

COUNTY OF OTTAWA

ORDINANCE 09-1

**CONTAMINATED GROUNDWATER USE ORDINANCE
of
OTTAWA COUNTY**

Article 1--AUTHORITY

Michigan counties have been delegated the right to adopt ordinances on topics over which they have jurisdiction. See MCL §46.11 et seq. MCL §333.2441 authorizes a County to enact regulations that are at least as stringent as state law on Health related issues. MCL §333.2451 authorizes a County to issue an order upon a determination that an imminent danger to the health or lives of individuals exists in the area served by the local health department, specifying actions to be taken to avoid, correct, or remove the imminent danger. MCL §333.2455 empowers a County to order a property owner to "avoid, correct, or remove at the owner's expense" a condition which the "local health officer or director reasonably believes to be a nuisance, unsanitary condition or cause of illness." State law prohibits any person from discharging "directly or indirectly" into the waters of the state a substance that is or may become injurious to the public health, safety or welfare. MCL §324.3109.

Article 2--PURPOSE

The purpose of this Ordinance is to fulfill the above-described responsibilities of Ottawa County and to protect the public health, safety, and welfare through the imposition of restrictions on the use of groundwater where there is municipal water available and where there is the possibility that the continued use of well water will lead to the human consumption of contaminated groundwater or the inadvertent spread of contaminated groundwater beyond its natural migration.

Article 3--DEFINITIONS

In addition to the adoption of the terms shall have the following terms shall have the meanings described in this Article:

- 3.1 "Affected Area" means an area within the County that the Board declares to have municipal water available and to be potentially affected by a contaminated groundwater plume.

- 3.2 **“Board”** means the Ottawa County Board of Commissioners.
- 3.3 **“Contaminated groundwater”** means groundwater in which there is present, or may be present, materials that may exceed the residential drinking water criteria established by the MDEQ by rule or operational memoranda pursuant to Part 201 of the Michigan Natural Resources and Environmental Protection Act, or its successors, being 1994 PA 451, as amended.
- 3.4 **“County”** means Ottawa County.
- 3.5 **“Groundwater”** means underground water within the zone of saturation.
- 3.6 **“MDEQ”** means the Michigan Department of Environmental Quality or its successor.
- 3.7 **“Ordinance”** means this Contaminated Groundwater Use Ordinance.
- 3.8 **“OCHD”** means the Ottawa County Public Health Department.
- 3.9 **“ORC”** means the Ottawa County Road Commission.
- 3.10 **“Person”** means any individual or legal body corporate.
- 3.11 **“Sheriff”** means the elected Sheriff of the County, including any of his or her authorized and sworn deputies.
- 3.12 **“Well”** means an opening in the surface of the earth for the purpose of removing groundwater for any purpose, including but not limited to heating, cooling, irrigation, dewatering, human consumption, processing, monitoring, remediation and emergency fire services.
- 3.13 **“Influential Well”** means a well outside the Affected Area but which impacts the contaminated groundwater within the Affected Area, whether by directly drawing such contaminated groundwater into the well or by merely changing the direction of such groundwater’s flow.

Article 4—PROHIBITION, RESTRICTIONS and REQUIREMENTS

Except as provided in Article 6, no person shall install, utilize, allow, permit or provide for the installation or utilization of a well within any Affected Area or an Influential Well. In addition each person shall comply with the following restrictions:

- 4.1 *Sources of Water Supplied for Human Consumption.* Except as provided in

Article 6, water supply for human consumption in the Affected Areas shall be delivered only from municipal water systems or the use of bottled water delivered or purchased in containers under conditions approved by the County's Environmental Health Officer or other appropriate agency. For purposes of this subsection, the term "human ingestion" means use in food preparation or food service, use in the interior of a dwelling or dwelling unit for household purposes, and use in any building for personal washing or consumption.

- 4.2 *Wells Affecting Contaminated Groundwater.* No Influential Well nor a well within the Affected Area may be used or installed if it will have the effect of spreading or diverting a contaminated groundwater plume, unless the well is part of an MDEQ or United States Environmental Protection Agency approved groundwater monitoring or remediation system.
- 4.3 *Non-conforming wells.* Any existing well, the use of which is prohibited by Article 6, shall be plugged or abandoned in conformance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction and in conformance with and according to the procedures outlined in the Ottawa County SW Landfill Well Abandonment Plan, attached as Exhibit B, and as approved by the MDEQ and as implemented by the OCHD.
- 4.4 *Well Abandonment Process.* Each person who owns real property in the Affected Area and within 300 feet of the Affected Area shall complete and submit to the Ottawa County Environmental Health Officer a Well Notification Form as attached as Exhibit C.

Article 5—DESIGNATION OF AFFECTED AREAS

The areas identified in Exhibit A, attached hereto, are found to be Affected Areas as of the date of the enactment of this Ordinance. By resolution, the Board may designate additional areas of the County as Affected Areas if it finds that there is a Contaminated Groundwater plume underlying or upgradient that justifies, requires, or warrants an application of the Prohibitions of this Ordinance. The Board may delist any Affected Area upon a resolution finding that the Affected Area no longer contains a Contaminated Groundwater plume that justifies, requires or warrants an application of the Prohibition of this Ordinance. The County's Environmental Health Officer shall keep and maintain a list of all current, Affected Areas, which shall be subject to this Ordinance, and shall periodically file that list with the Ottawa County Clerk, who shall provide a copy of such list with every copy of the Ordinance that is disseminated.

Article 6—EXCEPTIONS

A person may install or utilize or allow, permit, or provide for the installation or utilization of a

well within an Affected Area if any of the following exceptions apply and the requirements of the exception are complied with:

- 6.1 *Water Service Unavailable.* An existing residential well in an Affected Area may be maintained for residential purposes provided:
 - 6.1.1 The water is tested annually by a laboratory that is acceptable to and for chemical parameters specified by the OCHD, and the results of that test are promptly submitted to the OCHD for review;
 - 6.1.2 Based on those tests, the OCHD annually determines that the well is safe and suitable for use; and
 - 6.1.3 The homeowner agrees that municipal hookup will be made at the time of property conveyance.
- 6.2 *Proof of No Influence.* If the MDEQ determines that the use of an Affected Area well is not influenced or potentially influenced by Contaminated Groundwater and further determines that the use of that well will remain permanently unaffected by the future migration of Contaminated Groundwater, and proof of these determinations is delivered to the OCHD, the County Environmental Health Officer may issue a waiver allowing the use of the well.
- 6.3 *Groundwater Monitoring.* An Affected Area well may be used for Groundwater monitoring and/or remediation as part of response activity approved by the MDEQ.
- 6.4 *Construction Dewatering.* A well may be used in an Affected Area for construction dewatering if the following conditions are satisfied: (i) the use of the dewatering well will not result in unacceptable exposure to Contaminated Groundwater, possible cross-contamination between saturated zones, or movement of Contaminated Groundwater plumes toward an area that is not contaminated and (ii) the water generated by that activity is properly handled and disposed of in compliance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction. Any exacerbation caused by the use of the well under this exception shall be the responsibility of the person operating the dewatering well, as provided in Part 201 of the Natural Resources and Environmental Protection Act, being MCL 324.20101 to 324.20142.
- 6.5 *Processing Activities.* If an owner demonstrates to the satisfaction of the County's Environmental Health Officer that use of a well in an Affected Area for non-contact heating, cooling, irrigation or processing activities will not cause the

future migration of contaminated groundwater, or contamination of any other environmental media through its use or discharge, the County's Environmental Health Officer may execute a waiver allowing the use of the well.

- 6.6 *Public Emergencies.* A well may be used in an Affected Area in the event of a public emergency, but only if expressly authorized by the County's Environmental Health Officer and written notice is provided to the MDEQ and Environmental Health Officer.
- 6.7 *Remediation purging.* Groundwater purge wells may be operated within an Affected Area, if consistent with all applicable laws and written notice is provided to the MDEQ and Environmental Health Officer.

Article 7--ENFORCEMENT & REMEDIES

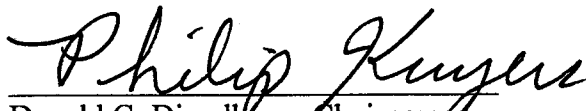
- 7.1 *Administration.* The County's Environmental Health Officer shall make the determinations required under this Ordinance, shall enforce the provisions of the Ordinance, and may request assistance from the Sheriff's Department and Prosecutor.
- 7.2 *Appearance Ticket.* If the County's Environmental Health Officer or Sheriff determines that there is probable cause that this Ordinance has been violated, they are authorized to issue and serve an Appearance Ticket upon a person or entity violating the Plan or this Ordinance. The Appearance Ticket shall direct the recipient to appear in the appropriate District Court within Ottawa County on a specified date to respond to the alleged violation.
- 7.3 *Civil and Criminal Penalties.* Enforcement may be accomplished by civil action and/or criminal prosecution, along with any other remedies provided by law. Any responsible party shall be guilty of a misdemeanor if proven to have violated the provisions of this Ordinance and may, upon conviction, be punished by imprisonment in the County jail for not more than ninety (90) days, or by fine of not more than five hundred (\$500) and the cost of prosecution, or by a fine and imprisonment at the discretion of the Court. The imposition of any sentence shall not exempt the Responsible Party from compliance with the requirements of this Ordinance nor from liability for civil penalties or other civil proceedings to enforce this Ordinance or abate the violation. Continued violation of this Ordinance is hereby declared a nuisance per se.
- 7.4 *Register of Deeds and County Clerk.* A copy of this Ordinance shall be filed with the register of deeds as an ordinance affecting multiple properties, and a copy of this Ordinance shall be on file with the County Clerk.

Article 8--SEVERABILITY AND MODIFICATION


The Ordinance and the various articles, sections and clauses thereof, are hereby declared to be severable. In any part, sentence, paragraph, section, clause or work is adjudged unconstitutional or invalid for any reason, by any Court of competent jurisdiction, such invalidity shall not affect the remaining portions of applications of this Ordinance which can be given effect with out the invalid portion or application, provided such remaining portions are not determined by the Court to be inoperable. The MDEQ, or its successor, shall be notified at lest thirty (30) days prior to modification or rescission of this Ordinance.

ORDINANCE ADOPTED: January 27, 2009

ORDINANCE EFFECTIVE: March 1, 2009



Donald G. Disselkoen, Chairperson,
Ottawa County Board of Commissioners



Daniel C. Krueger, Ottawa County Clerk

EXHIBIT "A"

[MAP ATTACHED TO ORIGINAL]