

CHAPTER 37

STOCKBRIDGE-MUNSEE TRIBAL LAW GROUNDWATER PROTECTION ORDINANCE

Section 37.1 Purpose

The residents of the Stockbridge-Munsee Indian Reservation depend exclusively on groundwater for a safe drinking water supply. Groundwater also is the primary source of water for wetlands, streams and rivers on the Reservation. Certain land use practices and activities can seriously threaten or degrade groundwater quality and quantity. The purpose of this Ordinance is to protect the groundwater of the Reservation for all reasonable uses, as well as to promote the public health and welfare of the Stockbridge-Munsee Community.

Section 37.2 Jurisdiction

This Ordinance shall apply to areas within the boundaries of the Stockbridge-Munsee Indian Reservation so that the groundwater underlying the Reservation may be protected.

Section 37.3 Definitions

(A) “Aquifer” is a saturated, permeable, geologic formation of soil or rock that contains and will yield groundwater.

(B) “Best Management Practices” (BMPs) refers to measures, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution.

(C) “Community Water Supply Well” is a public water supply well that serves 15 or more service connections used by year-round residents or regularly serves at least 25 year-round residents.

(D) “Groundwater” is the water that exists beneath the land surface, but more commonly is the water in an aquifer.

(E) “Non-community Water Supply Wells” are public water supply wells that do not qualify as community water supplies. Non-community water supply wells are divided into two categories:

(1) A non-transient non-community water supply regularly serves at least 25 of the same people over six months per year.

(2) A transient non-community water supply serves all other non-community water supply systems.

(F) “Person” refers to any and all persons and parties, including individuals, corporations, partnerships, other organizations or governmental entities.

(G) “Private Sewage System” is a sewage treatment and disposal system serving a single structure that has a septic tank and soil absorption field located on the same land parcel as the structure. This term also means an approved alternative sewage system, including a substitute for the septic tank or soil absorption

field, a holding tank, a system serving two structures or a system located on a different parcel than the structure.

(H) “Private Well” is any well that provides water for human consumption and is not considered a public water supply well.

(I) “Privy” is a building or structure above a buried container or above an unlined excavation used for the deposition of human waste.

(J) “Public Water Supply Well” provides drinking water for human consumption to 15 or more service connections or to an average of at least 25 individuals daily at least 60 days per year. A public water supply well is either a ‘community’ or ‘non-community’ water supply well.

(K) “Recharge Area” means the areas or features that supply groundwater to a well through the surface infiltration of water.

(L) “Safe Drinking Water Act” (SDWA) refers to the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f *et seq.*, and the regulations adopted under the SDWA.

(M) “Time of Travel” (TOT) is the distance that groundwater will travel in a specified time. In this Ordinance, it refers to the time that it takes groundwater and potential contaminants to reach a pumping well(s) from an area within the aquifer that is up-gradient from the well(s).

(N) “Wastewater” means any water carrying waste materials, except clear water wastes, created in and conducted away from residences, industrial establishments and public buildings.

(O) “Well” means any drillhole or other excavation or opening that is deeper than it is wide and extends more than 10 feet below the ground surface for the purpose of obtaining groundwater.

(P) “Wellhead Protection Area” (WHPA) is the surface and subsurface area around a well, through which contaminants are reasonably likely to move toward and reach that well within a given time frame.

Section 37.4 Protection of Groundwater Quality and Quantity

(A) The quality of groundwater shall be maintained at such a level that it is available for use as drinking water, as well as for other reasonable uses.

(B) Groundwater may not be used in such quantities that the use is detrimental to others.

Section 37.5 Groundwater Protection Best Management Practices

The following BMPs shall be adopted on the Reservation, as applicable, to help protect the quality of the groundwater. These BMPs shall be followed, unless they are superseded by more stringent requirements under this Ordinance or other applicable laws.

(A) Handle and store materials that could contaminate groundwater in a secure location with secondary containment. When not in immediate use, keep such materials in closed containers.

(B) Properly dispose of waste materials, unused or unwanted chemicals, and used batteries in a timely

fashion.

- (C) Adopt practices for the regular inspection and maintenance of potential sources of groundwater contamination.
- (D) Have plans and equipment in place to promptly contain and clean spills. Dispose of cleaning materials properly.
- (E) Eliminate floor drain discharges to the ground, septic systems, storm sewers or any surface water body.
- (F) Single-walled underground fuel storage tanks should be replaced with above-ground or basement fuel storage tanks or monitored buried tanks conforming with industry standards.
- (G) Mix and load pesticides, fertilizer or any other substance that could contaminate groundwater in a way that prevents leaks, spills or overflows onto the soil. Dispose of cleaning rancid from sprayer tanks and equipment properly.
- (H) Match the application of pesticides and fertilizers to the actual need and uptake rates. Avoid chemicals with high leaching potential on highly permeable soils.
- (I) Seal floor surfaces with an impermeable material that is resistant to substances used in the facility at commercial and/or industrial facilities.
- (J) Isolate spill-prone areas from floor drains with the use of berms.
- (K) Closed cooling water systems should be adopted.
- (L) Consolidate and segregate waste-generating operations in a secure area.
- (M) Proper disposal systems are needed for wastewater generated at commercial and/or industrial facilities or use holding tanks for such wastewater.

Section 37.6 Underground Injection Wells

- (A) The use of any well or water system for the underground placement of any waste, surface or subsurface water, or any other substance is generally prohibited. The only exceptions to this general prohibition are when the persons proposing the underground placement have the written permission of the Tribal Council for their activities and the tribal Environmental Department has approved the placement as being:
 - (1) necessary for the construction, rehabilitation or operation of a well or water system, or
 - (2) necessary for the remediation of contaminated soil, groundwater or an aquifer.
- (B) Injection wells classified as Class I, Class II, Class III and Class IV under the federal Underground Injection Control regulations of the SDWA (40 CFR pt. 144) are prohibited on the Reservation.
- (C) The following types of wells are not regulated under this Section or the Underground Injection

Control regulations of the federal SDWA:

- (1) Individual or single family residential waste disposal systems such as domestic septic systems;
- (2) Non-residential septic systems or similar waste disposal systems, if such systems are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day;
- (3) Any dug hole that is not used for the emplacement of fluids underground.

Section 37.7 Wellhead Protection -- General

(A) Wellhead protection provides communities with a way to safeguard water supplies by controlling land use around wells so as to prevent contaminants from entering groundwater.

(B) Wellhead protection programs have the goal of identifying and mitigating potential sources of groundwater contamination. They target protecting groundwater from three main sources of contaminants: the direct introduction of contaminants into the well from improper well casing, road runoff, spills and accidents; microbial contamination such as bacteria and viruses; and chemical contaminants.

(C) Lands around a well, which receive protection from possible sources of contamination, are called wellhead protection areas (WHPAs). WHPAs can be all or a portion of land that supplies water to a well and that contaminants are reasonably likely to move through to reach a well over a period of time.

- (1) WHPAs are determined using geologic and hydrologic criteria, such as the physical characteristics of the aquifer and the effect that pumping has on groundwater movement.
- (2) The delineation of WHPAs allow resources to be focused on protecting the locations where groundwater is most likely to be polluted.

Section 37.8 Wellhead Protection Districts

(A) WHPAs are divided into different wellhead protection districts. These districts are administrative areas where restrictions are placed on uses of land that can pose a threat of contamination to a well.

- (1) The Reservation contains two types of wellhead protection districts.
 - (a) Groundwater Protection Overlay District A (“District A”)
 - (i) The primary recharge area of a well is protected in District A.
 - (ii) The land in District A is subject to stringent use and development restrictions because of its close proximity to wells and the corresponding high threat of contamination.
 - (b) Groundwater Protection Overlay District B (“District B”)
 - (i) Areas of secondary recharge receive protection in District B.

(ii) Land use restrictions within District B are less restrictive because of the longer flow time before reaching the well, the increased opportunity for containment dilution and the increased potential for attenuation.

(2) The size of these wellhead protection districts varies depending on the type of well with community water supply wells having the largest districts since they pump a greater volume of water and consequently draw water from a larger recharge area.

(B) For community water supply wells at the Tribe's primary housing area, which is located off of Camp 14 Road within Section 16, T.28 N., R. 13 E. of Shawano County:

(1) District A is described as those lands that lie within the five (5) year TOT. The 5-year TOT for these wells has been established as encompassing those lands within 2,982 feet of the wells; and

(2) District B is those lands beyond the 5-year TOT that lie within the twenty (20) year TOT and are located in a direction which lies from -15° to -70° off of true north. The 20-year TOT has been established as extending up to 11,928 feet from the wells, but only encompasses those lands to the south of the West Branch of the Red River.

(C) For non-community water supply wells on the Reservation:

(1) District A are those lands within a radius of 330 feet from the well; and

(2) District B are those lands extending out from District A to be within a total distance of 660 feet from the well.

(D) For private wells on the Reservation:

(1) District A is the area within a radius of 100 feet from the well.

(2) District B are those lands extending out from District A to be within a total distance of 300 feet from the well.

Section 37.9 Permitted Uses in Wellhead Protection Districts

(A) The following uses of land are permitted within District A.

(1) Parks and playgrounds, provided there are no on-site waste disposal facilities.

(2) Housing, retail premises, schools and churches that are connected to a community sewer system.

(3) Roads that service homes on the community sewer system, so long as the roads have curbside drainage, which drains away from the well, and road salt use is limited to emergencies (e.g. ice storms).

(4) Wildlife areas.

(5) Non-motorized trails, such as biking, skiing, nature and fitness trails.

(6) Forestry.

(B) The following uses are permitted within District B.

(1) All uses listed above as being permitted in District A.

(2) Above-ground and basement storage tanks, up to 660 gallons, with secondary containment and monitored buried tanks conforming to industry standards.

(3) Sewered commercial uses, except those listed as prohibited in Section 37.10 (B).

(4) Unsewered (single family) residential uses.

Section 37.10 Standards and Prohibited Uses in Wellhead Protection Districts

(A) The following standards apply to uses permitted within Districts A and B.

(1) Of the lot area not covered by impervious surfaces, 75% shall be maintained or developed with vegetative cover not requiring the use of pesticides or fertilization after the initial establishment.

(2) Above-ground fuel storage tanks shall provide leak-proof secondary containment not less than 125% of the tank volume and basement fuel storage tanks shall provide secondary containment for not less than 100% of the tank volume.

(3) All abandoned wells shall be properly backfilled and sealed using bentonite pellets or other suitable materials approved by the U.S. Environmental Protection Agency guidelines within one month of abandonment

(B) The following uses of land are prohibited in District A. This list is not exhaustive since the only permitted uses are those specifically listed above in Section 37.9.

(1) On-site private sewage systems.

(2) Underground storage tanks of any size and other storage tanks without secondary containment basins.

(C) The following uses of land are prohibited in both Districts A and B. These uses are prohibited based on the high probability that activities routinely associated with these uses will cause groundwater contamination. This list is not exhaustive since the only permitted uses are those specifically listed above in Section 37.9.

(1) Agricultural activities, including animal confinement facilities, animal waste facilities and land spreading of animal waste.

(2) Pesticide and/or fertilizer storage and use.

(3) Commercial activities involving materials that can contaminate groundwater, such as:

- (a) Dry cleaning businesses.
- (b) Printing and duplicating businesses.
- (c) Manufacturing or industrial businesses.
- (d) Bulk fertilizer and/or pesticide facilities.
- (e) Asphalt products manufacturing.
- (f) Electroplating facilities.
- (g) Exterminating businesses.
- (h) Paint and coating manufacturing.
- (i) Lumber treatment tanks and other facilities.

(6) Landfills, facilities for the storage or disposal of waste materials, recycling facilities, and other waste disposal activities, including land spreading.

(7) Junk yards and auto salvage yards.

(8) Gas stations.

(9) Maintenance and repair establishments, including vehicle maintenance and repair, body repair, and tire and battery services.

(10) Bus or truck terminals.

(11) Salt storage, including salt/sand combinations.

(12) Aquaculture activities.

(13) Cemeteries.

Section 37.11 Nonconforming Uses in Wellhead Protection Districts

(A) A nonconforming use is one that does not comply with the requirements of this Ordinance, but was lawful prior to the enactment of the Ordinance.

(B) No use that is prohibited or regulated by this Ordinance shall be lawful in a wellhead protection district upon enactment of this Ordinance. However, uses of wellhead protection districts, which are not in conformance with the Ordinance and exist at the time the Ordinance takes effect, are not prohibited.

(1) If an alteration of, addition to or repair over 50% of the value is planned for a nonconforming use, a variance under Section 37.15 is required.

(C) If a nonconforming use is discontinued for twelve (12) consecutive months, it is no longer permitted and any future uses must comply with this Ordinance.

Section 37.12 Best Management Practices for Wellhead Protection

The following BMPs apply in WHPAs on the Reservation to prevent or minimize groundwater contamination through wells. These BMPs shall be followed, unless they are superseded by more

stringent requirements under this Ordinance or other tribal laws.

(A) Maintain vegetation 20 feet around well casing unless surface is impermeable and drains away from well.

(B) Prevent contaminants of any kind from entering the well directly and the soil in the vicinity of the well.

(C) Maintain the casing and well cap in good condition and ensure that the well has adequate backflow protection.

(D) Locate livestock pastures, feeding operations and waste storage downslope and far enough from wells to prevent leachate from reaching groundwater.

(E) Maintain a distance of at least 150 feet from wells when mixing pesticides, fertilizers or other substances that could contaminate groundwater.

(G) Reduce fertilizer use and limit the use of pesticides.

Section 37.13 Regulation of Private Sewage Systems -- General

(A) The Tribe is interested in regulating the siting, installation, use and maintenance of private sewage systems, so as to ensure the safety of drinking water supplies, to protect human health and to protect the environment.

(B) As required under the Stockbridge-Munsee Utility Ordinance (Section 39.15), new buildings that are proximate to the tribal sanitary sewer system shall be constructed with wastewater systems that are connected to the tribal sanitary sewer system and buildings with existing private sewage systems, which are proximate to the tribal sanitary sewer system, are required to connect to the sanitary sewer within ten years.

(C) All buildings on the Reservation that are permanently or intermittently intended for human habitation or occupancy, which are not served by a public sanitary sewer, shall have a properly functioning private sewage system for the treatment and disposal of wastewater.

(D) Every private sewage system shall be designed, located and constructed to prevent any discharge of wastewater or partially treated wastewater into drain tiles, onto the ground surface, into the structure served, into surface waters or into groundwater, including seasonal zones of saturation.

(E) Privies may be permitted only when the building served by the privy is not provided with plumbing or water service and when there is no electrical service available to the site.

(F) The land owner or person holding the land assignment is responsible for the private sewage system on that property.

Section 37.14 Maintenance and Use of Private Sewage Systems

(A) Private sewage systems shall be used in a way that ensures their proper operation and minimizes impacts on groundwater.

(1) The system shall be sized to adequately dispose of all wastewater generated in the structure or facility that is served.

(2) The system shall not be used to dispose of toxic and hazardous materials, including household chemicals. The amount of bleach, disinfectants and drain and toilet bowl cleaners in the system shall be limited.

(3) The system shall not be used to dispose of non-degradable materials.

(4) The system should not be parked on or driven over to prevent soil compaction or damage to the drain lines. Tree and shrub growth around system should be controlled since roots can clog and damage drain lines.

(B) Every private sewage system shall be adequately maintained.

(1) Septic tanks shall be pumped out at least once every two (2) years, as appropriate, or when the sludge level reaches one-quarter (1/4) of the liquid capacity of the tank.

(2) Commercial septic tank additives shall not be used as an alternative to sludge pumping or as septic tank cleaners since such additives can exterminate useful microbes, resulting in an increased discharge of pollutants, and can contaminate groundwater.

(3) Sludge, scum or sewage pumped from a septic tank shall be disposed of by authorized persons and in accordance with tribal procedures and any necessary permits.

(4) Holding tanks shall be pumped out as necessary and, if pumping is not done, the Tribe will have the tank pumped at the owner's expense.

(5) Periodic inspections of the system shall be done to ensure that systems are used and maintained properly.

Section 37.15 Variances

(A) The Tribal Council may grant variances from the requirements of this Ordinance, if it is determined that the activity will not harm groundwater. The following procedure shall apply.

(1) A written application for the variance shall be submitted to the Tribal Council Secretary by the applicant that describes the proposed activity and how it varies from those permitted.

(2) The Tribal Council Secretary shall forward copies of the application to the Tribal Council and appropriate tribal departments, including Environmental, Land Management and Utilities. The departments shall provide comments on the proposed variance to the Tribal Council.

(3) A date for public discussion of the variance application with the Tribal Council shall be set for not more than 45 days after receipt of the application. A notice of the application and the date it will be discussed shall be publicized at least 2 weeks prior to this discussion.

(4) Following the public discussion of the application before the Tribal Council, the Council shall

consider the impacts of the proposed variance and assess whether there is a negative impact to groundwater. In doing so, the Tribal Council shall consider the comments received from tribal departments and during the public discussion.

(5) The Tribal Council shall issue a written decision as to whether the variance will be granted, granted with stipulations governing the proposed activity, or denied.

(6) The Tribal Council may revoke or modify a variance if they determine that the activity authorized in the proposed variance has or will have a negative impact or if they determine that such a revocation or modification is in the best interests of the Tribe.

(B) Variances are limited to the activities described in the application and are subject to any stipulations required by the Tribal Council. If the applicant does not act upon the variance within two (2) years after it is granted, the applicant must apply for and receive a new variance before the proposed activity may be undertaken.

Section 37.16 Administration

(A) The tribal Environmental Department shall administer this Ordinance, including:

- (1) assessing compliance with the Ordinance and other applicable tribal law;
- (2) investigating suspected violations and initiating enforcement actions;
- (3) conducting monitoring activities;
- (4) recommending new or different groundwater standards; and
- (5) taking such action as may be necessary to prevent, abate and control pollution.

(B) The tribal Environmental Department, through its authorized employees, is authorized to enter and inspect property or premises and records to investigate potential sources of groundwater pollution.

- (1) Entry must be done at a reasonable time and in a reasonable manner.
- (2) If entry is denied, a warrant shall be obtained from the Stockbridge-Munsee Tribal Court allowing the Environmental Department to enter and inspect. The Tribal Court may issue such warrants upon a proper showing of the need for such entry and inspection.

(C) The tribal Environmental Department shall periodically organize an education campaign on groundwater protection and the requirements of this Ordinance.

Section 37.17 Determination of Compliance

(A) Sampling and analyses may be done by the tribal Environmental Department to the extent considered necessary to assess groundwater quality or quantity and for the identification of the nature, amount, source, and point of entry for pollutants, if possible

(B) Samples shall be preserved and analyzed in accordance with procedures described in the “Standard

Methods for the Examination of Water and Wastewater” by the American Public Health Association, American Water Works Association and the Water Pollution Control Federation, and any revisions or amendments thereto, or other methods acceptable to the tribal Environmental Department.

Section 37.18 Emergencies

(A) If the Tribal Environmentalist, or other person designated by the Tribal Council to act under this Section, determines that any person causes, is causing or is planning to cause a violation of this Ordinance and that such person’s actions, either directly or indirectly, constitute a clear, present and immediate danger to the public’s health or livelihood or irreparable harm to the environment, they may issue a Temporary Cease and Desist Order.

(1) The Temporary Cease and Desist Order shall require the violation to immediately cease to prevent further pollution.

(2) The Temporary Cease and Desist Order shall be a written Order describing the alleged violating actions, which must be immediately discontinued.

(3) The Environmentalist shall coordinate with the Stockbridge-Munsee Clerk of Courts so that the Order contains the date for a hearing on a Temporary Restraining Order. If the court date cannot be determined prior to the issuance of the Temporary Cease and Desist Order, the alleged violator shall receive written notice of the date as soon as it is set.

(B) Concurrent with the issuance of the Temporary Cease and Desist Order in emergency situations, the tribal Environmentalist shall inform the Tribal Prosecutor of these actions so that a complaint requesting a Temporary Restraining Order may be filed in the Stockbridge-Munsee Tribal Court.

(1) The Temporary Cease and Desist Order shall only be in effect until a hearing can be held on the request for a Temporary Restraining Order or for a maximum of 10 days. The hearing shall be held as soon as practicable, by telephone if necessary.

(2) In extraordinary circumstances where a judge is unavailable for a hearing, the Temporary Cease and Desist Order may be extended for an additional 5 days.

Section 37.19 Reports of Suspected Violations

Any person who engages in any operation or activity that causes groundwater pollution in violation of this Ordinance or who witnesses another person engaging in such operations or activities, shall notify the tribal Environmental Office as soon as he or she has knowledge of that violation. A person who fails to notify the Tribe as soon as practicable is deemed in violation of this Ordinance and, upon a judicial finding thereof, shall be levied a civil penalty of not more than Five-hundred dollars (\$500.00).

Section 37.20 Enforcement Proceedings

(A) If, upon investigation, the tribal Environmental Department determines that a violation of this Ordinance has occurred, is occurring or is likely to occur, the Tribal Environmentalist shall provide written Notice of the violation to the alleged violator and file a copy of this Notice with the Tribal Prosecutor.

(1) The Notice shall contain a description of the alleged violation as well as any corrective action that may be required.

(2) The Notice shall be provided to the person that the Environmental Office determines is responsible for the violation. If unable to determine the person responsible, the Notice shall be provided to the person responsible for the land, who for purposes of this Ordinance, is the landowner or the assignee or lessee if the land is assigned or leased.

(B) After receiving a copy of such a Notice from the Tribal Environmentalist, the Tribal Prosecutor shall discuss the violation and its potential consequences with the Environmental Department. If it is determined that judicial action is needed, the Tribal Prosecutor may:

(1) have a citation issued by the tribal law enforcement personnel to the alleged violator under tribal law; or

(2) file a complaint seeking a remedy under this Ordinance in Tribal Court.

(C) Hearings on alleged violations shall be conducted in the Stockbridge-Munsee Tribal Court in accordance with normal court procedures.

Section 37.21 Remedies

If the Tribal Court finds that there has been a violation of this Ordinance, the Court may issue the following remedies.

(A) Cease and Desist Order. A Cease and Desist Order sets forth the acts or practices that violate the Ordinance and the time by which the violation must be terminated.

(B) Clean-up Order. A Clean-Up Order requires a person to clean up any material that could contaminate groundwater and take actions to remediate groundwater that has been contaminated.

(C) Restraining Order or Injunction. A Temporary Restraining Order, Preliminary Injunction or Permanent Injunction may be issued to prevent any further or continued violation during court proceedings or in the event any person fails to comply with a Cease and Desist Order or a Clean-Up Order, which is not subject to a stay pending review.

(D) Civil Penalties.

(1) Any person who violates the terms of this Ordinance shall be subject to a forfeiture, for each day the violation occurs, as follows:

(a) If the violation is committed with negligence or recklessly, the maximum forfeiture shall be Two-hundred fifty dollars (\$250.00) per day.

(b) If the violation is committed knowingly or intentionally, the maximum forfeiture shall be Five-hundred dollars (\$500.00) per day.

(c) If two separate offenses under this Ordinance, occur in two separate episodes during a period of two years, the maximum forfeiture for the second offense shall be double the amounts specified above.

(2) Any person who violates a Final Cease and Desist Order or Clean-Up Order shall be subject to a civil penalty of not more than Five hundred dollars (\$500.00) per day for each day during which such violation occurs.

(3) These penalties shall in no way limit the Court's ability to use other judicial remedies, such as exercising its contempt power, in response to a violation of this Ordinance.

(E) Alternative Dispositions. The Court shall have the discretion to tailor a disposition that will be the most effective in addressing the defendant's violation, the needs of the Community and any harm resulting from the violation. Such alternative remedies may be issued in addition to those remedies described in this Ordinance.

Legislative History

Adopted by Tribal Council on November 7, 2000, Resolution No. 071-2000. BIA approval, November 22, 2000.