

Chapter 33

SOURCE WATER AND AQUIFER PROTECTION PLAN*

Sec. 33-01. Title.

This Chapter will be known as the "Livingston Source Water and Aquifer Protection Plan." (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-02. Jurisdictional area.

The provisions of this Chapter will be effective within the City of Livingston, Montana. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-03. Purpose.

The Livingston Source Water and Aquifer Protection Plan established hereby are intended to protect the public health and general welfare of those using the public water supply. The provisions of the Ordinance codified in this Chapter are intended to be a health ordinance and shall be effective within the City of Livingston, Montana. This Chapter establishes prohibitions and restrictions to prevent ground water contamination in order to protect public health and general welfare of the community and to provide quality water for future generations. This Chapter shall be broadly construed to effect its purposes. Nothing in this Chapter shall relieve a person from the requirements of any other local, State, or Federal law. Where this Ordinance codified in this Chapter duplicates any other local, State, or Federal statute or regulation, the more stringent applicable regulation shall govern. This Chapter establishes prohibitions and restrictions to prevent surface and ground water contamination to protect public health and general welfare. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-04. Aquifer Protection Area.

The Aquifer Protection Area is defined as being all land within the corporate limits of the City of Livingston, Montana, as it currently exists, and shall include all lands hereinafter annexed. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-05. Source Water Protection Area established.

The Source Water Protection Area (SWPA) is hereby established and defined as being all land encompassed within the recharge zones for the City of Livingston's wells as identified on the map which is attached hereto and incorporated by this reference as though fully set forth herein as Exhibit A. The Source Water Protection Area is a portion of the Aquifer Protection Area subject to the limitations set forth in this Chapter. (Ord. 1918 § 1 (part), 11/4/02)

*Prior history: Ord. 1905.

Sec. 33-06. Definitions.

As used in this Chapter:

“Aquifer” means the layer of subsurface material under the City of Livingston which coincides with the City limits and from which the City obtains its public water supply.

“Barrier” means a natural or man-made structure, construction method, or management control intended to prevent the contamination of a source water.

“Best management practices” means strategies for managing land use that protect water quality while promoting economic sustainability. Also known as water quality protection practice.

“Bulk fuel storage” means any tank or container with a capacity of more than fifty (50) gallons, whether above or below ground, from which fuel is dispensed for public or private use.

“Commercial agriculture” means any premises, facility, or use of land for the processing, storage, disposal, loading or transporting of (1) agricultural products produced off the premises or by other than the owner of facility, or (2) commercial products for use by agricultural operators. “Commercial agriculture” includes facilities such as grain elevators, railroad loading facilities, crop and meat processing plants, rendering plants, slaughterhouses, fertilizer plants, alfalfa dehydration plants and commercial feedlots as defined in these regulations.

“Commercial building, site or facility” means any use of land for the sale, offering for sale, purchase, or any other transaction involving the handling or disposition of any article, commodity, substance, or service; also the occupancy or management of office buildings, and the use of structures or premises by professions and trades or persons rendering services.

“Commercial feedlot” means any premise on which at least one hundred (100) head of cattle or the equivalent number of animal units of other livestock animals are confined for the purpose of feeding or fattening for market, and where twenty-five (25) percent or more of the animals are not produced by the owner or the facility. “Commercial feedlot” does not include the normal seasonal feeding or wintering of livestock produced by the owner.

“Conditionally exempt small quantity generator” means a Conditionally Exempt Small Quantity Generator, as defined by the Resource Conservation and Recovery Act of 1976, 40 Code of Federal Regulations 261, is one who in a calendar month generates no more than one hundred (100) kilograms (220 lbs or 25 gallons) of hazardous waste or less than one (1) kilogram of an acute hazardous waste. Additionally, the generator must never accumulate more than one thousand (1000) kilograms (2200 lbs or 250 gallons) of hazardous waste at any time.

“Control region” means a sub-area within the Source Water Protection Area that is usually circular and managed to protect against direct introduction of contaminants or damage to the well. Also known as the control zone or exclusion zone.

“Covenant” means an agreement, in writing, of two (2) or more parties by which any of the parties pledges himself to the others that something is done or will be done.

“Delineation” means a process of defining the boundaries of groundwater flow to a well.

“Development” means a change in land use.

“ Dwelling unit” means a building or portion of a building providing cooking, eating, sleeping and living facilities for one (1) or more persons.

“Fire Chief” means the Fire Chief for the City of Livingston is the enforcement officer. The phrase “Fire Chief” includes other officers and employees of the Fire Department designated by the Fire Chief to assist in enforcement of this code.

“Hazardous material” means substances which, because of quantity, concentration, or physical, chemical, infectious characteristics, radiomutagenicity, carcinogenicity, persistence in nature, or any other characteristics relevant to a particular material that may cause significant harm to human health and/or environment.

“Hazardous material identification plan” means a document prepared by the City of Livingston, identifying hazardous materials or regulated substances in reportable quantities as established by the Environmental Protection Agency (EPA) and establishing a plan for reporting and remediation of potential spills.

“Industrial building, site or facility” means any use of land for the manufacture, fabrication, processing, reduction, or destruction of any article, substance, commodity, or any other treatment in such a manner as to change the form, character or appearance thereof, including warehouses, wholesale storage, storage elevators, truck storage yards, and gasohol or ethanol plants.

“Intensive management” means management techniques applied to areas where contaminants can reach groundwater and easily be drawn into a well. Examples are controlling land use by ownership or easements on the land.

“Inventory region” means a sub-area within the source water protection area that extends a specified distance from the well in an up gradient direction based on a fixed distance or time of travel.

“Maximum contaminant level” means maximum concentration of a substance in water that is permitted to be delivered to the users of a public water supply. Set by EPA under authority of the Safe Drinking Water Act.

“Protective management” means management techniques applied to areas where contaminants cannot easily gain access to groundwater and be drawn into the well. Examples are best management practices or public education.

“Public facility” means any structure or facility constructed to serve the residents of a subdivision or the general public, such as parks, streets and roads, sidewalks, curbs, gutters or drainage swales, street lighting, utilities, and systems for water supply and sewage disposal.

“Radial collection well” means a well that uses horizontal pipes to increase the amount of contact between well screen and aquifer thus enhancing the amount of water the well can produce.

“Recharge region or recharge zone” means that region which coincides with the geologic and hydrologic features that allow water to enter the portion of the aquifer supplying water to a well. In unconfined, fractured bedrock aquifers, this region is intensively managed to prevent contaminants from entering the groundwater.

“Regulated substance” means any substance, including petroleum or derivatives thereof, or combination of substances which because of their quantity, concentration, physical, chemical, infectious, flammable, combustible, radioactive or toxic characteristics, may cause or significantly contribute to a present or potential risk to human health, safety, welfare, to groundwater resources or to the natural environment. Regulated substances include those materials subject to the following regulations which meet the requirements of this definition:

- A. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CER-CLA), 42 U.S.C. §§ 9601-9675;
- B. Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251-1387;
- C. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136Y;
- D. Emergency Planning and Community Right-to-Know Act of 1986 (EPCRTKA), 42 U.S.C. §§ 11001-11050;
- E. Hazardous Materials Transportation Act (HMTA), 49 App. (U.S.C.) §§ 1801-1819;
- F. Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub.L. 98-616, Nov. 8, 1984, Stat. 3221;
- G. Solid Waste Disposal Act and Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901-6992K;
- H. Superfund Amendments and Reauthorization Act (SARA), Pub. L. 99-499, as amended by Pub.L. 99-563, Pub. L. 100-102, and Pub. L. 101-144;
- I. Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2654.

“Residential use” means the use of land for the location of a structure to be used as the private dwelling place or sleeping place of one or more persons.

“Set back” means the horizontal distance required between any structure and a specified object, boundary, lot line or right-of-way line.

“Small quantity generator (SQG)” means a small quantity generator, as defined by the Resource Conservation and Recovery Act of 1976, 40 Code of Federal Regulations 260, is one who generates less than one thousand (1000) kilograms (two thousand two hundred (2200) lbs or two hundred fifty (250) gallons) of hazardous waste in a calendar month.

“Sole source aquifer” means an aquifer that is determined by the EPA to be the sole or principal source of drinking water for a given population.

“Source water” means any water used by a PWS such as ground water, surface water, springs, or any combination thereof.

“Source water delineation and assessment report” means a written report in which source water protection areas are delineated, potential contaminant sources are identified, and susceptibility of a drinking water source to contamination is assessed.

“Source Water Protection Area (SWPA)” means the surface and subsurface area surrounding a water well, wellfield, spring, or surface water intake supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well, wellfield, spring, or surface water intake established by the Source Water Delineation and Assessment Report developed by the Montana Department of Environmental Quality which report is hereby incorporated by this reference as though fully set forth herein. The Source Water Protection Area established by this Chapter is described by Section 33.05 of this Ordinance codified in this Chapter and Exhibit A.

“Spill” means the unpermitted release or escape of a regulated substance directly or indirectly to water, air or soil.

“Spill prevention plan” means a written document that identifies regulated substances at a facility or site and describes management methods to prevent a release to water, air, or soils to be filed, in addition with any State or Federal filing requirements, with the City Fire Department.

“Stormwater” means the flow of water that results from and which occurs immediately following a rainfall event.

“Structural alteration” means the modification of a building that changes its exterior dimensions or its roofline(s).

“Structure” means any object constructed or placed at a fixed location on the ground. Structures include buildings, mobile homes, walls, fences and signs.

“Susceptibility” means an assessment of the potential for a PWS to draw contaminated water based on pumping characteristics and a consideration of the quantity, toxicity, and location of a potential contaminant source relative to barriers to contamination. Susceptibility is evaluated at the point immediately preceding water treatment or, if no treatment is provided, at the entry point to the distribution system.

“Synthetic organic compounds” means man made organic chemical compounds. Used in SWPP to refer to herbicides and pesticides that PWS are required to sample for.

“Total maximum daily load (TMDL)” means the total pollutant load to a surface water body from point, non-point and natural sources. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL program was established by Section 303(d) of the Clean Water Act to help states implement water quality standards.

“Volatile organic compounds” means organic chemical compounds that have low vapor pressure and therefore are easily released into air as vapor. Commonly found in paints, solvents, and petroleum products.

“Zone of contribution” means the land surface around a pumping well that encompasses all areas and features that supply groundwater recharge to a pumping well; see Recharge region or recharge zone. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-07. Prohibited uses in Source Water Protection Area.

The following list of prohibited uses will apply within the Source Water Protection Area:

- (1) landfills;
- (2) dry cleaners;
- (3) heavy manufacturing;
- (4) gasoline service stations;
- (5) chemical production/storage;
- (6) new septic systems*;
- (7) bulk fuel storage;
- (8) new private water wells which supply potable water**;
- (9) injection wells;
- (10) private high volume production wells.

*existing private septic systems may be continued and maintained for the life of the current use, or until such time that connection to City utilities is feasible and/or required by the laws pertaining thereto.

**existing private wells which supply potable water may be continued and maintained for the life of their current use, or until such time that the wells cease to produce, however, it is illegal for any such private wells to be connected to the municipal water system; all private wells which supply

potable water which cease to be used must be capped and sealed in accordance with State laws and regulations. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-07.5. Permitted uses in Source Water Protection Area.

A private irrigation well may be allowed in the Source Water Protection Area under the conditions contained in this Chapter. For purposes of this Section a private irrigation well is defined as a well which produces less than thirty-five (35) gallons per minute and which is used solely for the irrigation of land. However, it is illegal for any such irrigation well to be connected to the municipal water system. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-08. Mandatory connection.

No person shall install a new private drinking water supply well in the Aquifer Protection Area if the primary structure located on the property is located within two hundred (200) feet of a municipal water line. As specified in Sections 13-26 and 33-16 of the Livingston Municipal Code, it is illegal to connect any private water supply, whether for irrigation or as a potable water source, to the municipal water system. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-09. Hazardous material identification plan required.

A. Hazardous material identification plan must be prepared in order to obtain a business license or renewal thereof or building permit for a commercial or industrial facility and such plan must be approved by the Fire Chief in accordance with this Chapter and the Uniform Fire Code before any person may begin to construct, place, move, expand, structurally alter, or use a commercial or industrial building, site, or facility in the Source Water Protection Area.

B. A private well permit for the supply private potable water where there is no existing municipal water line within two hundred (200) of the proposed well location must be obtained by any individual, business, industry who desires to drill a well in the aquifer protection area, outside of the Source Water Protection Area and outside of the Burlington Northern Cleanup Site and Buffer Zone as such zone may be determined from time to time based upon the continuing monitoring and as identified by the map attached hereto as Exhibit B which is incorporated by this reference as though fully set forth herein.

C. A private irrigation well permit must be obtained by any individual, business, industry who desires to drill a well in the aquifer protection area. However, no private irrigation well permits will be issued for land located within a three hundred (300) foot circumference of any municipal water well, nor will any permits be issued within the boundaries of the Burlington Northern Cleanup Site and Buffer Zone as such zone may be determined from time to time based upon the continuing monitoring and as identified by the map attached hereto as Exhibit B which is incorporated by this reference as though fully set forth herein. It is unlawful and punishable as provided by Section 33-16 to connect a private irrigation well to the plumbing system of any residence, business, industry or other facility being supplied with municipal water.

D. The issuance of a private well permit or private irrigation well permit by the City, in no way is to be construed as any warranty or certification by the City as to the quality or quantity of water,

the availability of a water right, or as the subordination or surrender of the City's water rights to such permittee.

E. A permit issued by the City, whether for potable water or for purposes of irrigation, in no way supplants or replaces any requirements of State or Federal law. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-10. Procedures for obtaining a hazardous material identification plan.

A. Procedures for applying and obtaining a hazardous material identification plan.

1. A hazardous material identification plan must be approved by the Fire Chief before any building, other structure, or land may be used or occupied, or before any building or other structure permitted under these regulations may be erected, placed, moved, expanded, or structurally altered. The Fire Chief may approve a hazardous material identification plan only when the proposed building, structure, parcel or use will meet the requirements of these regulations.

2. Before commencing a use, or constructing, erecting, expanding, altering or modifying a building or structure, a person must submit a completed business license or building permit for a commercial or industrial facility application form to the Fire Chief with all of the required information, including plans drawn to scale, showing the actual dimensions and shape of the lot, the sizes and location of existing and proposed buildings and other structures. The business licence or building permit for a commercial or industrial facility application shall include any additional information required by the Fire Chief, including a description of the uses of buildings and land; pollution prevention activities to be employed; drainage structures, waste disposal structures; the number of families, dwelling units, or rental units proposed which will use septic systems; conditions existing on the lot; and such other matters as may be necessary to determine conformance with these regulations. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-11. Requirements for approval of hazardous material identification plan.

A hazardous material identification plan will be approved only when the applicant demonstrates that the proposed development or land use activity will comply with the following standards.

A. Land uses and development must not cause high source water susceptibility to sources of regulated contaminants.

Land uses and developments may not result in exposure of the source water used by the PWS to high susceptibility to contaminant sources as determined by a susceptibility assessment as set forth in the Source Water Delineation and Assessment Report for the City of Livingston Public Water System prepared by the DEQ and which has been accepted and concurred in by the City of Livingston.

B. Developments must be on suitable lands. Developments are prohibited:

1. Where on-site individual septic sewage disposal systems or Underground Injection Wells are proposed and the water table rises to within six (6) feet of the ground surface.

2. Where storm water runoff or rapid infiltration occurs from impervious surfaces that are subject to the discharge of potential contaminant sources.

C. Land uses and developments may not adversely affect public health or safety.

1. All facilities, structures, or uses that include handling or storage of regulated materials in reportable quantities as specified by the Environmental Protection Agency or the Montana Depart-

ment of Environmental Quality must employ one hundred (100) percent spill containment and implement a spill prevention plan. All spill prevention plans shall be reviewed and approved by the Fire Chief prior to construction or site occupation.

2. Structures, wells, and septic tanks must be set back at least one hundred (100) feet from streams, lakes, and identified one hundred (100) year floodway as defined by FEMA.

3. Discharges to surface waters or ground waters shall be prevented unless authorized by a Montana Pollution Discharge Elimination System permit.

4. Grading and drainage facilities shall be designed to remove storm run-off waters and prevent accumulation of standing water. Stormwater disposal structures must ensure pretreatment for the removal of solids, floatable oils/lubricants, or any regulated substances.

5. Developments or land uses may not impede or diminish the quality of, add sediments or other contaminants to, or otherwise adversely affect ground or surface water sources used by the PWS.

D. Procedures for hearing and acting on appeals from actions of the Fire Chief.

1. Any person aggrieved by a decision of the Fire Chief may file a notice of appeal within thirty (30) days of date the subject decision was made. The notice of appeal, submitted to the Fire Chief, must comply with the rules adopted by the City of Livingston.

2. The Fire Chief shall promptly transmit to the City Commission the notice of appeal and all papers constituting the record of the subject decision.

3. The City Commission shall fix a reasonable time for a hearing of the appeal, give public notice and notify the affected parties. At the hearing any party may appear in person or be represented by agent or attorney.

4. The City Commission may reverse, affirm, wholly or in part, or modify the order, decision or action appealed.

E. Stay of proceedings. An appeal stays any further proceedings of the action appealed until the City Commission has decided the appeal.

F. Appeals from decisions of the City Commission.

1. Any person or persons, jointly or severally, aggrieved by any decision hereunder may appeal to the district court by a petition, duly verified, setting forth the basis for such appeal. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-12. Nonconforming uses and structures.

A. Purpose.

1. Structures and uses of land and structures which were lawful at the time these regulations were adopted or amended, but which would be prohibited or regulated under the terms of these regulations or future amendment may continue to exist. The intent of this Section is to permit these nonconformities to continue until they are removed, but not to encourage their survival. These regulations further intend that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the jurisdiction.

2. Nonconforming uses and structures are declared by these regulations to be incompatible with permitted uses and structures, However, to avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption

or amendment of these regulations and where actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

B. Nonconforming uses of land and structures. Where, at the time of passage of these regulations, a lawful use of land or a structure exists which would not be permitted by the ordinance codified in this Chapter, the use or structure may be continued where it remains otherwise lawful, provided:

1. A nonconforming use or structure may not be enlarged or increased, nor extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of these regulations.

2. Should any nonconforming use cease for any reason for a period of more than one (1) year, any subsequent use of the land or structure shall conform to the regulations specified by these regulations for the district in which such land is located.

3. Should a nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in compliance with the provisions of these regulations.

4. Nothing in these regulations shall be deemed to prevent the routine repair and maintenance of a nonconforming structure.

5. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming building or part thereof declared to be unsafe by any officials charged with protecting the public safety, upon order of such official. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-13. Reporting of spills and unauthorized discharges.

A. Any unauthorized discharge of a regulated substance(s) in the Source Water Protection Area, which is required by either Federal or State law to be reported immediately following such spill by the facility owner, operator, or other responsible party to the Federal or State government, shall also be reported to the Fire Department. The owner, operator, responsible party, or person providing notification shall inform the City of the substance(s) discharged, the amount, location, duration of discharge and the potential hazard to groundwater, if known.

B. A discharge of any quantity of a regulated substance must be remediated such that contamination of soils, surface water, or groundwater is brought into compliance with local, State and/or Federal standards.

C. Clean-up activities shall begin concurrent with or immediately following emergency response activities. A full written report including the steps taken to contain and clean up the spill shall be submitted to the City Fire Chief within forty-five (45) days of the discovery of the spill.

D. Any person responsible for a spill or unauthorized discharge shall be subject to the clean-up provisions in this Chapter. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-14. Fees.

A. The City Commission shall establish by resolution a schedule of fees and charges and a collection procedure for Hazardous Material Identification Plan reviews, private well permits, private irrigation well permits and appeals.

B. Until all applicable fees and charges have been paid in full, no action may be taken on any application or appeal. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-15. Clean-up costs.

A. Clean-up and reimbursement. Any person subject to this Chapter shall be liable for any damage caused by a regulated substance(s) present on or emanating from the person's property, including motor vehicles, for all costs of response, removal or remedial action incurred by the City, and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from the release of a regulated substance. Such removal or remedial action by the City may include, but is not limited to, the prevention of further contamination of groundwater, monitoring, containment, and clean-up or disposal of regulated substances resulting from the spilling, leaking, pumping, pouring, emitting or dumping of any regulated substance or material which creates an emergency hazardous situation or is expected to create an emergency hazardous situation.

B. Enforcement.

1. Whenever a violation of these regulations occurs or is alleged to have occurred any person may file a written complaint. The complaint, stating fully the causes and basis of the alleged violation, shall be filed with the Fire Chief. He shall properly record the complaint and immediately investigate and take action as provided by these regulations.

2. The Fire Chief shall notify in writing the owner of the property alleged to be in violation in person, by first class mail or posting notice on the site. The notice shall describe the violation, cite the Sections of these regulations being violated, and order the owner to attain compliance within thirty (30) days unless a shorter time frame is designated by the Fire Chief because of an issue of life safety which may require immediate remediation.

3. Any person who has been notified of a violation of these regulations may:

a. Request an inspection under the Uniform Fire Code by Fire Chief to show that the property has been brought in compliance within the allowed thirty (30) day period unless a shorter time frame is deemed appropriate based upon life safety issues as determined by the Fire Chief;

b. File a written request for an extension of time to attain compliance; or

c. File an appeal City Commission in accordance with the provisions of Section 33-11(F), of these regulations.

4. Where a person fails to attain compliance within the specified time period, or to show on appeal that a violation did not occur, the Fire Chief shall request that the City Attorney commence legal action. (Ord. 1918 § 1 (part), 11/4/02)

Sec. 33-16. Violations and civil penalty.

It shall be a civil offense, punishable by a fine not to exceed Three Hundred Dollars (\$300.00) per day for any person to violate any provision of the Source Water and Aquifer Protection Plan. Each day that a violation shall continue to exist shall be deemed as a separate and punishable offense. (Ord. 1918 § 1 (part), 11/4/02)