

CODE OF THE TOWN OF FITZWILLIAM
CHAPTER 113
GROUNDWATER PROTECTION OVERLAY DISTRICT

I. Authority

The Town of Fitzwilliam hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II relative to innovative land use controls, and RSA 674:21.

II. Purpose

The purpose of this ordinance is in the interest of public health, safety and general welfare, to protect, preserve and maintain existing and potential groundwater supply and groundwater recharge areas within a known aquifer from adverse development, land use practices or depletion. This is to be accomplished by regulating the uses of land over certain known aquifers and their recharge areas so as to protect them from contamination caused by adverse or incompatible land use practices or developments. The Groundwater Protection Ordinance is intended to limit the uses of land so designated to those which will not adversely affect water quality by contamination, or water quantity by preventing recharge of the aquifer.

III. Definitions

- A. Animal Feedlot: A commercial agricultural establishment consisting of confined feeding areas and related structures for the raising of livestock.
- B. Aquifer: a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
- C. Direct Recharge Area: The area immediately overlying the stratified-drift aquifer. The boundary of the direct recharge area is the contact between the stratified drift and adjacent till or bedrock.
- D. Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations.
- E. Groundwater Recharge Area: That area from which water is added to the saturated zone by: 1) natural processes such as infiltration or precipitation, or by 2) artificial processes such as induced infiltration.
- F. Gasoline station: means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.
- G. Impervious: not readily permitting the infiltration of water.
- H. Impervious surface: a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt; earthen, wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.

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- I. Induced Infiltration: the process by which water in a stream or lake moves into an aquifer because of hydraulic gradient from the surface water body toward a pumping well or wells.
- J. Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary landfills. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.
- K. Leachable Wastes: Waste material, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.
- L. Mining: The activities performed in the extraction of minerals including the excavation of pits, removal of mineral, removal of dimension stone, disposal of overburden and the construction of roads for the haulage of mining materials.
- M. Multi-family residence: A building or structure containing three (3) or more dwelling units.
- N. Non-Contact Cooling Water: Water which flows through a heat exchanger providing a physical barrier between the water and the process being cooled.
- O. Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
- P. Petroleum bulk plant or terminal: that portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.
- Q. Regulated container: any device in which a regulated substance is stored, transported, treated, disposed of, or otherwise handled, with a capacity of greater than or equal to 5 gallons. The term does not include fuel tanks attached to and supplying fuel to a motor vehicle.
- R. Regulated substance: petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, or subsequent revision, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquified fuels which exist as gases at normal atmospheric temperature and pressure.
- S. Secondary containment: a structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest regulated-substances container that will be stored there.
- T. Sludge: Residual materials produced by water and sewage treatment processes and domestic septic tanks.

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- U. Snow dump: An off-site location where snow, which is cleared from roadways and/or motor vehicle parking areas, is imported to and piled and disposed of. Storage areas situated adjacent to roads or parking lots from which the snow is cleared and serving only those roads or lots are not considered snow dumps.
- V. Solid Waste: Any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by Env-Sw 104.36 of the New Hampshire Solid Waste Rules.* Solid waste includes solid, liquid, semi-solid, or contained gaseous waste material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities.
- W. Stratified Drift: Unconsolidated, sorted sediment composed of layer of sand and gravel deposited by meltwater from glaciers.
- X. Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.
- Y. Surface water: streams, lakes, ponds and tidal waters, including marshes, water-courses and other bodies of water, natural or artificial.

IV. Groundwater Protection District

- A. The Groundwater Protection District is an overlay district which is superimposed over the existing underlying zoning and includes within its boundaries the Stratified Drift Aquifer(s) shown on the map entitled, Town of Fitzwilliam Groundwater Protection District Defined: The Groundwater Protection District is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying, base district zoning. In all cases, the more restrictive requirement(s) shall apply.
- B. Incorrectly Designated Zones: Upon any well founded information that the actual boundary of the Groundwater Protection District is incorrectly mapped, the Planning Board or the owner of any land may engage a professional geologist or hydrologist or other professional, recognized by the Planning Board as being qualified to perform such work, to determine more accurately the precise boundary of the Groundwater Protection District. The Planning Board may, based upon appropriate findings and evidence, adjust the boundary or area designation of the Groundwater Protection District or reduce or expand the designation area to more correctly define the location and the extent of the aquifer on a site-specific, case by case basis.

V. Applicability

This Ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under Article XII (Exemptions) of this Ordinance.

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VI. Performance Standards The following Performance Standards apply to all uses in the Groundwater Protection District unless exempt under Article XII:

- A. For any use that will render impervious more than 15% or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board determines is consistent with Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992 and Best Management Practices for Urban Stormwater Runoff, NH Department of Environmental Services, January 1996.* (update when available)
- B. Conditional uses, as defined under Article X shall develop stormwater management and pollution prevention plans and include information consistent with Stormwater Management For Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices. (US EPA, 1992) The plan shall demonstrate that the use will:
 - 1. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
 - 2. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater generated from or passing through areas containing contaminated soils or groundwater without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI).
 - 3. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August 2005, and any subsequent revisions;
 - 4. All regulated substances stored in containers with a capacity of 5
 - 5. gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
 - 6. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;
 - 7. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, & outside the sanitary protective radius of wells used by public water systems;
 - 8. Secondary containment must be provided for all outdoor storage of regulated substances;

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9. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
10. Prior to any land disturbing activities, all inactive water wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.

VII. Spill Prevention, Control and Countermeasure (SPCC) Plan

- A. Conditional uses, as described under Article X, part (A), using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Board of Selectmen or its authorized agent who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:
 1. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
 2. Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
 3. A list of all regulated substances in use and locations of use and storage;
 4. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
 5. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

VIII. Permitted Uses

All uses permitted by right or allowed by special exception in the underlying district are permitted in the Groundwater Protection District unless they are Prohibited Uses or Conditional Uses. All uses must comply with the Performance Standards unless specifically exempt under Article XII.

IX. Prohibited Uses

The following uses are prohibited in the Groundwater Protection District.

- A. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A, including general disposal of hazardous materials;
- B. The development or operation of a solid waste landfill, except for the brush and stumps generated on site from clearing land and buried on the same site. A copy of the site plan which is required to be filed with the Commissioner of

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the Department of Environmental Services, in accordance with RSA 149-m for on site burial of stumps, must be submitted to the Planning Board for files.

- C. The outdoor storage of road salt or other deicing chemicals in bulk;
- D. The development or operation of a junkyard;
- E. The development or operation of a snow dump;
- F. The development or operation of a wastewater or septage lagoon;
- G. The development or operation of a petroleum bulk plant or terminal;
- H. The development or operation of gasoline stations or automotive service or repair shop;
- I. Subsurface storage of petroleum and other hazardous material;
- J. Disposal of liquid or leachable wastes, except from single or multi-family residential subsurface disposal systems, or approved commercial or industrial systems which discharge human waste only;
- K. Industrial uses which discharge contact type process waters on site. Non-contact cooling water is permitted;
- L. Commercial animal feedlots;
- M. Mining except for earth excavation carried out in compliance with the Code of the Town of Fitzwilliam Chapter 209 including any subsequent amendments and a Conditional Use Permit issued under Section X of this Ordinance and RSA 155-E.
- N. Land uses that will render over 20% of the parcel surface area impervious to surface water infiltration.

X. Conditional Uses

A. Permit Required:

All subdivision proposals, site plans and other development proposals located within the Groundwater Protection District shall be reviewed by the Planning Board and shall conform to all of the provisions of this ordinance. No conditional uses shall be conducted within the Groundwater Protection District unless a Conditional Use Permit has been issued by the Planning Board. The Planning Board is hereby authorized to attach any reasonable conditions to such permit regarding construction and operation. Conditional uses shall include but are not limited to:

- 1. Industrial, commercial, institutional and governmental uses not otherwise prohibited in Section IX of this Ordinance.
- 2. Multi-family residential development.

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3. Sand and gravel excavation carried out in compliance with the Code of the Town of Fitzwilliam Chapter 209 including any subsequent amendments, provided that such excavation is not carried out within four (4) vertical feet of the average seasonal high water table and that periodic inspections are made by the Planning Board or its agent to determine compliance.
4. Replacement of underground petroleum product storage tanks.

B. Standards

The Planning Board may grant a Permit for a conditional use after determining that the proposed use is not a prohibited use and will be in compliance with the Performance Standards in Article VI as well as all applicable local, state and federal requirements and only after written findings of fact are made that all of the following are true:

1. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
2. The proposed use, either alone or on a cumulative basis, will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.
3. The proposed use will discharge no waste-water on site other than that typically discharged by domestic waste water disposal systems and will not involve onsite storage or disposal of toxic or hazardous material as herein defined;
4. Sufficient recharge to the aquifer will not be inhibited or prevented; and
5. The proposed use complies with all other applicable sections of this ordinance. The Planning Board may require that the applicant provide data reports prepared by a professional engineer or qualified groundwater consultant to assess any potential damage to the aquifer that may result from the proposed use. The Planning Board shall engage such professional assistance as is required to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. Costs for any of the above mentioned services shall be paid by the applicant. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.

XI. Existing Nonconforming Uses

Existing nonconforming uses may continue without expanding or changing

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to another nonconforming use, but must be in compliance with all applicable state and federal requirements, including state administrative code Env-Wq 401, Best Management Practices for Groundwater Protection.

XII. Exemptions

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

- A. Any private residence is exempt from all Performance Standards;
- B. Any business or facility where regulated substances are not stored in containers with a capacity of 5 gallons or more is exempt from Article VI, Performance Standards, sections E through H;
- C. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard E;
- D. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standards E-H;
- E. Storage & use of office supplies is exempt from Performance Standards E-H;
- F. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards E-H;
- G. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance;
- H. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Performance Standards E-H;
- I. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Article XIV of this ordinance.

XIII. Relationship Between State And Local Requirements

Where both State and municipality have existing requirements the more stringent shall govern.

XIV. Maintenance and Inspection

- A. For uses requiring planning board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for Cheshire

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County. The description so prepared shall comply with the requirements of RSA 478:4-a.

- B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Board of Selectmen or its authorized agent at reasonable times, with prior notice to the landowner.
- C. All properties within the Groundwater Protection District known to the Board of Selectmen or its authorized agent as using or storing regulated substances in containers with a capacity of 5 gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Article XII, shall be subject to inspections under this Article.
- D. The Town of Fitzwilliam may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Town of Fitzwilliam as provided for in RSA 41-9:a.

XV. Enforcement Procedures

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676.

XVI. Enforcement

It shall be the duty of the Board of Selectmen or its authorized agent to enforce the provisions of this Ordinance and to see that its requirements and restrictions are duly complied with. A Conditional Use Permit may be withdrawn by the Board of Selectmen if the use is not conducted in accordance with the regulations of this Ordinance or the conditions of the permit. The Board of Selectmen or its authorized agent shall institute or cause to be instituted, in the name of the Town, any and all actions, legal and equitable, that shall be appropriate or necessary for the enforcement of the provisions of this Ordinance. Any non-conforming use may continue and may be maintained, repaired and improved, unless that such use is determined to be an imminent hazard to public health and safety by the Selectmen and Health Officer. No non-conforming use may be expanded, changed to another non-conforming use, or renewed after it has been discontinued for a period of 12 months or more.

XVII. Saving Clause

If any provision of this ordinance is found to be unenforceable or be declared by the courts to be invalid, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

XVIII. Effective Date

This ordinance shall be effective upon adoption by the Town of Fitzwilliam.(Added ATM 03-09-10 by Art. 5)