

TOWNSHIP OF SAUGATUCK
COUNTY OF ALLEGAN, MICHIGAN

At a regular meeting of the Township Board of the Township of Saugatuck, Allegan County, Michigan, held in the Saugatuck Township Hall, within the Township, on the 4th day of February, 2004, at 7:00 p.m.

PRESENT: Members: Gudith, Wright, Knikelbine, Shanahan and Roerig

ABSENT: Members: None

The following preamble and ordinance were offered by Member Shanahan and supported by Member Gudith:

ORDINANCE NO. 2004-01

**AN ORDINANCE TO REQUIRE THE ANALYSIS OF GROUNDWATER
SAMPLES FROM PRIVATE WATER SUPPLIES PRIOR TO THE
ISSUANCE OF BUILDING PERMITS FOR RESIDENTIAL DWELLINGS
AND TO PROHIBIT THE ISSUANCE OF SUCH BUILDING PERMITS IF
THE PRIVATE WATER SUPPLY IS NOT SAFE FOR HUMAN
CONSUMPTION; TO REQUIRE THE ANALYSIS OF GROUNDWATER
SAMPLES PRIOR TO THE SALE OF PROPERTY THAT HAS AN
EXISTING PRIVATE WATER SUPPLY; AND TO PROVIDE
PENALTIES FOR THE VIOLATION THEREOF**

THE TOWNSHIP OF SAUGATUCK ORDAINS:

Section 1. Findings/Purpose. The Township Board of the Township of Saugatuck hereby finds that there are certain areas of the Township where, because of historical and on-going releases of chemical constituents to the environment, groundwater has been adversely affected by contaminants in concentrations greater than those considered safe for human consumption. In addition, because of the presence of businesses in the Township that utilize hazardous substances, such as gasoline service stations, there exists an on-going risk of new releases of hazardous substances to the environment that could contaminate groundwater in additional locations. The Board further finds that there are several locations in the Township

where a public water supply is not available and where residents rely, therefore, on groundwater as a source of drinking water. This ordinance has been adopted for the purpose of ensuring that new residential dwellings that will rely on a private water supply for drinking water are not constructed in areas where the groundwater has been contaminated by chemical constituents at concentrations exceeding levels that are safe for human consumption, unless an alternative source of safe drinking water is secured, and for the purpose of disclosing water quality in existing residential dwellings that rely on a private water supply for drinking water.

Section 2. Authority. This ordinance is adopted under the Township’s general regulatory authority to adopt ordinances for the protection of the health, safety and welfare of its inhabitants under the Township Ordinances Act, MCL 41.181, *et seq.* and is more specifically authorized by Section P2901.1 of the Michigan Residential Code, being a part of the Michigan Building Code, which requires that all residential dwellings be provided with a supply of potable water as a condition for the issuance of a building permit.

Section 3. Definitions. As used in this Ordinance, the following words, terms and phrases shall be defined as follows:

- A. “Applicant Property” means a lot, parcel or other unit of real property for which a building permit for the construction of a residential dwelling is sought that will rely on a Private Water Supply as a source of drinking water.
- B. “Community Water Supply” means a Public Water Supply that provides year-round service to not fewer than 15 living units or that regularly provides year-round service to not fewer than 25 residents, and which is regulated by the MDEQ pursuant to the Michigan Safe Drinking Water Act, 1976 PA 399, as amended.

- C. “MCL” means the maximum contaminant level for a constituent in drinking water, as established by the US EPA.
- D. “MDEQ” means the Michigan Department of Environmental Quality.
- E. “Private Water Supply” means any water supply well that is not a Community Water Supply, that provides water for drinking or household purposes, and which is constructed in accordance with the requirements of the Michigan Well Construction Code, MAC R 325.1601, *et seq.*
- F. “Public Water Supply” means a waterworks system that provides water for drinking or household purposes to persons other than the supplier of the water, and does not include either of the following:
 - 1. A waterworks system that supplies water to only 1 living unit.
 - 2. A waterworks system that consists solely of customer site piping.
- G. “Source Property” means a lot, parcel or unit of real property, other than an Applicant Property, on which a Private Water Supply is located that will be used as a source of drinking water for an Applicant Property.
- H. "Test well," means a well that is used to obtain information on groundwater quantity, quality, or aquifer characteristics for the purpose of designing or operating a water supply well, and which is constructed in accordance with the requirements of the Michigan Well Construction Code, MAC R 325.1601, *et seq.*
- I. “US EPA” means the United States Environmental Protection Agency.

Section 4. Required Testing of Private Water Supply. The Township Building Official, or his or her designee, or any other Township official, shall not issue a building permit for the construction of a residential dwelling on an Applicant Property unless and until the record

owner of the Applicant Property first submits analytical test results for the Private Water Supply to be utilized by the dwelling to the Building Official, demonstrating that the water from the Private Water Supply has been sampled and analyzed pursuant to the requirements of this Ordinance and meets the standards prescribed by this Ordinance.

Section 5. Sampling and Analytical Methods and Procedures. The collection, analysis and reporting procedures for the water sample from the Private Water Supply shall comply with the following requirements:

A. Sample Collection.

1. Except as provided in subsection 2, the water sample shall be collected from a Private Water Supply located on the Applicant Property.
2. The water sample may be collected from a Private Water Supply on a Source Property if the record owner of the Applicant Property submits to the Building Official a legal instrument recorded with the Allegan County Register of Deeds that conveys to the Applicant Property the right to obtain drinking water from a Private Water Supply on the Source Property without time limitation or expiration.
3. The water sample shall be collected in accordance with MDEQ MERA Operational Memorandum #16, as it may be amended or supplemented from time to time, by a representative of a laboratory certified by the MDEQ Environmental Science and Services Division, or its successor agency or division, as a Certified Drinking Water Chemical Laboratory.

4. The water sample shall be collected not more than one year prior to the submission of a building permit for the construction of a dwelling on the Applicant Property.

B. Sample Analysis.

1. The water sample shall be analyzed for all volatile organic compounds (VOCs) for which the US EPA has established a MCL, for all VOCs for which the MDEQ has established a residential drinking water criteria pursuant to Part 201 of the Natural Resources and Environmental Protection Act (the “Part 201 criteria”), and for nitrates and nitrites.
2. The water sample shall be analyzed by a laboratory certified by the MDEQ Environmental Science and Services Division, or its successor agency or division, as a Certified Drinking Water Chemical Laboratory, using one of the analytical methods approved by MDEQ MERA Operational Memorandum #16, as it may be amended or supplemented from time to time.

C. Reporting of Results.

1. The analytical results for the water sample shall be provided in a written report, identifying the method detection limit for each compound and the concentration of each detected compound in milligrams per liter. The report shall conspicuously identify all compounds that were detected and all compounds that were detected above the applicable MCL and/or above the applicable Part 201 criterion.

2. The written report of the analytical results shall be provided directly to the Building Official by the Certified Drinking Water Chemical Laboratory.

Section 6. Drinking Water Standards.

- A. If the analytical results for the water sample from the Private Water Supply indicate that any of the analyzed compounds were detected at a concentration above the MCL and/or above the Part 201 criterion for that compound, then a building permit shall not be issued for the construction of a dwelling on the Applicant Property unless and until the owner of the Applicant Property demonstrates one of the following to the Building Official:

1. That the Applicant Property will be served by an MDEQ-approved Community Water Supply; or
2. That drinking water will be supplied to the Applicant Property from a Private Water Supply on a Source Property that meets the requirements of this Ordinance.

Section 7. Use of Approved Private Water Supply Only. After a building permit has been issued for a dwelling on an Applicant Property based on the analytical results for a Private Water Supply meeting the requirements of this Ordinance, the dwelling shall thereafter rely only on the approved Private Water Supply as the primary source of drinking water for the dwelling, unless the owner of the Applicant Property first demonstrates to the Building Official that the Applicant Property will be served by an MDEQ-approved Community Water Supply or by another Private Water Supply that meets the requirements of this Ordinance.

Section 8. Sampling and Analysis of Groundwater Prior to Sale of Property.

- A. No lot, parcel or other unit of real property in the Township on which exists a dwelling that relies on a Private Water Supply as a source of drinking water shall be sold unless, prior to the time of sale the Private Water Supply is sampled and analyzed pursuant to the requirements of Section 5 of this Ordinance and the results of the analysis are reported to the buyer. The results shall also be reported to the Building Official, prior to sale, in accordance with the requirements of Section 5.C of this Ordinance.
- B. A water sample collected pursuant to the requirements of this Section shall be collected not more than one year prior to the effective date of the agreement for sale of the property.

Section 9. Retention of Records for Public Inspection.

- A. The Building Official shall keep a record of all analytical results submitted under this Ordinance for a minimum of ten years after receiving such results.
- B. The Building Official shall segregate and file separately those analytical results which indicate that compounds were detected above the method detection limit and/or the applicable MCL or Part 201 criterion.
- C. The Building Official shall prepare, and update at least annually, a map or drawing of the Township that illustrates the properties where compounds have been detected above the method detection limit and/or the applicable MCL or Part 201 criterion.

- D. These records shall be open to inspection by the public and copies thereof shall be provided, upon request, pursuant to the requirements of the Michigan Freedom of Information Act, MCL 15.231, *et seq.*

Section 10. Coordination With Other Drinking Water Requirements. Nothing in this Ordinance shall be deemed to waive, modify or abrogate any other requirements of law promulgated, administered or enforced by any other governmental agency or entity with appropriate jurisdiction, including, but not limited to, the Allegan County Health Department, the MDEQ and the US EPA. The requirements of this Ordinance shall be in addition to any requirements of any other governmental agency or entity with appropriate jurisdiction.

Section 11. Enforcement; Penalties.

- A. **Municipal Civil Infraction.** A violation of this Ordinance is a municipal civil infraction, for which the fine shall be One Hundred Dollars (\$100) for the first offense, Two Hundred Fifty Dollars (\$250), for the second offense, and Five Hundred Dollars (\$500) for subsequent offenses, in the discretion of the Court, and in addition to all other costs, damages, expenses and actual attorneys fees incurred by the Township in enforcing the Ordinance and/or remedying the violation of the Ordinance. For purposes of this section, A subsequent offense means a violation of this Ordinance committed with respect to a separate incident by the same person within twelve (12) months after a previous violation of the Ordinance for which said person admitted responsibility or was adjudicated to be responsible. Each day that a violation occurs shall constitute a separate offense.

- B. **Injunctive Relief.** A violation of this Ordinance is hereby declared to be a nuisance per se. The Township may seek injunctive relief to abate the violation and, in the injunctive action, also seek its costs, damages, expenses and actual attorneys fees incurred in enforcing the Ordinance and/or in remedying the violation of the Ordinance, in addition to other relief provided by law.
- C. **Remedies Under Building Code.** The Township may also pursue all remedies available to it under the Michigan Building Code to abate, correct and/or penalize a violation of this Ordinance.
- D. **Cumulative Remedies.** The remedies provided by this Section are cumulative. The Township may elect to pursue enforcement by any one, a combination of, or all of the methods provided above, in addition to pursuing any other remedies provided by law.

Section 12. Severability. Should any portion of this Ordinance be declared invalid, the remaining portions shall remain in full force and effect.

Section 13. Publication; Effective Date. This Ordinance shall become effective 30 days after its publication or 30 days after the publication of a summary of its provisions in a newspaper of general circulation in the Township.

AYES: Members: Knikelbine, Wright, Shanahan, Gudith, Roerig

NAYS: Members: None

ORDINANCE DECLARED ADOPTED.

Jane Wright, Township Clerk

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Township Board of the Township of Saugatuck at a regular meeting held on the date first stated above, and I further certify that public notice of such meeting was given as provided by law.

Jane Wright, Township Clerk

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