

DOVER BOROUGH
YORK COUNTY, PENNSYLVANIA

ORDINANCE NO. 97-3

AN ORDINANCE OF DOVER BOROUGH, YORK COUNTY, PENNSYLVANIA, ESTABLISHING A WELLHEAD PROTECTION OVERLAY DISTRICT, PROVIDING FOR THE REGULATION OF LAND USES WITHIN SUCH OVERLAY DISTRICT FOR THE PURPOSE OF PROTECTING GROUNDWATER SUPPLIES, PROVIDING FOR REPORTING REQUIREMENTS FOR CERTAIN REGULATED LAND USES WITHIN THE WELLHEAD PROTECTION OVERLAY DISTRICT, AND ESTABLISHING THE MEANS FOR ENFORCEMENT OF THE ORDINANCE.

WHEREAS, Section 1428 of the Federal Safe Drinking Water Act Amendments of 1987 requires that each state develop a program to protect wellhead areas to public water supplies; and

WHEREAS, the Pennsylvania Department of Environmental Protection (PA DEP) has developed a wellhead protection program which provides that local governments have the responsibility for developing programs including regulations and management controls to protect public water supplies from contamination; and

WHEREAS, the groundwater underlying the community water supply wellhead protection area is a major source of the Borough's existing and future water supply, including drinking water; and

WHEREAS, the aquifer systems supplying the community water supply wellhead protection areas with groundwater are integrally connected with numerous surface waters and streams; and

WHEREAS, accidental spills and discharges of toxic and regulated substances can threaten the quality of such water supplies, posing public health and safety hazards; and

WHEREAS, unless preventive measures are adopted to control the discharge and storage of toxic and regulated substances within the community water supply wellhead protection areas, further spills and discharges of such materials will predictably occur and with greater frequency and degree of hazard by reason of increasing land development, population and vehicular traffic within the wellhead protection areas.

NOW, THEREFORE, be it enacted and ordained and it is hereby enacted and ordained by the Borough Council of Dover Borough as follows:

SECTION 1. PURPOSE AND INTENT: AUTHORITY

(a) The purpose of this Ordinance is to protect the public health, safety and welfare through the preservation of the groundwater resources of the Borough public water supplies and to ensure a future supply of safe and healthful drinking water for the residents of the Borough. The designation of the Wellhead Protection Overlay District, as provided hereinbelow, and the regulation of activities within such Wellhead Protection Overlay District will reduce the potential for ground and surface water contamination and thereby preserve irreplaceable groundwater resources. The delineation of the Wellhead Protection Overlay District and the development of the provisions of this Ordinance are based upon a professional study of the hydrogeologic and other features of the Borough conducted by the York County Planning Commission.

(b) This Ordinance is enacted pursuant to the authority

contained in the Constitution of the Commonwealth of Pennsylvania and the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended, which provisions authorize the Borough to enact ordinances regulating development and land uses to (i) ensure the public health and safety, (ii) provide a safe, reliable and adequate water supply, and (iii) preserve natural values and aquifers.

SECTION 2. ESTABLISHMENT AND DELINEATION OF WELLHEAD PROTECTION OVERLAY DISTRICT AND WELLHEAD PROTECTION ZONES

The "Wellhead Protection Overlay District" shall be defined as that area within the corporate boundaries of the Borough as is set forth on the map attached hereto, marked as Exhibit 'A' and incorporated herein by reference thereto. Within the Wellhead Protection Overlay District, the following Wellhead Protection Zones are hereby established:

(a) Zone 1 shall be that area marked on Exhibit "A" as Zone 1, which Zone 1 represents a protective zone immediately surrounding a community water supply well, which shall be a radius of 200 feet.

(b) Zone 2 shall be that area marked on Exhibit "A" as Zone 2, which Zone 2 represents an area determined by methods applicable to that hydrogeologic setting, as a Zone of contribution to the well, and

(c) Zone 3 shall be that area marked on Exhibit "A" as Zone 3, which Zone 3 represents the area that contributes surface and groundwater to Zone 2.

Where the boundary of any Zone divides any property, the entire property shall be considered to lie within the Zone offering the highest degree of protection to groundwater resources. Should any person challenge the boundary of Zones 1, 2, or 3, it shall be the responsibility of that person to retain a recognized professional with competence in the field to determine more accurately the precise boundary of the disputed area. The final boundary to be used will be determined by the Borough with assistance from the Borough Engineer and/or a professional hydrogeologist, as appropriate.

SECTION 3. REGULATED LAND USES

Within the Wellhead Protection Overlay District, land uses shall be regulated as follows:

(a) Lots and tracts of land located within the Wellhead Protection Overlay District, as delineated on Exhibit "A," shall be governed by the restrictions applicable to the Wellhead Protection Zone in which such lots and tracts of land are located.

(b) Certain land uses within the Wellhead Protection Overlay District will be regulated (hereinafter "Regulated Land Uses") according to the Schedule of Regulated Land Uses attached hereto, marked Exhibit "B" and incorporated herein by reference.

Certain particular Regulated Land Uses will be prohibited, or permitted only by Special Exception, within Zone 1, Zone 2 or Zone 3, as applicable, as if set forth in the Schedule of Regulated Land Uses.

SECTION 4. REPORTING REQUIREMENTS

As to each lot or tract of land located within the Wellhead Protection Overlay District upon which there is conducted a Regulated Land Use, the record owner thereof shall submit, or cause to be submitted, to the Zoning Officer of the Borough the following records and information in the manner prescribed:

(a) Copies of all federal, state and county operational approvals, certificates, permits and applications, on-going environmental reports and monitoring results, relating to environmental, pollution control, hazardous substance and drinking water laws and regulations pertaining to such lot or tract of land, as and when required to be submitted to federal, state and county governmental authorities.

(b) In the event that any contaminants and/or substances regulated under federal, state or county environmental, pollution control, hazardous substance and drinking water laws and regulations are released on or from any lot or tract of land within the Wellhead Protection Overlay District, copies of any and all notices, reports and documents which such owner filed, or caused to be filed, with any federal, state and/or county governmental authorities which provide notice of or relate to such release, as and when such notices, reports and documents are required to be filed with such governmental authorities; and

(c) Copies of all notices, orders, rules, decisions, recommendations, enforcement actions and similar documentation, as and when received by or on behalf of such record owner or the occupant of any such lot or tract of land from any federal, state

or county governmental authority in connection with the enforcement of environmental, pollution control, hazardous substance and drinking water laws and regulations.

SECTION 5. ADMINISTRATION

(a) The Zoning Officer of the Borough is hereby designated as the Borough official responsible for the administration and enforcement of this Ordinance. The Zoning Hearing Board of the Borough shall hear appeals from the written determinations and orders of the Zoning Officer regarding applications, enforcement notices, cease and desist orders and other matters, and shall also hear substantive and procedural challenges to the validity of this Ordinance.

(b) Uses of lots or tracts of land in existence on the date of enactment of this Ordinance which are Regulated Land Uses shall be deemed to be "non-conforming uses" of land under the terms of this Ordinance. Such non-conforming uses of land may be continued by the present or any subsequent owner as long as: -

(1) Such use is and remains otherwise lawful and in compliance with all federal, state, and county environmental, pollution control, hazardous substance and drinking water laws and regulations;

(2) Such non-conforming use has not been and is not discontinued for a period of twelve (12) consecutive months;

(3) Such non-conforming use is not, after the date of enactment of this Ordinance, materially altered, changed or expanded;

(4) The record owner of the lot or tract of land on which such non-conforming use is located is in compliance with Section 4 of this Ordinance regarding reporting requirements; and

(5) Such non-conforming use is not an actual known source of groundwater contamination.

(c) A Regulated Land Use shall be deemed to be new or materially altered, changed or expanded if:

(1) The land use which constitutes the Regulated Land Use was not previously present and conducted upon the lot or tract of land in question;

(2) The production and/or storage capacity of the Regulated Land Use is increased;

(3) The types of any substances which give rise to the Regulated Land Use are changed;

(4) The number of types of any substances which give rise to the Regulated Land Use is increased; and/or

(5) The quantity of any substances which give rise to the Regulated Land Use is materially increased.

(d) Following the date of enactment of this Ordinance, Regulated Land Uses which are new or which constitute material changes, alterations or expansions of nonconforming Regulated Land Uses will be prohibited in accordance with the terms of Exhibit "B" annexed hereto thereby prohibiting such Regulated Land Uses, or permitting such Regulated Land Uses only upon the granting of a Special Exception. Any Regulated Land Use which is permitted to be conducted within the Wellhead Protection Overlay District as a

result of the granting of a Special Exception in accordance with the terms of this Ordinance shall not be deemed to be a non-conforming use of land under the terms of this Ordinance, but shall without further action be considered a land use written in conformity with the terms of this Ordinance.

(e) As to any new Regulated Land Use or any proposed material change, alteration or expansion of a Regulated Land Use which is a non-conforming Regulated Land Use and as to which such Regulated Land Use is permitted to be conducted within the applicable Wellhead Protection Zone upon the granting of a Special Exception, such Special Exception shall only be granted upon the following conditions:

(1) Such Regulated Land Use is one which is specifically authorized as a Special Exception use in the Wellhead Protection Zone in question, as set forth in Exhibit "B,"

(2) Such Regulated Land Use will not, during construction or thereafter, cause the degradation of the groundwater quality upon or beneath the lot or tract of land in question, or upon or beneath adjacent lots or tracts of land, the degree and extent of which degradation is or would be violative of safe drinking water standards promulgated by federal, state, or county governmental authorities;

(3) Satisfactory evidence has been provided to the Borough's Zoning Officer, or Zoning Hearing Board, as applicable, that the proposed Regulated Land Use is in compliance with all federal, state and county laws and regulations applicable to such

Regulated Land Use and the record owner or occupant has received all necessary approvals of federal, state and county governmental authorities for the conduct of such Regulated Land Use.

(f) Application for a Special Exception shall be made to the Zoning Hearing Board of the Borough in writing on such form as may be prescribed by the Zoning Officer and approved by Resolution of the Borough Council and such application shall include, at a minimum, a detailed description of each of the activities to be conducted upon the lot or tract of land in question which constitute a Regulated Land Use, including a listing of all substances which are to be stored, handled, used or produced in connection with each Regulated Land Use being proposed and which substances are subject to regulation by federal, state and/or county governmental authorities.

(g) The Zoning Hearing Board of the Borough shall issue a written determination approving or disapproving the application for a Special Exception, or conditioning the granting of the Special Exception upon adherence to any or all of the following requirements by the applicant for the Special Exception, where the Zoning Hearing Board has found that such adherence is reasonably necessary to fulfill the groundwater protection purposes of this Ordinance:

(1) The installation of adequate containment facilities and systems so as to prevent the contamination of groundwater by substances regulated by federal, state and/or county governmental authorities.

(2) The preparation, filing (with the Zoning Hearing Board of the Borough) and periodic revision of an emergency plan addressing the means by which any potential contamination of groundwater will be controlled, collected and remediated, including emergency contacts and identification of potential contaminants;

(3) Regular inspection and/or monitoring by the owner, occupant, the Zoning Officer and/or third parties, of the Regulated Land Use area;

(4) Compliance by the applicant with the provisions of the Borough Subdivision and Land Development Ordinance then in effect pertaining to sanitary sewage disposal, water supply, storm water management, utilities and easements and subsurface carbonate areas.

(h) Applications to the Zoning Hearing Board of the Borough for a Special Exception under this Ordinance, as well as written determinations of the Zoning Officer and appeals from the written determinations of the Zoning Officer to the Borough Zoning Hearing Board and appeals to the courts of the Commonwealth of Pennsylvania, shall be subject to the same procedural (but not substantive) rules as are applicable to applications for special exceptions under the terms of the underlying Zoning Ordinance of the Borough in effect at the time the application is filed.

SECTION 6. MAJOR SUBDIVISION AND LAND DEVELOPMENT PLANS

All major subdivision proposals and other proposed new development plans to be located within the Wellhead Protection Overlay District shall be reviewed by the Zoning Officer and the

Borough Planning Commission for compliance with the provisions of this Ordinance. It shall be the responsibility of the Zoning Officer and the Borough Planning Commission to recommend approval, disapproval or approval with conditions or modifications, of the proposed subdivision or development plan, so as to assure compliance with the provisions of this Ordinance.

(a) Subdivisions and land developments within Zones 1, 2 or 3 for which storm water management controls are required pursuant to the Borough Subdivision and Land Development Ordinance shall be designed consistent with the following:

(1) Storm water retention basins shall be prohibited;

(2) Storm water detention basins shall be designed with an impermeable liner to prohibit the infiltration of impounded water to the subsurface.

(b) Subdivisions and land developments within Zones 1, 2 or 3 as mapped on Exhibit "A" shall have the following Preliminary Plan requirements in addition to those requirements of the Borough Subdivision and Land Development Ordinance:

(1) A recognized professional with competence in the field shall review aerial photographs, soils, geologic and other available related data as the data relates to the subject property. The professional shall also conduct a site inspection of the property.

(2) Based on the work required in Section 6(b)(1), the professional shall prepare a map of the site showing all

topographic, geologic and other pertinent physical features. The mapping shall indicate, but shall not be limited to, the following:

- (A) Closed depressions
- (B) Seasonal high water table indicators
- (C) Outcrops of bedrock
- (D) Surface drainage into ground
- (E) Lineaments and faults
- (F) Quarries and mines
- (G) Oil and gas wells
- (H) Geologic contacts

(3) Based upon the work performed in Sections 6(b)(1) and 6(b)(2), the professional shall determine what if any further testing should be done by the applicant to ensure compliance with this Ordinance. Testing methodology shall be reasonable under the circumstances, including (i) the scale of the proposed development, and (ii) the hazards revealed by examination of available data and the site inspection.

(4) The applicant shall cause the additional testing established in Section 6(b)(3) to be done. A study report shall be submitted and referred to the Borough Engineer. This study shall include a map of the area, all test results and a recommendation on the mitigation measures to be taken.

(5) The Borough Engineer shall report to the planning commission, with a copy to the landowner, his or her opinion as to the adequacy of the study and as to the capability of the site to support the proposed development in a manner in which

the risks attendant to the development in carbonate areas are either eliminated or minimized. Recommendations for site development including building location may be included. Additional studies or testing as deemed necessary by the Borough Engineer in order to produce an adequate study given the scale of the proposed development and the hazards revealed may be required of the applicant.

SECTION 7. GENERAL EXCEPTIONS

The following General Exceptions specify those land uses and activities that are permitted by right and do not require a Special Exception:

(a) Transit: The transportation of any hazardous or governmentally regulated substance through the Wellhead Protection Overlay District shall be exempt from provisions of this Ordinance, provided that the transporting vehicle is in transit through the Wellhead Protection Overlay District and further provided that such transportation is conducted in compliance with all applicable federal and state laws and regulations;

(b) Residential: To the extent otherwise permitted or regulated by federal, state and/or county statutes and regulations, the owners and/or occupiers of lots and tracts of land which are primarily utilized for the purpose of single or multi-family residential dwellings are permitted to utilize and store fuels, hazardous chemicals, pesticides, fertilizers, inflammable liquids and gases, and toxic and regulated substances in such quantities and in such manner as is associated with normal consumer, household

use, and such limited utilization shall not be deemed a Regulated Land Use for the purposes of this Ordinance.

SECTION 8. DESIGN STANDARDS AND OPERATING REQUIREMENTS FOR STORAGE TANKS

(a) The following design standards apply to underground storage tanks located within the Wellhead Protection Overlay District:

(1) The design and construction of underground storage tanks shall be in accordance with applicable federal and state requirements, including the rules and regulations of PA DEP.

(2) The tank shall be constructed of fiberglass-reinforced plastic, coated and cathodically protected steel, or fiberglass-reinforced plastic composite.

(3) The tank and associated tank piping shall provide for secondary containment for release detection purposes which may include double-walled tanks and piping, a concrete vault in which the tank and piping is placed, or an impermeable liner in the excavation zone in which the tank and piping is placed.

(4) The tank shall be equipped with spill and overfill prevention equipment and a leak detection system.

(5) A thirty (30) day written notice shall be submitted to the Borough's Zoning Officer prior to the installation or removal of a tank.

(b) The following design standards apply to aboveground storage tanks located within the Wellhead Protection Overlay District:

(1) The design and construction of aboveground

storage tanks shall be in accordance with applicable federal and state regulations.

(2) Aboveground storage tanks shall be equipped with a containment device designed to contain an unauthorized release, retain it for cleanup and prevent released materials from penetrating into the ground.

(3) The containment device shall be large enough to contain one hundred (100%) per cent of the volume of the tank, in cases where a single tank is used to store, handle, use or produce a hazardous material. In cases where multiple tanks are used, the containment device shall be large enough to contain one hundred (100%) per cent of the volume of the largest tank.

(4) All containment devices shall be constructed of materials of sufficient thickness, density and composition to prevent structural weakening of the containment device as a result of contact with any hazardous material, and shall be capable of containing any accidental release for at least a period sufficient to allow detection and removal of the material. Provisions shall be made for monitoring, testing and immediate removal of accumulated precipitation.

(5) The design of the tank shall meet applicable technical standards for the specific type and class of tank as set forth in the applicable Underwriters Laboratory Standards No. 142 of the American Petroleum Institute (API), by the American Water Works Association (AWWA), or by the Society of Mechanical Engineers (ASME). The tanks shall be fabricated, tested and installed in

accordance with the appropriate codes and standards applicable to the material to be stored therein.

(6) The tank shall be designed with monitoring standards consistent with the manufacturer's specifications.

(7) The tank shall be tested as required by federal and state codes and standards.

(8) The tank and containment area shall be protected by a security fence.

(9) A thirty (30) day written notice shall be submitted to the Borough's Zoning Officer prior to the installation or removal of a tank.

SECTION 9. PREVENTIVE AND ENFORCEMENT REMEDIES

For the purpose of preventing violations of this Ordinance and enforcing the provisions of this Ordinance, the Borough shall have available to it the same preventive and enforcement remedies, including the use of civil actions, as are set forth in the Zoning Ordinance of the Borough in effect from time to time. In addition, the Zoning Officer of the Borough is authorized to issue cease and desist orders whenever such Zoning Officer becomes aware of violations of this Ordinance. The Zoning Officer is authorized to issue Enforcement Notices with respect to violations of this Ordinance, such Enforcement Notices to be issued in accordance with the Enforcement Notice provisions of the Zoning Ordinance of the Borough in effect from time to time.

SECTION 10. FEEES

The Borough Council shall, from time to time, establish by

resolution a schedule of fees, charges and expenses and collection procedures for Special Exceptions, costs of review and inspection, appeals and other matters pertaining to this Ordinance. The schedule of fees shall be available for inspection in the Municipal Office of the Borough. An application will not be considered to be complete until all applicable fees charges and expenses have been paid in full.

SECTION 10. MISCELLANEOUS

(a) Conflicts: Whenever there is a difference between any of the minimum standards specified in this Ordinance and any standard included in any other ordinance, law or regulation of the Borough, the more stringent requirement shall apply. The provisions of this Ordinance shall be deemed to be supplementary and in addition to the provisions of the Zoning Ordinance and Subdivision and Land Development Ordinance of the Borough as each is in effect from time to time.

(b) Severability: The provisions of this Ordinance are severable, and should any article, section, subsection, paragraph, clause, phrase or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part so declared to be invalid.

(c) Savings Clause: This Ordinance shall not affect any act done or any offense committed prior to its effective date, nor affect any action to enforce any prior ordinance or to punish any offense against a prior ordinance.

(d) This Ordinance shall become effective as provided by law.

ENACTED AND ORDAINED by the Borough Council of Dover Borough this 7th day of July, 1997.

ATTEST:

BOROUGH OF DOVER

Gloria L. Davis
Gloria L. Davis, Secretary

By: Robert R. Merkert
Robert R. Merkert, President

Approved this 7th day of July, 1997.

George R. Airing
George R. Airing, Mayor

EXHIBIT "B"
SCHEDULE OF REGULATED LAND USES

| USE | ZONE 1 | ZONE 2 | ZONE 3 |
|--|--------|--------|--------|
| 1. Bulk Storage of Regulated Substances | x | x | SE |
| 2. Dry Cleaning Establishments, Coin or Commercial Laundries | x | x | SE |
| 3. Garage Service Station (Gasoline Station) | x | x | SE |
| 4. Heavy Manufacturing Uses | x | x | SE |
| 5. Junk Yards | x | x | x |
| 6. Land Application of Wastewater and Sludges | x | x | x |
| 7. Livestock Animals in Excess of 25 Animal Equivalent Units per Acre in Yarding Areas | x | x | x |
| 8. Metal Plating Establishments | x | x | SE |
| 9. Open Burning Sites and Dumps | x | x | x |
| 10. Quarries and Mining Operations | x | x | x |
| 11. Road Salt Stockpiles | x | SE | SE |
| 12. Sales and/or Storage of Fuels | x | SE | SE |
| 13. Sanitary Landfill | x | x | x |
| 14. Sewage Treatment Facilities with an On-Site Disposal of Primary or Secondary Treated Effluent in Excess of 5,000 gpd | x | x | x |
| 15. Storage and Mixing of Regulated Substances | x | x | SE |
| 16. Storage of Inflammable Liquids and Gases | x | SE | SE |
| 17. Use Which Involves as a Principal Activity the Manufacture, Storage, Use, Transportation or Disposal of Regulated Substances | x | x | x |
| 18. Use Which Involves Use or Storage of Regulated Substances in Quantities Greater Than Those With Normal Household Use | x | SE | SE |
| 19. Used Motor Vehicle Sales Area | x | SE | SE |

NOTES: x - Not Allowed
SE - Special Exception

As used in this Exhibit "B," the term "Regulated Substances" shall mean any substances regulated under federal, state or county environmental, pollution control, hazardous substance and drinking water laws and regulations.

A copy of the proposed Ordinance amending the Zoning Ordinance of Dover Borough may be examined without charge at the Dover Borough offices, 46 Butter Road, Dover, Pennsylvania, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday. A copy of the proposed Ordinance has been filed with the York Newspaper Company, 1891 Loucks Road, York, Pennsylvania, and the York County Law Library, York County Court House, 28 East Market Street, York, Pennsylvania.

Interested persons are invited to attend the public hearing on July 7, 1997 and the regularly scheduled meeting of Borough Council immediately following the public hearing and offer comments on the proposed amendments to the Zoning Ordinance of Dover Borough.

BOROUGH COUNCIL OF DOVER BOROUGH

By: John C. Herrold, Esquire
Borough Solicitor