

## Chapter 135

### WELLHEAD PROTECTION

**[HISTORY: Adopted by the Town Board of the Town of Conklin 6-16-1998 by L.L. No. 3-1998. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Cemeteries — See Ch. 65.  
Flood damage prevention — See Ch. 76.  
Freshwater wetlands — See Ch. 79.  
Solid waste — See Ch. 109.  
Subdivision of land — See Ch. 115.  
Water — See Ch. 132.  
Zoning — See Ch. 140.

#### § 135-1. Purpose and applicability.

The purpose and intent of this chapter is to protect and promote the safety of the groundwater supply for the residents of the Town of Conklin, New York. The rules and regulations herein set forth, duly made and enacted in accordance with the provisions of §§ 1100 through 1107 of the Public Health Law, shall apply to the wells which comprise the source of the public water supply of the Town of Conklin. Said wells for the water districts of the Town of Conklin are located on land owned or otherwise controlled by the Town of Conklin and are situated as indicated on the Town of Conklin Wellhead Protection Area Map No. 1, dated April 13, 1998, and as updated hereafter.

#### § 135-2. Definitions.

As used in this chapter, the following terms shall have the stated meanings:

**ABANDONED TANKS** — The following circumstances shall constitute abandoned tanks for the purposes of these rules and regulations:

- A. In the event that a gasoline or service station is not used for a period of three months for purposes of dispensing gasoline, wherein there is no continuous business operation for at least four continuous weeks in said three-month period, as measured from the first day of nonuse, then the facility's storage tanks shall be considered abandoned.
- B. In the event that the operation of any gasoline or service station is discontinued for a period of one year for purposes of dispensing gasoline, wherein there is no continuous operation for a period of at least two continuous months of said one year, then the facility's storage tanks shall be considered abandoned.

**ABOVE GROUND** — One hundred percent of the tank is exposed above the final ground elevation, or a portion of the tank is resting on an impervious material and the rest of the storage tank is above the final ground elevation.

**AQUIFER** — An underground water-bearing area of permeable rock, sand or gravel.

**CHLORIDE SALT** — The solid compounds or solutions of potassium chloride (commonly used as fertilizer), calcium chloride (commonly used for winter road maintenance) or sodium chloride (commonly used for water softener regeneration).

**CONTAINMENT SYSTEM** — A structure having an impervious surface (concrete, asphalt, membrane, etc.) surrounded by curbs, gutters, dikes, etc. The purpose is to prevent any flow from leaving a defined area.

**DISCHARGE** — To release by any means to the surface waters, groundwaters, surface of the ground, below ground, the air and living resources. Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, except those activities duly permitted by any town, state or federal agency.

**EXISTING STORAGE FACILITY** — A storage facility, as defined herein, that was in operation on the date that this chapter became effective.

**GROUNDWATER** — Water within an aquifer.

**HERBICIDE** — Any substance used to destroy or inhibit plant growth.

**HUMAN EXCRETA** — Human feces and urine.

**IMPERVIOUS** — A layer of natural and/or man-made material of sufficient thickness, density and composition as to prevent the discharge of toxic or hazardous materials for a period of at least as long as the maximum anticipated time during which the toxic or hazardous substance will be in contact with the material.

**JUNKYARD or RECYCLING CENTER** — Land or a building used for the collecting, storage or sale of wastepaper, rags, scrap metal or discarded material or for the collecting, wrecking, dismantling, storage, salvaging and sale of vehicle or machinery parts.

**LINEAR DISTANCE** — The shortest horizontal distance from the nearest point of the structure or object to the extension of the center line of the wells.

**MODIFICATION** — Any change in a storage facility that would result in a ten-percent or more increase in the maximum stored volume specified on the operational permit application; or any change in containment system(s), storage tank(s) and related piping other than routine maintenance.

**PERSON** — Any individual, firm, company, association, society, corporation or group.

**PESTICIDE**<sup>1</sup> — A pesticide active ingredient or ingredients in a particular formulation, including its related composition, packaging and labeling. The terms include any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide. Examples include but are not limited to:

- A. Any pesticide product registered or required to be registered by the Environmental Protection Agency, including:
  - (1) pesticide products with supplemental distributor registrations, each of which must be

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1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

- registered as a separate product; and
- (2) Additional brand names, each of which must be registered separately.
- B. Any pesticide product registered for a special local need.
  - C. Any product whose use is authorized by an experimental use permit issued by an agency of the United States government.

**POLLUTANT** — Dredge, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, chemical waste, biological materials, radioactive materials, heat, wrecked, discarded equipment, construction and demolition debris, cellar dirt and industrial, municipal and agricultural waste.

**PRODUCT-TIGHT** — Impervious to the material which is or could be contained therein so as to prevent the seepage of the product through the container. To be product-tight, the container shall be made of a material that is not subject to physical or chemical deterioration by the product being contained.

**PUBLIC WATER SUPPLY** — A water supply as defined in Part 5 of Chapter 1 of Title 10 (Health) of the New York Codes, Rules and Regulations.

**RADIOACTIVE MATERIAL** — Any material in any form that emits radiation spontaneously. "Radiation" shall mean ionizing radiation, that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton and any other atomic particle producing ionization, but shall not mean any sound or radio wave or visible, infrared or ultraviolet light.

**REFUSE** — All putrescible and nonputrescible solid wastes, including garbage, sludge, manure, rubbish, ashes, incinerator residue, street cleaning, dead animals, offal and solid commercial industrial wastes.

**REFUSE DISPOSAL AREA** — Land used for the depositing of refuse.

**SEPTAGE** — The content of a septic tank, cesspool or other individual sewage treatment facility that receives domestic sewage wastes.

**SEWAGE** — A combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwaters, surface waters and stormwaters as may be present.

**SEWAGE DISPOSAL SYSTEM** — Any system used for disposing of sewage and/or wastewater.

**SEWAGE SLUDGE** — The accumulated semisolids or solids resulting from treatment of wastewater from a publicly or privately owned or operated sewage treatment plant.

**STORAGE** — The holding of toxic or hazardous materials for a temporary period of time.

**STORAGE FACILITY** — All contiguous land and structures and other appurtenances and improvements on the land used for the storage of toxic or hazardous materials. A storage facility may consist of several different storage operational units.

**STORAGE TANK** — Any stationary device used or designed to be used to contain an

accumulation of toxic or hazardous materials, i.e., wood, concrete, steel, plastic, and which provide structural support.

**TOXIC OR HAZARDOUS MATERIAL** — Any substance, solution or mixture, as stated in 40 CFR 116 and subsequent amendments thereof, which because of its quality, concentration, physical, chemical or infectious characteristics may present a potential hazard to human health, drinking water or food supply quality if discharged to the land, air or water.

**UNDERGROUND [WHEN REFERRING TO STORAGE TANK(S)]** — Any storage tank which is not above ground.

**UNDERGROUND INJECTION WELL** — Any Class V injection well, as defined and classified under 40 CFR 144.3, which allows for the injection of fluids into the ground.

**WATER SUPPLY** — The public water supply of the Town of Conklin.

**WELLS** — Wells now used as a source of this water supply, or any additional wells which may be constructed as a source for this water supply.

**WELLHEAD PROTECTION AREA** — The surface and subsurface area surrounding a water well or well field supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. This area is defined by the Zone 3 boundary for each well, as mapped on Map No. 1 within these rules and regulations.

**WELLHEAD PROTECTION PERMIT** — A permit issued by the Water Superintendent, pursuant to these regulations.

**ZONES 1, 2 AND 3** — The zones mapped on Map No. 1 which delineate the boundaries of and within the wellhead protection areas. Zone boundaries are established from the following:

- A. **ZONE 1, 2 AND 3** — Whenever closer to the wellhead than the stated linear distance criteria, the following shall be a boundary for any zone:
  - (1) The Susquehanna River;
  - (2) Mapped aquifer boundaries from published United States Geological Survey (USGS) reports where available;
  - (3) Boundaries of soil types from USDA Soil Conservation Service (SCS) maps which are consistent with aquifers, as established by interpretation of the Broome County Health Department (BCHD); and/or
  - (4) Boundary of the cone of depression of the pumping well when determined by calculations, measurements or other scientific interpretation based on aquifer and well analysis from published USGS reports.
- B. **ZONE 1** — One-hundred-foot radius from wellhead; all restrictions and prohibitions of this chapter apply, plus the town shall have direct control of all activity through either ownership, easements or other legal means.
- C. **ZONE 2** — Three-hundred-foot radius from wellhead; all restrictions and prohibitions of this chapter apply, plus septic systems are prohibited, with exceptions where no sanitary sewers could service the subject property per these rules and regulations.

- D. ZONE 3 — Maximum two-thousand-five-hundred-foot radius from wellhead; all restrictions and prohibitions apply, as outlined in § 135-5.

**§ 135-3. General provisions.**

No person, including state agencies or political subdivisions having jurisdiction, shall perform any act or grant any permit or approval which may result in the contravention of the standards for raw water quality as contained in Part 170 of Title 10 (Health) of the New York Codes, Rules and Regulations (10 NYCRR 170). Town of Conklin Wellhead Protection Permits shall be applied for and issued in accordance with § 135-4 of these rules and regulations.

**§ 135-4. Specific prohibitions and restrictions.**

Referring to Map No. 1, and Zones 1, 2 and 3, the following shall be prohibited or restricted within these zones as follows, with wellhead protection permits required as indicated:

- A. Cemeteries. No interment of a human body shall be made within Zone 1 and 2.
- B. Chloride salt. No chloride salt shall be stored within Zone 3 in excess of 50 pounds, except in a weatherproof building with an impervious floor or an aboveground watertight vessel with a 100% product-tight containment system, and by permit only. Normal household use is exempt.
- C. Herbicides and pesticides. No pesticides or herbicides shall be stored underground or above ground within Zone 3 except for aboveground containers for household use and retail sales, provided that they are stored in a weatherproof building. No pesticides or herbicides shall be discharged within Zone 3 except for household aerial discharge.
- D. Human excreta and sewage. No privy, privy vault, pit or other receptacle of any kind for either the temporary storage or permanent deposit of human excreta or sewage shall be constructed, located, placed or maintained within Zone 2. No sewage or polluted liquid of any kind shall be discharged or allowed to flow on or beneath the surface of the ground within Zone 2 except in watertight pipes connected to a sewage treatment plant for which a permit has been granted by the appropriate state agency having jurisdiction over such facility. No such watertight pipe shall be located within a twenty-five-foot linear distance of the wells. Exception to the above shall be made for existing residential septic systems and for municipal temporary storage vaults serving recreation facility toilets, where no sanitary sewers are in service, providing that these facilities are not within Zone 1. Properties within Zone 2 that do not have a sanitary sewer in service and are operating with a septic system shall be given priority for construction of sanitary sewers when declared a health hazard by the Broome County Health Department.
- E. Radioactive material. No radioactive material shall be disposed of by burial in soil within Zone 3.
- F. Sewage sludge or septage. No sewage sludge or septage shall be disposed of in any manner, including land spreading of treated sludge or septage, within Zone 3.
- G. Solid waste. No junkyard, refuse disposal area or recycling site shall be located within Zone 3.

H. Toxic chemicals.

- (1) No containers used for the storage of gasoline, kerosene, fuel oil, diesel oil or toxic chemicals, nor these materials themselves, shall be buried beneath the surface of the ground within Zone 2, effective the date these regulations are approved.
- (2) All preexisting and new underground storage tanks containing petroleum or toxic materials within Zone 3 shall meet and comply with all current New York State Department of Environmental Conservation (NYSDEC) and United States Environmental Protection Agency (USEPA) regulations; preexisting and new storage tanks shall be granted a wellhead protection permit upon demonstration of compliance with said regulations in the permit application. Any leak(s) found in underground storage tank(s) will constitute an immediate revocation of the wellhead protection permit. Upon notification by the Town of Conklin, the owner of the underground storage will have 48 hours to remove the storage tank(s) and to excavate the contaminated ground. If this is not accomplished within this time frame, the Town of Conklin or its authorized agent may remove the leaking storage tank(s) at the expense of the owner(s).
- (3) In the event that tanks are abandoned in accordance with the definition of "abandoned tanks" herein, the owner and/or lessee of such highway gasoline or service station will immediately remove the tanks and gasoline pumps from the site of the same. In lieu of removing the tanks, said owner and/or lessee shall remove the gasoline therefrom and fill all tanks with water or solid materials.
- (4) To assure performance of the foregoing provisions, every applicant hereafter applying to the Town Board for a permit for a gasoline or service station within Zone 3 shall be required, before constructing, building or operating such gasoline or service station, to present the bond of a reputable insurance company, in an amount to be fixed by the Town Board, assuring the performance of the foregoing provisions.

I. Trespassing. No trespassing shall occur within the boundaries of any property properly posted against trespassing which is owned or occupied by the Town of Conklin or by an agency or special improvement district, organized under law, within the Town of Conklin.

J. Underground injection wells. 40 CFR 144.12(a) states that no owner or operator shall conduct any injection activity in a manner that allows the movement of any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR 142 or may otherwise adversely affect the health of persons. Wellhead protection permits for existing underground injection wells within Zone 3 will be issued only when there is an existing Federal Underground Injection Control (UIC) permit satisfying the conditions of 40 CFR 144.21(a). All other existing underground injection wells within Zone 3 shall be closed under a USEPA-approved closure plan or obtain a federal UIC permit within 180 days of the adoption of these rules and regulations. No new underground injection wells shall be allowed within Zone 3 without a federal UIC permit.

**§ 135-5. Permit requirements.**

A. New facilities.

- (1) When application is made for a site plan approval special use permit or zoning variance from the Town of Conklin Planning Board, Zoning Board or Town Board, reviewing officials shall also require submittal of a wellhead protection permit application for the following:
  - (a) Properties located wholly or partially within Zones 1 and 2. All specifically restricted facilities or activities included in § 135-4, and other unlisted facilities or activities deemed by reviewing officials to potentially threaten contravention of groundwater standards as provided for under § 135-3.
  - (b) Properties located wholly or partially within Zone 3. The wellhead protection permit application shall be reviewed by the Town of Conklin Water Superintendent and Code Enforcement Officer, who shall determine compliance with § 135-3, General provisions, and § 135-4, Specific prohibitions and restrictions, of these rules and regulations.
- (2) The Water Superintendent shall either deny a wellhead protection permit for specific reasons or prepare a wellhead protection permit, either unconditional or with provisions, restrictions and permit requirements, including but not limited to special construction, professional construction inspection/certification and/or ongoing inspection, monitoring and reporting requirements appropriate to protect the town water supply in accordance with these rules and regulations.
- (3) Compliance with the requirements of a wellhead protection permit and these rules and regulations shall be a condition of site plan approvals or issuance of special use permits or zoning variance.

B. Existing facilities. Wellhead protection permits shall not be required for existing facilities with the exception of existing storage facilities storing toxic or hazardous material and existing underground injection wells, which shall be subject to the provisions of § 135-4H and J respectively of these rules and regulations. All continuing operation of all other existing facilities shall comply with specific restrictions and prohibitions of these rules and regulations.

**§ 135-6. Application form.**

Applicants for a wellhead protection permit shall submit the following:

- A. The name, address and telephone number of the applicant.
- B. If the applicant is a corporation, the name, address and telephone number of all the corporate officers and directors.
- C. A map and report showing the location of the premises for which the permit is sought and plans prepared by a licensed professional engineer or architect showing all features of the system necessary for the satisfactory conveyance, storage, distribution, use and disposal of sanitary wastes, stormwater wastes, process wastes, toxic substances and hazardous materials, solid wastes and incidental wastes within the property boundaries of the business or commercial establishment.

- D. A detailed environmental assessment form pursuant to Article 8 of the Environmental Conservation Law of the State of New York, which assessment shall include a description and evaluation of the nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and an evaluation of measures to mitigate adverse effects.
- E. Preliminary engineering plans with elevations showing the use, location and dimensions of proposed buildings and land areas, driveways, driveway intersections with streets, maneuvering areas, parking areas, utility and utility easements, signs and railroad sidings.
- F. A storm drainage and grading plan regarding proposed handling of surface water runoff and erosion control.
- G. A survey prepared by a licensed surveyor or engineer showing the precise site boundaries.
- H. Copies of any permits and applications to any other government agencies.
- I. Such other information as the applicant may consider relevant or as may be required by the town. Copies of the application including the required information stated above shall be filed with the town and shall be available for public inspection.

**§ 135-7. Notification.**

The Town of Conklin upon request shall provide all businesses, governmental agencies and transportation systems that are affected by Zones 1, 2 and 3 with a copy of the current Town of Conklin Wellhead Protection Rules and Regulations and restrictions requiring wellhead protection permits for existing facilities at no charge.

**§ 135-8. Inspection.**

All authorized employees of the United States Environmental Protection Agency, the New York State Department of Environmental Conservation, the New York State Department of Health, the Broome County Health Department and duly authorized employees of the Town of Conklin bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing. The Town of Conklin shall take water samples for the required parameters at frequencies determined by Part 5 of the New York State Department of Health Code. It shall be the duty of the Town of Conklin Water Superintendent to cause copies of any rules and regulations violated to be served upon the persons violating the same, together with notices of such violations. If such persons served do not immediately comply with the rules and regulations, it shall be the further duty of the aforesaid Town of Conklin Water Superintendent to promptly notify the State Commissioner of Health or duly authorized representative of such violations. The aforesaid Town of Conklin Water Superintendent shall report to the State Commissioner of Health and the Broome County Health Department in writing annually, prior to the 30th day of January, the results of the regular inspections made during the preceding year. The report shall state the number of violations abated and the general condition of the area surrounding the wells at the time of the last inspection.

**§ 135-9. Notice of violation.**



The Town Code Enforcement Office shall give written notice by personal service or by registered, certified or first class mail on the owner and any tenant of the violating property. Such notice shall direct the person so served to correct the stated problem within 48 hours of notification. The person served shall allow a representative of the Town of Conklin to inspect the property and its contents.

**§ 135-10. Special permit by Town Board.**

- A. An owner who experiences unnecessary hardship as a consequence of the provisions of this chapter may request a hearing by the Town Board of the Town of Conklin. The Town Board may grant a special permit modifying the requirements of this chapter if the Board finds that the health, welfare and safety of the public is not in jeopardy.
- B. Application for a special permit shall, in addition to the information required in § 135-6, also include the following:
  - (1) A statement articulating the hardship imposed by the enforcement and administration of this chapter.
  - (2) A statement by a professional architect or engineer licensed to practice in the State of New York assessing the potential impact on groundwater quality of the use or activity to be authorized by the variance.

**§ 135-11. Penalties for offenses.**

- A. Penalties for violations of these rules and regulations shall be as specified in this chapter. Any person who fails to comply with the provisions of these regulations shall be subject to a fine not exceeding \$250 for each violation. The continued violation of any provision of any section of these regulations shall constitute a separate offense for each and every day such violation of any provision hereof shall continue.
- B. In addition to the above, the Town Board may also, at its option, maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of these rules and regulations.