary sewer with capacity shall be required to connect within two years of the passage of this Ordinance. All existing developments (residential and nonresidential) which are located within 300 feet of a new gravity sanitary sewer line with capacity shall be required to connect within two years of the availability of the new sewer line.

D. Pipeline Requirements.

1. All existing product pipelines in Zone 1 shall be repaired and maintained in accordance with best management practices and best available technology.
2. All new pipelines constructed in Zone 1 shall be tested for leakage in conformance with this paragraph prior to being placed into service. Pipeline leakage testing shall be conducted in accordance with best available technology, to the satisfaction of the City. Pipeline leakage testing methods shall be submitted to the City for review prior to testing and shall include: a detailed description of the testing methods and technical assumptions; accuracy and precision of the test; proposed testing durations, pressures, and lengths of pipeline to be tested; and scale drawings of the pipeline(s) to be tested.

Upon completion of testing, pipeline leakage testing results shall be submitted to the City and shall include: record of testing durations, pressures, and lengths of pipeline tested; and weather conditions at the time of testing.

Routine leakages testing of new pipelines constructed in Zone 1 may be required by the City.

3. If the City has reason to believe that the operation or proposed operation of an existing pipeline in Zone 1 of a WPA may degrade groundwater quality, the City may require: leakage testing of the existing pipeline in accordance with paragraph 2 of this subsection; and installation, sampling, and sample analysis of monitoring wells. Routine leakage testing of existing pipelines in Zone 1 may be required by the City.
4. Should pipeline leakage testing reveal any leakage at any level, then the City shall require immediate repairs to the pipeline to the satisfaction of the City such that no infiltration of water into the pipeline or ex-filtration of substance conveyed through the pipeline shall occur. Any repairs which are made shall be tested for leakage pursuant to paragraph 2 of this subsection.

E. Requirements for Wellhead Protection Area Operating Permits Issued to Existing Facilities. The following conditions will be required as part of Operating Permit issued in Zone 1 of a WPA. These conditions must be met within two (2) years of the effective date for permit applications.

1. Containment. Every owner/operator of a facility shall provide containment devices adequate in size to contain onsite any unauthorized release of regulated substances from any area where these substances are either stored, handled, treated, used or produced. Containment devices shall prevent such substances from penetrating into the ground. This provision also applies to releases that may mix with storm runoff. Design requirements for containment devices are as follows:
  - a. Containment storage areas must have a containment system that is capable of collecting and holding spills and leaks. In addition to the necessary leak containment capacity, uncovered storage areas must be capable of holding the additional volume that would result from the precipitation of maximum twenty-five year storm of twenty-four hours duration. The containment system must:
    - (1) Have a base underlying the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated rainfall until the collected material is defected and removed. The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks,

spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(2) Be designed for positive drainage control (such as located drainage valve) to prevent release of contaminated liquids and so that uncontaminated precipitation can be drained properly for convenience of operation. Spilled or leaked waste and accumulated precipitation must be removed from the containment system in as timely a manner as is necessary to prevent overflow; and

(3) Have sufficient capacity to contain ten percent (10%) of the volume of all containers or the volume of the largest container; whichever is greater.

b. Run-on into the containment system must be prevented, unless the department waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in (a)(3) of this subsection to accommodate any run-on which might enter the system.

c. Storage areas that store containers holding only wastes that do not contain free liquids, need not have a containment system as described in the subsection provided that:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquids.

d. Underground storage tanks containing hazardous substances above the threshold quantity shall not be required to provide secondary containment provided that:

(1) All provisions of WAC 173-360 are strictly adhered to.

2. Regulated Substance Monitoring Requirements for Existing Facilities.

a. The owners or operators of all existing facilities shall implement regulated substances monitoring as part of the Regulated Substance Management Plan required by Section

13A.34.110 of this Ordinance.

b. All regulated substance monitoring activities shall include the following:

(1) A written routine monitoring procedure which includes, when applicable: the frequency of performing the monitoring method, the methods and equipment to be used for performing the monitoring, the location(s) from which the monitoring will be performed, the name(s) or title(s) of the person(s) responsible for performing the monitoring and/or maintaining the equipment, and the reporting format.

(2) Written records of all monitoring performed shall be maintained onsite by the operator for a period of three (3) years from the date the monitoring was performed. The City may require the submittal of the monitoring records of a summary at a frequency that the City may establish. The written records of all monitoring performed in the past three (3) years shall be shown to the City upon demand during any site inspection. Monitoring records shall include but not be limited to:

- i. The date and time of all monitoring or sampling;
- ii. Monitoring equipment calibration and maintenance records;
- iii. The results of any visual observations;
- iv. The results of all sample analysis performed in the laboratory or in the field; including laboratory data sheets;
- v. The logs of all reading of gauges or other monitoring equipment, ground water elevations, or other test results; and
- vi. The results of inventory readings and reconciliations.

c. For facilities located in Zone 1 of a WPA, on every day of operation, a responsible person designated by the permittee shall check for breakage or leakage of any container holding regulated substances. Electronic sensing devices approved by the City may be employed as part of the inspection process, provided that the system is checked daily for malfunctions.

3. Emergency Equipment Devices.

- a. Required equipment. All facilities must be equipped with the following unless it can be demonstrated to the City that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:
- (1) An internal communications or alarm system capable of providing immediate emergency instruction to facility personnel;
  - (2) A device, such as a telephone or a handheld, two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
  - (3) Portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment; and
  - (4) Water at adequate volume and pressure to supply water hose streams, foam producing equipment, automatic sprinklers, or water spray systems.

A facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

4. Inspection of Containment and Emergency Equipment.

- a. The owner or operator shall inspect his facility to prevent malfunctions and deterioration, operator errors, and discharge which may cause or lead to the release of dangerous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.
- b. The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that help prevent, detect, or respond to hazards to the public health or the environment. The schedule must be kept at the facilities.

5. Inventory of Regulated Substances. For facilities located in Zone 1 of WPA, owners/operators of all facilities shall keep and maintain an inventory of all regulated substances onsite to include recording of all purchases, sales and use. This inventory shall be kept onsite for a period of at least three (3) years from the date the inventory was recorded and made available to the City at all reasonable times for inspection.
6. Employee Training. Operators of all facilities in Zone 1 shall schedule training for all employees once per year to explain the conditions of the Operating Permit such as emergency response procedures, monitoring and reporting requirements, record keeping requirements, and the types and quantities of regulated substances onsite. These training sessions will be documented and recorded and the names of those in attendance will be recorded. These records shall be made available at all reasonable times to the City for inspection.
7. Additional Operating Permit Requirements for Zone 1. By the fifth year following the effective date for permit applications, owners and/or operators shall complete the following:
  - a. Groundwater Monitoring. For facilities located in Zone 1 of a WPA, an owner/operator of a facility may, at its own expense, be required to install one or more groundwater monitoring wells as determined by and in a manner approved by the City. Criteria used to determine the need for monitoring wells shall include but not be limited to the proximity of the facility to the City's production or monitoring wells, the type and quantity of regulated substances onsite, and whether or not the regulated substances are stored in underground vessels.

Every owner required to install monitoring wells shall, at its own expense, sample groundwater in each monitoring well within thirty (30) days of completing well construction and semiannually thereafter, and obtain independent analytical results of the presence and concentration of those chemicals identified by the City in the Operating Permit (including breakdown and transformation products). The City shall have access to the wells for purposes of monitoring and inspection. The analytical results shall be obtained through the use of the EPA approved methods for water. The results shall be filed within 72 hours with the City.



- b. For those facilities located in Zone 1 of a WPA in which the nature of the business involves the use of regulated substances outside of fully enclosed structures, the City shall evaluate the existing storm water collection and conveyance system, and reserves the right to require the owner/operator to upgrade the system to meet Ordinance requirements. (Ord. 707, July 2000.)

**13A.34.070 Regulations Which Apply Within Zone 2 of a WPA.**

- A. Existing Facilities. The storage, handling, treatment, use or production of regulated substances at existing facilities shall be allowed within Zone 2 of a WPA upon compliance with the provisions of this Ordinance.
- B. Review of Proposed Activities.
  - 1. Section 13A.34.060(B) of this Ordinance, which pertains to review of proposed activities in Zone 1 of a WPA, also applies to Zone 2 of a WPA.
  - 2. The conversion of heating systems to fuel oil or the installation of new fuel oil heating systems in Zone 2 of the WPA after the effective date of this Ordinance is prohibited.
  - 3. The following specific changes in land use and types of new facilities will be prohibited within Zone 2 of a WPA: hazardous waste surface impoundment; waste pile (as defined in WAC 173-303 and 304); recycling facilities that handle regulated substances; hazardous waste treatment and storage facilities; solid waste landfills; transfer stations; septic systems; and petroleum product pipelines.
- C. Wastewater Disposal Requirements.
  - 1. New developments (residential and nonresidential) shall, as a condition of the building permit, be required to connect to a central sanitary sewer system prior to occupancy.
  - 2. Sanitary sewers shall be constructed in accordance with prevailing American Public Works Association (APWA) standards with respect to minimum allowable infiltration and ex-filtration.
- D. Pipeline Requirements. If the City has reason to believe that the operation or proposed operation of an existing pipeline in Zone 2 of a WPA will degrade groundwater quality, the City may require: leakage testing in accordance with Section 13A.34.060(D)(2) of this Ordinance;

installation, sampling, and sample analysis of groundwater monitoring wells; repair of the pipeline to the satisfaction of the City such the degradation of groundwater quality is minimized or eliminated.

- E. Requirements for WPA Operating Permits Issues to Existing and New Facilities. Permit requirements as part of any permit issued in Zone 2 of a WPA shall be as specified for Zone 1 of a WPA, Section 13A.34.060(E)(1) and (2) of this Ordinance. (Ord. 707, July 2000.)

**13A.34.080 Regulations for Existing Solid Waste Landfills.**

- A. The City shall have the authority to inspect and screen any excavated dirt, soil or other material prior to placement in a solid waste landfill if the material is suspected of containing contaminants at levels which may impact groundwater quality. The City may require the owner to conduct a sampling program to determine if contaminants are present in materials prior to landfilling.
- B. The City shall require an owner of a solid waste landfill to submit to a groundwater monitoring program. The program shall include:
1. Number, locations and depths of monitoring wells to be installed;
  2. Monitoring well drilling and construction methods;
  3. Groundwater sample collection, shipment and handling procedures, including the frequency of sampling;
  4. List of constituents to be analyzed, including test methods;
  5. Procedure for measuring groundwater elevation;
  6. A statistical procedure for determining whether a significant change over background has occurred;
  7. A procedure for regular reporting of monitoring results to the City; and
  8. Access to the monitoring wells by the City for the purposes of monitoring and inspection. (Ord. 707, July 2000.)

**13A.34.090 Wellhead Protection Area Permits.**

- A. No person, persons, corporation, or other legal entities shall install or operate a facility in a WPA without first obtaining an Operating Permit from the City.

- B. The City shall not issue an Operating Permit for a facility unless adequate plans, specifications, test data, and/or other appropriate information has been submitted by the owner and/or operator showing that the proposed design and construction of the facility meets the intent and provisions of this Ordinance and will not impact the short term, long term or cumulative quantity or quality of groundwater.
- C. No person, persons, corporation or other legal entity shall temporarily or permanently abandon a facility in a WPA without complying with the requirements of Section 13A.34.140, Closure Permits and Permit Conditions, of this Ordinance.
- D. No person, persons, corporation or other legal entity shall close a facility without first obtaining a Closure Permit to do so from the City. The City shall not issue a permit to temporarily or permanently close a facility unless adequate plans and specifications and other appropriate information has been submitted by the applicant showing that the proposed closure meets the intent and provisions of this Ordinance.
- E. The application for Operating Permits pursuant to this Ordinance shall be made on a form provided by the City. (Ord. 707, July 2000.)

**13A.34.100 Operating Permit Conditions.** Specific conditions for Operating Permits issued to facilities in Zones 1 and 2 of a WPA are described in Sections 13A.34.060 and 13A.34.070 of this Ordinance, respectively. The following general conditions shall be included as part of any Operating Permit issued pursuant to this Ordinance:

- A. The Operating Permit application (for permits other than application of pesticides, herbicides, fungicides, or fertilizers containing nitrates) shall include at a minimum:
  - 1. A list of the names and volumes of all regulated substances which are stored, handled, treated, used, or produced at the facility being permitted in quantities greater than the threshold amounts specified in Section 13A.34.030(H)(2) of this Ordinance.
  - 2. If groundwater monitoring is anticipated to be required, a list of the chemicals to be monitored through the analysis of groundwater samples must be provided.
  - 3. A detailed description of the activities conducted at the facility that involve the storage, handling, treatment, use or production of regulated substances in quantities greater than the threshold amounts specified in Section 13A.34.030(H)(2) of this Ordinance.

4. A description of the containment devices used to comply with the requirements of this Ordinance.
  5. A proposed Regulated Substances Management Plan for the facility.
  6. A description of the procedures for inspection and maintenance of containment devices.
  7. A description of how regulated substances will be disposed.
  8. A site map showing the location of the facility and its property boundaries and the locations where regulated substances in containers with quantities greater than the amount specified in 13A.34.030(H)(2) in size are stored, handled, treated, used or produced. The location of each containment device also should be identified on the site plan.
- B. Procedures for the in-house inspection and maintenance of containment devices and areas where regulated substances are stored, handled, treated, used and produced shall be identified in the Operating Permit for each facility. Such procedures shall be in writing, and a log shall be kept of all inspection and maintenance activities. Such logs shall be submitted to the City annually and shall be available for inspection. Inspection and maintenance logs shall be maintained onsite by the owner or operator for a period of at least three (3) years from the date the monitoring was performed.
- C. The permittee shall report to the City within fifteen (15) days after any changes in a facility including:
1. The storage, handling, treatment, use or processing of new regulated substances;
  2. Changes in monitoring procedures; or
  3. The replacement or repair of any part of a facility that is related to the regulated substance(s).
- D. The permittee shall report to the City any unauthorized release occurrence, within 24 hours of its detection.
- E. An Operating Permit, issued by the City, shall be effective for one (1) year. The City shall not issue a permit to operate a facility until the City determines that the facility complies with the provisions of these

regulations. If an inspection of the facility reveals noncompliance, then the City must verify by a follow-up inspection that all required corrections have been implemented before renewing the permit. The facility owner shall apply to the City for permit renewal at least sixty (60) days prior to the expiration of the permit.

- F. Operating Permits may be transferred to a new facility owner/operator if the new facility owner does not change any conditions of the permit, the transfer is registered with the City within thirty (30) days of the change in ownership, and any necessary modifications are made to the information in the initial permit application due to change in ownership.
- G. Within thirty (30) days of receiving an inspection report from the City, the Operating Permit holder shall file with the City a plan and time schedule to implement any required modifications to the facility or to the monitoring plan needed to achieve compliance with the intent of this Ordinance or the permit conditions. This plan and time schedule shall also implement all of the recommendations of the City. (Ord. 707, July 2000.)

**13A.34.110 Regulated Substances Management Plan.**

- A. A Regulated Substances Management Plan indicating procedures to be followed to prevent, control, collect, and dispose of any unauthorized release of a regulated substance shall be required as a condition of each Operating Permit. If a Spill Prevention Control and Countermeasure (SPCC) Plan has been prepared in accordance with 40 CFR 264 or 265, a Regulated Substance Management Plan is not required as long as all of the regulated substances are included in the SPCC plan and the facility submits a copy to the City.
- B. The Regulated Substances Management Plan shall include:
  - 1. Provisions to address the regulated substances monitoring requirements of Sections 13A.34.060(E)(2) of this Ordinance.
  - 2. Provisions to address the pesticide, herbicide, fungicide, and fertilizer requirements of Section 13A.34.040 of this Ordinance.
  - 3. Provisions to train employees in the prevention, identification, reporting, control, disposal and documentation of any unauthorized release of a regulated substance, as required in Section 13A.34.060(E). (Ord. 707, July 2000.)

**13A.34.120 Groundwater Monitoring Plan.**

- A. If a facility is required to install and monitor groundwater wells pursuant to Section 13A.34.060(E)(7), then a Groundwater Monitoring Plan will be required. This plan must indicate procedures to be followed to assess groundwater quality for concentrations of those chemicals identified by the City in the Operating Permit. If a groundwater monitoring program is in effect per the requirements of 40 CFR 264 or 265, and this program includes all of the chemicals identified in the Operating Permit, then a separate Groundwater Monitoring Plan is not required by the City and the facility shall submit a copy of this program to the City.
- B. The Groundwater Monitoring Plan shall include provisions to address the groundwater monitoring requirements of Section 13A.34.060(E)(7) and Section 13A.34.130(C) of this Ordinance. (Ord. 707, July 2000.)

**13A.34.130 Unauthorized Releases.**

- A. General Provisions. All unauthorized releases as defined in Section 13A.34.020 of this Ordinance shall be reported to the City according to the provisions of this subsection. All unauthorized releases shall be recorded in the owner's inspection and maintenance log. If the containment device fails to contain the entire release, the release shall be determined to be an "unauthorized release requiring reporting."
- B. Unauthorized Releases Requiring Reporting.
  - 1. Unauthorized releases requiring reporting shall be reported to the City within 24 hours of discovery of the occurrence.
  - 2. The report shall contain the following information that is known at the time of filing the report:
    - a. List of type, quantity, and concentration of regulated substances released.
    - b. The results of all investigations completed at that time to determine the extent of soil or groundwater or surface water contamination because of the release.
    - c. Method of cleanup implemented to date, proposed cleanup actions and approximate cost of actions taken to date.
    - d. Method and location of disposal of the release regulated substance and contaminated soils, groundwater, or surface water.

- e. Proposed method of repair or replacement of the containment device.
    - f. Facility owner's name and telephone number.
  - 3. Until cleanup is complete, as defined by the Model Toxins Control Act Cleanup Regulation (Chapter 173-340 WAC), the owner shall submit reports to the City every month or at a more frequent interval specified by the City. The reports shall include the information requested in this Ordinance.
- C. Semiannually, the City shall review all groundwater monitoring results submitted by owners in WPA to determine if an unauthorized release to groundwater has occurred. Either one of the following occurrences shall constitute an unauthorized release to groundwater.
  - 1. A chemical concentration in an owner's monitoring well(s) that exceeds applicable legally enforceable federal or state groundwater quality standards.
  - 2. An upward trend in the concentration of a chemical as determined by a statistically based procedure.
- D. Upon confirmation of an unauthorized release to groundwater, the owner and/or operator shall be responsible for immediately accomplishing the following:
  - 1. Locate and determine the source of the unauthorized release of the regulated substance(s).
  - 2. Stop and prevent any further unauthorized release(s), if under the control of the owner and/or operator.
  - 3. Comply with the requirements for an unauthorized release(s) requiring reporting.
- E. The owner shall not be subject to this mandatory action if the owner can present acceptable technical data that substantiate it as not responsible for the violation.

In complying with this subsection, no new regulated substance(s) may be introduced in the place of the regulated substance(s) that caused the violation.
- F. If an unauthorized release creates or is expected to create an emergency situation with respect to the drinking water of the City, and if the facility

owner fails to address the unauthorized release in a timely manner, the City or its authorized agents shall have the authority to implement removal or remedial actions. Such actions may include, but not be limited to, the prevention of further groundwater contamination; installation of groundwater monitoring wells; collection and laboratory testing of water, soil, and waste samples; and cleanup and disposal of regulated substances. The facility owner shall be responsible for any costs incurred by the City or its authorized agents in the conduct of such remedial actions.

- G. Reporting a release to the City does not exempt or preempt any other reporting requirements under Federal, State or local laws. (Ord. 707, July 2000.)

**13A.34.140 Closure Permits and Permit Conditions.**

- A. No person shall close or cause to be closed a facility regulated pursuant to this Ordinance without first obtaining a Closure Permit from the City.
- B. Closure Permits shall be required for all facilities that cease to store, handle, treat, use or produce regulated substances for a period of more than 365 days or when the owner has no intent within the next year to store, handle, treat, or produce regulated substance. During the period of time between cessation of regulated substance storage, handling, treatment, use or production, and actual completion of facility closure, the applicable containment and monitoring requirements of this Ordinance shall continue to apply.
- C. Prior to closure, the facility owner shall submit to the City a proposal describing how the owner intends to comply with the closure requirements. Owners proposing to close a facility shall comply with the following requirements:
  - 1. Regulated substances shall be removed from the facility, including residual liquids, solids, or sludge to levels specified in 173-340 WAC, Model Toxic Control Act Cleanup Regulation.
  - 2. When a containment device is to be disposed of, the owner must document to the City that proper disposal has been completed.
  - 3. An owner of a containment device or any part of a containment device that is destined for reuse as scrap material that identify this reuse to the City.
- D. The owner of a facility being closed shall demonstrate to the satisfaction of the City that no detectable unauthorized release has occurred or that



unauthorized releases have been cleaned up (pursuant to the Model Toxins Control Act). This demonstration can be based on the ongoing leak detection monitoring, groundwater monitoring, or soils sampling performed during or immediately after closure activities.

- E. If an unauthorized release is determined to have occurred, the facility owner shall comply with Section 13A.34.160 of this Ordinance.
- F. Facility closure will be accepted as complete by the City upon implementation of the closure permit conditions and compliance with all other provisions of this Ordinance. (Ord. 707, July 2000.)

**13A.34.150 Enforcement.**

- A. The City shall be the administering agency and shall have the power and authority to administer and enforce the provisions of this Ordinance. The City shall have the right to conduct inspections of facility at all reasonable times to determine compliance with this Ordinance. Noncompliance with the provisions of this Ordinance is a violation.

All permitted facilities in WPA may be subject to one (1) inspection per year by a City inspector of assignee.

- B. The City may revoke any permit issued pursuant to this Ordinance if it finds that the permit holder:
  - 1. Has failed or refused to comply with any one of the provisions of this Ordinance.
  - 2. Has submitted false or inaccurate information in the permit application or any required reports.
  - 3. Has failed to submit operational reports of other information required by this Ordinance.
  - 4. Has refused lawful inspection pursuant to this Section.
  - 5. Has had four or more releases requiring reporting, or two (2) or more incidents that result in detectable contamination of groundwater (as measured in monitoring wells). The owner and/or operator shall be cited by the City and shall immediately cease the use of and remove from the site any regulated substances present in quantities greater than threshold. Such facility shall apply for a closure permit as defined in Section 13A.34.140 within four (4) weeks of citation. Reinstatement of the use of regulated substances in quantities greater than threshold shall be prohibited

onsite.

6. Has violated the intent of this Ordinance by intentionally dumping, spilling, or otherwise releasing regulated substances within the ACWPA. The owner and/or operator shall be cited by the City and have their ACWPA operating permit revoked. Such facilities must stop the use of and remove from the site any regulated substances in quantities greater than threshold, and apply for ACWPA closure permit within four weeks of citation. Reinstatement of the use of regulated substances in quantities greater than threshold shall be prohibited onsite. The decision as to whether there has been intentional violation under this section shall be made by the Mayor or his or her designee. (Ord. 707, July 2000.)

**13A.34.160** **Notice of Violation.** Whenever it is determined that there is a violation of this Ordinance, the notice of violation issued shall:

- A. Be in writing;
- B. Be dated and signed by the authorized City agent making the inspection;
- C. Specify the violation or violations; or
- D. Specify the length of time available to correct the violation after receiving the notice of violation. (Ord. 707, July 2000.)

**13A.34.170** **Injunctive Relief.** If any owner stores, handles, uses or produces regulated substances without having obtained an Operating or Closure Permit as provided for herein or continues to operate in violation of the provisions of this Ordinance, the City may file an action for injunctive relief in the Superior Court of the State of Washington for Benton County. All costs incurred for abatement by the City, including reasonable attorney's fees, shall be paid by the owner operating without an Operating or Closure Permit or operating in violation of the provisions of this Ordinance or the permit. (Ord. 707, July 2000.)

**13A.34.180** **Other Laws, Rules and Regulations.** All owners within a WPA must also comply with County, State and Federal laws, rules and regulations related to the intent of this Ordinance. (Ord. 707, July 2000.)

**13A.34.190** **Penalties.**

- A. A violation of any of the provisions of this Ordinance shall constitute a civil infraction and a nuisance. It shall be a separate offense for each and every day or portion thereof, during which any violation of any of the provisions of this Ordinance is committed, continued or permitted.

- B. Any owner or operator who violates any provision of this Ordinance shall be subject, upon conviction in Court, to a fine not to exceed \$1,000.00 per day, per facility.
- C. In addition to any fines and penalties set forth above, the owner or operator shall reimburse the City for all costs incurred as a result of responding to, containing, cleaning up, or monitoring the cleaning up and disposal of any spilled or leaked regulated substance. (Ord. 707, July 2000.)

**13A.34.200** **Administrative Rule.** The Administrator shall adopt administrative rules for implementation that sets forth criteria relating to interpretation and enforcement of this Ordinance. (Ord. 707, July 2000.)

**13A.34.210** **Modifications, Waivers, Alternates, Tests.**

- A. **Modifications.** Whenever there are practical difficulties involved in carrying out the provision of this Ordinance, the Administrator may grant minor modifications for individual cases provided he/she shall first find that a specific reason makes the strict letter of this Code impractical, and that the minor modification is in conformity with the intent and purpose of this Code, and that such modification:
  - 1. Will meet the objectives of environmental protection, safety, function, and maintainability intended by the Code requirements, based upon sound engineering judgment; and
  - 2. Will not be injurious to other property(s) in the vicinity.
- B. **Waivers.** Requirements of this Ordinance may be waived upon determination by the Administrator that all impacts to the aquifer would be mitigated and protective measures will meet or exceed the requirements of this Ordinance.
- C. **Alternates.** The provisions of this Code are not intended to prevent the use of any material or method of construction or aquifer protection not specifically prescribed by this Code, provided any alternate has been approved and its use authorized by the Administrator.

The Administrator may approve any such alternate, provided he or she finds that the proposed design is satisfactory and complies with the provisions of this Code and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Code in environmental protection, safety, and effectiveness.

The Administrator shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details or any action granting approval of any alternate shall be written and entered in the files of the Code Enforcement Agency.

- D. Tests. Whenever there is insufficient evidence or complaint with any of the provisions of this Code or evidence that any action does not conform to the requirements of the Code, the Administrator may require tests as proof of compliance to be made at no expense to this jurisdiction.

Test methods shall be as specified in this Code or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the Administrator shall determine test procedures. (Ord. 707, July 2000.)

### **13A.34.220 Appeals.**

- A. Any decision of the City in the administration of this Ordinance such as administrative determinations or modifications, may be appealed to the Board of Hearing Examiners (BOHE). Any decision of the BOHE on variance may be appealed to the Superior Court.
- B. The BOHE, in determining whether or not to grant a variance, shall consider the following factors:
1. If there is available a feasible and effective measure to protect the aquifer outside of this Ordinance.
  2. The extent of the problem being resolved by the Ordinance.
  3. The contribution of the land being regulated to the problem.
  4. The degree to which the Aquifer Protection Ordinance solves the problem presented by the proposal.
  5. The amount and percentage of value lost by application of the Ordinance.
  6. The quality of the aquifer to be impacted.
  7. The extent of remaining uses for the parcel.
  8. The past, present and future uses of the property.
  9. The extent to which the landowner could predict the effects of this Ordinance on the property. (Ord. 707, July 2000.)

**13A.34.230 Aquifer Protection Variance Procedures.** If an applicant feels that the strict application of this Chapter would deny all reasonable use of the property or would deny installation of public transportation or City facilities determined by the public agency proposing these facilities to be in the best interest of the public health, safety and welfare, the applicant of a development proposal may apply for a variance. An application for a variance shall be filed with the City. A requirement for a variance includes an environmental review pursuant to (SEPA) Washington Administration Code 197-11-300 (SEPA). A variance shall be decided by the BOHE based on the following standards set forth in this Section:

- A. The BOHE, in granting approval of a variance, must determine:
1. That the applicant suffers undue hardship and the variance is necessary because of special circumstances applicable to the subject property, including the size, shape, topography, location or surroundings of the subject property, and the strict application of the code is found to deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and other identical zone classification.
  2. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the water supply aquifer.
    - a. That no economically viable alternative with less impact on the aquifer is physically and/or legally possible;
    - b. That there is no feasible onsite alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the aquifer;
    - c. That the proposed activities will not cause significant degradation of groundwater surface-water quality;
    - d. That the applicant has taken deliberate measures to minimize aquifer impacts, including but not limited to the following:
      - (1) Limiting the degree or magnitude of the regulated substance and activity;

- (2) Limiting the implementation of the regulated substance and activity;
    - (3) Using appropriate and best available technology; and
    - (4) Taking affirmative steps to avoid or reduce impacts.
  - e. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
  - f. That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in creating an uneconomic business condition and use of the property after the effective date of this chapter.
3. That if government and quasi-governmental agencies are granted a variance under this section, they will meet the following additional conditions:
- a. Competing public policies have been evaluated and it has been determined by the Administrator that the public's health, safety, and welfare is best served;
  - b. Each facility must conform to the Comprehensive Land Use Plan and with any adopted public programs and policies;
  - c. Each facility must serve established, identified public needs; and
  - d. No practical alternative exists to meet the needs.
4. That the approval as determined by the BOHE is a minimum variance that will accomplish the desire purpose.
5. That in determining whether or not to grant a variance, the following factors have been considered:
- a. If there is an available, feasible, and effective measure to protect the aquifer outside of this Ordinance;
  - b. The extent of the problem being resolved by the Ordinance;
  - c. The amount and percentage of value lost by application of the Ordinance;

- d. The extent of remaining uses for the parcel;
  - e. The past, present, and future uses of the property; and
  - f. The extent to which the landowner could predict the effects of this Ordinance on the property.
- B. The BOHE may prescribe any conditions upon the variance deemed to be reasonably necessary and required to mitigate aquifer impacts. Any variance granted by the BOHE, unless otherwise specified in writing, shall become null and void in the event that the applicant or owner of the subject property for which a variance has been requested has failed to commence construction or otherwise implement effectively the variance granted within a period of two(2) years after such a variances has been issued. For proper cause shown, an applicant may petition the BOHE during the variance procedure, for an extension of the two (2) year period, specifying the reasons therefore. The time may be extended but not exceed one additional year in any event. (Ord.707, July, 2000)