

SECTION 47 AQUIFER PROTECTION¹

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¹ Amended March 24, 2003; Effective March 28, 2003 at 12:01 a.m.

SECTION 47 AQUIFER PROTECTION¹

47.1 Legislative Findings and Purpose

47.1.1 Legislative Findings

- A.** The Commission adopts the findings of the Connecticut General Assembly, set forth in Section 22a-354g of the General Statutes, that aquifers are an essential natural resource and a major source of public drinking water; that reliance on groundwater will increase because opportunities for development of new surface water supplies are diminishing due to the rising cost of land and increasingly intense development; that numerous drinking water wells have been contaminated by certain land use activities and other wells are now threatened; that protection of existing and future groundwater supplies demands greater action by state and local government; that a groundwater protection program requires identification and delineation of present and future water supplies in stratified drift aquifers supplying drinking water wells; that a comprehensive and coordinated system of land use regulations should be established that includes state regulations protecting public drinking water wells located in stratified drift aquifers; that municipalities with existing or proposed public drinking water wells in stratified drift aquifers should designate aquifer protection agencies, and that the state should provide technical assistance and education programs on aquifer protection to ensure a plentiful supply of public drinking water for present and future generations.
- B.** The Commission finds further that over eighty percent of Cheshire residents are served by public water supply wells that draw upon stratified drift aquifers that lie within the Town boundaries, and the other twenty percent rely on private wells.
- C.** The Commission recognizes that aquifers are vulnerable to contamination from land use activities and that protection of Cheshire's groundwater resources is vital to ensure an adequate supply of safe, potable water. The release and use of toxic and hazardous substances and physical alterations of the environment have had substantial and unattended consequences affecting human health and the environment. Some of these consequences are high rates of learning deficiencies, cancer, birth defects, and contamination of groundwater with toxic materials.

47.1.2 Purpose

The purpose of this Section 47 is to safeguard public health and safety by reducing risks of contamination of public water supply in the Town of Cheshire by establishing Aquifer Protection Overlay Zones, requiring reviews of activities proposed to be conducted within those zones, and prohibiting certain activities within those zones.

47.2 Definitions

47.2.1 As used in this in this Section 47, the following definitions apply:

(47-1)

¹ Adopted January 24, 1994, effective January 28, 1994. Amended March 24, 2003; Effective March 28, 2003 at 12:01 a.m.

Section 47.2.1 (continued)

"Affected water company" means any public or private water company owning or operating a public water supply well within an aquifer protection overlay area.

"Ancillary activity" means a regulated activity which is subordinate to, or supportive of, another regulated activity conducted at the property under consideration, and which ancillary activity involves the use or storage of hazardous material the quantity of which at any one time is less than one percent (1.0%) of the reportable quantity for that material set forth in 40 C.F.R. 302.4 or which is no more than fifty-five (55) gallons, or its equivalent in kilograms or pounds, whichever quantity is less.

"Aquifer" means a geologic formation, group of formations, or part of a formation that contains sufficient saturated, permeable materials to yield significant quantities of water to wells and springs.

"Aquifer Protection Overlay Zone" means that area consisting of well fields, areas of contribution, and recharge areas which is identified as an Aquifer Protection Overlay Zone on those maps set forth in Section 47.3.1 of these Regulations, within which activities are regulated by this Section 47.

"Area of contribution" means area of contribution as defined in Section 22a-354h of the General statutes and as mapped by Level A mapping pursuant to Sections 22a-354b, 22a-354c, and 22a-354z of the General Statutes and Section 22a-354b-1 of the Regulations of Connecticut State Agencies.

"Existing well fields" means well fields in use by a public water supply system when mapping is required pursuant to Section 22a-354c of the General Statutes.

"Certified Hazardous Materials Manager" means a qualified hazardous materials manager, certified by the Institute of Hazardous Materials Management, who is qualified by reason of relevant specialized training and relevant specialized experience to conduct audits of regulated activities to ensure compliance with applicable law and to identify appropriate pollution prevention practices for such activities.

"CFR" means Code of Federal Regulations.

"DEP" means State of Connecticut Department of Environmental Protection.

"DPH" means State of Connecticut Department of Public Health.

"Floor drain" means any opening in a floor or surface which opening or surface is designed to receive materials spilled or deposited thereon, including basement sumps.

"Groundwater" means water that lies below the surface of the earth, filling the spaces or pores in soil and rock.

"Hazardous material" means

- (i) any hazardous substance as defined in 40 CFR 302.4 and listed therein at Table 302.4, (ii) any hazardous waste as defined in Section in 22a-449(c)-101 of the Regulations of

Section 47.2.1 (continued)

- (ii) Connecticut State Agencies,
- (iii) any pesticide as defined in Section 22a-47 of the General Statutes, or
- (iv) any oil or petroleum as defined in Section 22a-448 of the General Statutes. For the purposes of this Section 47, "hazardous material" does not include any gaseous substance, waste, or material; any liquefied gases that are gaseous at room temperature; nor any substance, waste, or material that is solid and insoluble in water at room temperature.

"Hazardous waste" means hazardous waste as defined in Section 22a-449(c)-101 of the Regulations of Connecticut State Agencies.

"Hydrogeologist" means a person qualified to develop and apply standard methods in determination of ground water movement and storage, ground water recharge and discharge; presence, extent, and migration of contaminants; areal extent and thickness of geologic formations; hydraulic conductivities, boundary conditions, and other aquifer properties; well construction; radial flow to a well and well interference. Minimum qualifications include a Bachelor's degree involving major study in hydrogeology, hydrology, geology, or a closely allied field and either two years of associated, professional experience or a Master's degree with major study in hydrogeology, hydrology, geology, or a closely allied field.

"Impervious surfaces" means surfaces, such as roofs and pavement, through which water does not drain.

"Infiltration" means movement of water into an area as it filtrates underground.

"Municipal sewerage system" means municipal sewerage system as defined in Section 7-245 of the General Statutes.

"Owner" means any individual, corporation, partnership, limited partnership, limited liability company, or other business entity that is the owner, lessee, and sublessee of the property under consideration and includes the owner and operator of the business and facility under consideration.

"Pavement deicing chemical" means sodium chloride, calcium chloride, calcium magnesium acetate, and the like.

"Person" means any individual, corporation, partnership, limited partnership, limited liability company, or other business entity, the state and its agencies and political subdivisions, the federal government and its agencies, and any other entity (public or private) however organized.

"Pre-existing nonconforming uses" means uses which were being lawfully conducted on the date of adoption of this Section 47 (and any amendment thereto) but which became nonconforming under the terms of this Section 47 (and any amendment thereto).

"Pollution" means pollution as defined in Section 22a-423 of the General Statutes.

“Pollution prevention” means the use of processes and materials so as to reduce or minimize the amount of hazardous materials used and/or the quantity and concentration of pollutants in waste generated.

“Potential well fields” means those well fields identified as future sources of supply in the water supply plan of the public water supply system approved pursuant to Section 25-32d of the General Statutes.

“Prohibited activity” means those activities set forth in Section 47.4.3 of these Regulations.

“Public water supply” means public water supply or community water system or public water system or seasonal water system, as each such term is defined in Sections 19-13-B102 of the Regulations of Connecticut State Agencies.

“Recharge area” means the area from which groundwater flows directly to the area of contribution of an aquifer, as such area is mapped by Level A mapping pursuant to Sections 22a-354b, 22a-354c, and 22a-354z of the General Statutes, and Section 22a-354b-1 of the Regulations of Connecticut State Agencies.

“Regulated activity” means any use permitted as of right, by special permit, or by site plan in accordance with the Cheshire Zoning Regulations which use is proposed to be conducted or located, wholly or partially, within an Aquifer Protection Overlay Zone and includes “ancillary activities. “Regulated activity” does not include pre-existing nonconforming uses (as defined herein) nor the construction, reconstruction, or repair of single-family houses, and their customary accessory buildings, provided the construction, etc. includes no new or modified storm water drainage structures.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a hazardous material.

“Regional Water Authority” or “RWA” means South Central Connecticut Regional Water Authority.

“Stratified drift” means a predominantly sorted sediment laid down by or in meltwater from glaciers and includes sand, gravel, silt, and clay arranged in layers.

“Storage” means the holding or possession of any hazardous material for a temporary period, at the end of which such hazardous material is treated, disposed of, utilized, abandoned or stored elsewhere.

“Storage tank” means a stationary device, which is designed to store hazardous materials and is constructed of non-earthen materials including but not limited to concrete, steel, fiberglass or plastic.

“Storm water drainage structure” means a catch basin, yard drain, pipe, or other device set at or below the ground surface, whose purpose is the enclosed conveyance of storm water.

"Underground" when referring to a storage tank or storage tank component means that (a) ten percent or more of the volumetric capacity of such tank or component is below the surface of the ground and (b) that portion which is below the surface of the ground is not fully visible from the ground's surface.

"Vehicle" means a vessel (as defined by Section 15-170 of the General Statutes) and any vehicle propelled or drawn by any non-muscular power, including without limitation a motor vehicle, aircraft, all-terrain vehicle, or snowmobile.

"Wastewater treatment system" means any operation or process for reducing the concentration of wastes in any solution of water and wastes.

"Well field" means the immediate area surrounding a public drinking water supply well or group of wells.

"ZEO" means the Zoning Enforcement Officer or the Assistant Zoning Enforcement Officer of the Town of Cheshire, and any other agent designated by the Commission to enforce these regulations.

47.2.2 Doubts as to the precise meaning of other words and terms shall be determined by the Planning and Zoning Commission with reference to the following sources: First to Section 23 of the Cheshire Zoning Regulations, then to the General Statutes, and finally to Webster's Third New International Dictionary, all as may be amended.

47.2.3 Reference to federal, state, and local laws and regulations in this Section 47 include those laws and regulations as they may be amended from time to time.

47.3 Aquifer Protection Overlay Zones

47.3.1 Boundaries of the Aquifer Protection Overlay Zones

The boundaries of the Aquifer Protection Overlay Zones are shown on the following maps which are on file in the Cheshire Town Clerk's Office and the Cheshire Planning Department:

- A. "North Cheshire Level A Aquifer Protection Area," approved by the Department of Environmental Protection on 9/22/00 and produced by the South Central Regional Water Authority on 3/27/02. Town Clerk Map # 3679.
- B. "Mill River Level A Aquifer Protection Area," approved by the Department of Environmental Protection on 10/16/02 and produced by the South Central Regional Water Authority on 10/30/02. Town Clerk Map # 3680.

47.3.2 Amendments of Aquifer Protection Overlay Zones Boundaries

A. Commission-Initiated Amendment of Aquifer Protection Overlay Zone Boundaries

- 1.** The Commission may amend the boundaries of the Aquifer Protection Overlay Zones as provided by law in order to address new information regarding aquifers, the standards for aquifer mapping, the extent and configuration of contributing or recharge areas for public water supply well fields, and changes in the permitted pumping capacity of well fields or to comply with changes in the General Statutes or the regulations or guidelines of the DEP.
- 2.** An affirmative vote of a majority of all the members of the Commission, that is no fewer than five (5) votes, is required to adopt a Commission-initiated amendment of the Aquifer Protection Overlay Zone boundaries.

B. Petitions Challenging the Commission's Delineation of Aquifer Protection Overlay Zone Boundaries

- 1.** The Commission shall hear and decide challenges to the boundaries of an aquifer protection overlay zone as provided by law.
- 2.** Any person challenging the Commission's delineation of the Aquifer Protection Overlay Zone boundaries shall file the original and eleven (11) copies of a petition with the Cheshire Planning Department on a form provided by it. The petition shall include and be accompanied by the following information:
 - a.** The petitioner's name, address, and telephone number;
 - b.** If the petitioner is not the record title owner of the property, the property owner's name, address, telephone number, and a written consent to the proposed action set forth in the petition;
 - c.** The petitioner's interest in the property (owner, lessee, etc.);
 - d.** The address of the property at issue in the petition;
 - e.** A list of the names and addresses of all current, abutting property owners (including those across any street) as indicated in the most recent Assessor's records;

Section 47.3.2(B)(continued)

- f.** A map showing the geographic location of the property at issue in the petition; the existing and proposed aquifer protection overlay zone boundaries; and the proposed development of the property;
 - g.** Documentation, certified by a hydrogeologist that the Commission’s delineation of the boundaries are not in accordance with regulations adopted by the DEP Commissioner;
 - h.** The petition processing fee:
 - i.** Such other relevant information as the Commission deems necessary to make an informed decision concerning the petition.
- 3.** The petitioner bears the burden of proving that the Commission failed to properly delineate the boundaries of the Aquifer Protection Overlay Zone as provided by law.
 - 4.** An affirmative vote of two-thirds (2/3) of the members of the Commission present and voting, but in no event fewer than five (5) votes, is required to adopt a challenge petition-initiated amendment of the Aquifer Protection Overlay Zone boundaries.
- C.** The boundaries of the Aquifer Protection Overlay Zone may be amended only after the Commission holds a public hearing at which the parties and the public have an opportunity to be heard concerning the proposed amendments. The hearing shall be noticed, commenced, conducted, and closed as required for an amendment of these Regulations.
 - D.** The Commission’s decision shall be in writing, and if the Commission decides to amend the boundaries, the Commission shall specify the amendment of the aquifer protection zone boundary to be made and shall state the reasons why the change was made. The Commission shall provide a copy of the boundary change to the DEP Commissioner.

47.4 Prohibited Activities in Aquifer Protection Overlay Zones

- 47.4.1** Subject to the provisions of Section 47.4.4 regarding ancillary activities, the activities set forth in this Section 47.4.3 are prohibited in all Aquifer Protection Overlay Zones.
- 47.4.2** Citations to NAICS codes refer to the “North American Industry Classification System” (“NAICS”) codes, copies of which are on file in the Cheshire Planning Department. The NAICS codes listed in this section refer to major groups as a whole and supersede previous Standard Industrial Classification (“SIC”) codes.

47.4.3 Prohibited Activities

- A. The following waste handling and disposal practices: New private or municipal solid waste disposal areas; private or special solid waste disposal areas; regional solid waste disposal areas; resources recovery facilities; transfer stations; biomedical waste treatment facilities and regional processing centers; hazardous waste water facilities; septage disposal areas; publicly-owned treatment works; wastewater treatment systems which discharge to the groundwater other than those which treat domestic sanitary sewage and sanitary sewage generated from public or private restrooms (provided that the primary use of the facility is not prohibited under this section); and potable water treatment residuals. Notwithstanding the provisions of this Section 47.4.3(A), treatment works and wastewater treatment systems owned by, and operated for the benefit of, the Town of Cheshire are not prohibited.
- B. The following waste processing systems: Floor drains, dry wells, or other leaching structures intended to convey waste or spillage to the groundwater, excluding septic systems which receive only domestic sanitary waste and excluding non-contaminated roof drainage or storm water runoff to the ground.
- C. The following facilities for the underground storage or transmission of petroleum liquids or hazardous materials: Underground storage tanks, underground distribution systems, and liquid fuel pipelines.
- D. The storage, loading, or handling of pavement deicing chemicals.
- E. Airports.
- F. The following textile mills, tanneries, and apparel production facilities: Those which are described in NAICS codes 313 through and including 316 and which specifically engage in dyeing, textile coating or treatment, and fabric printing.
- G. The following wood products manufacturing facilities: Those which are described in NAICS code 321 and which specifically engage in hard or softwood veneer or plywood production, wood preservation, production of reconstituted wood products, and pulp and paper manufacturing.
- H. The following printing and publishing facilities: Those which are described in NAICS code 323 and which specifically engage in platemaking, commercial lithography, photoengraving, and gravure.
- I. The following production facilities: Those described in NAICS codes 324 and 325 and which specifically engage in the production of chemicals, petroleum or products derived from petroleum, or coal.

Section 47.4.3 (continued)

- J.** The following facilities for the production of rubber and miscellaneous plastic products: Those described in NAICS codes 313, 316, 326, and 339 and which specifically engage in the manufacture of coated rubber products, elastomer and resin cements, tires, and tubes.
- K.** The following facilities: Those which are primary metal industries or fabricate metal, clay glass, and electrical parts or engage in manufacturing of metal products, including those described in NAICS codes 327, 331, 332, 333, 335, 336, 334, and 339, and which specifically engage in foundry operations, metal forming, machine shops, chemical processes for mirror or glass coating, metal plating, degreasing shops, and etching operations or which engage in the use, storage, handling, or disposal of hazardous materials.
- L.** Facilities for the generation of electrical power by the means of fossil fuel or nuclear power, with the exception of those facilities intended for the generation of electricity during emergencies and those facilities which utilize natural gas as a fuel.
- M.** The following facilities involving vehicles or petroleum liquids: Those described in NAICS codes 441 and 454 and which specifically engage in the following: (i) The sale of new or used vehicles, boats, or power equipment and which provide product repair and service for such vehicles, boats, or power equipment; (ii) petroleum terminals; (iii) fuel oil dealers; (iv) vehicle service stations; (v) vehicle body repair and paint shops; (vi) vehicle radiator, tire, exhaust, transmission repair shops, tire retreading facilities, and other facilities for the repair and service of internal combustion engines or vehicles powered by them, including all new uses involving the servicing of vehicles and/or power equipment and also including the storage, warehousing, or parking of vehicles in connection with their repair or service; and petroleum distribution, or petroleum fuel dispensing, activities.
- N.** The following facilities for wholesale trade: Those described in NAICS codes 421 and 422 and which specifically engage in coal, ore, and mineral sales; metal and vehicle parts salvage; sales of paints, varnishes, and solvents; and chemical and allied products' sales (with the exception, however, that sales of gases are permitted in the Aquifer Protection Overlay Zone).
- O.** The following personal and business service operations: Those described in NAICS codes 812, 51, and 811 and which specifically engage in dry cleaning, industrial laundering, commercial laundering, construction equipment retail, funeral services (excluding those connected to a municipal sewerage system with industrial pre-treatment), photographic processing operations (excluding those connected to a municipal sewerage system with industrial pre-treatment), and furniture stripping and finishing.

Section 47.4.3 (continued)

- P.** The following laboratory facilities: Those described in NAICS codes 621, 611, and 541 and which specifically engage in biological or chemical research or testing, with the exception of those facilities associated with the testing of a public or private water supply or with photographic processing from radiological examination, or those which are connected to a municipal sewerage system with industrial pre-treatment.
- Q.** Any new residential development which includes discharge of sodium chloride backwash waters from water treatment systems to any groundwater.
- R.** Any new residential development which includes the use of garage floor drains or basement floor drains.
- S.** The initiation of any home occupation which includes any primary activity or use prohibited in this section.
- T.** The production, use, handling, treatment, storage, and/or disposal of hazardous materials if the quantity of such materials so produced, etc. requires reporting to state and/or federal permitting agencies.
- U.** All uses prohibited by Section 31 "Prohibited Uses" of these Regulations and, as applied to the subject property, all uses not permitted in the underlying zoning district within which the subject property is located as set forth in Section 30, Schedule A, "Permitted Uses" of these Regulations.

47.4.4 Any prohibited activity (as defined in this Section 47.4.3) which is conducted as an ancillary activity (as defined in Section 47.2 of these Regulations) may be permitted by the Commission as a part of an Aquifer Protection Overlay Zone permit, provided the ancillary activity meets the following conditions:

- A.** The ancillary activity takes place solely within an entirely enclosed building;
- B.** The total of all ancillary activities to be conducted occupies no more than ten percent (10%) of the floor area of the building, and does not exceed 5,000 square feet, where the activities take place;
- C.** Any hazardous material used in connection with the ancillary activity is stored in the building at all times;
- D.** All waste waters which are generated by the ancillary activity are lawfully disposed of through a connection to a publicly-owned water treatment works;

Section 47.4.4 (continued)

- E. The ancillary activity shall not consist of or involve any of the following:
 - 1. Repair, service, or maintenance of internal combustion engines, vehicles powered by them, nor equipment associated with such vehicles.
 - 2. The underground storage of any hazardous material.
 - 3. The above-ground storage of hazardous material the quantity of which at any one time exceeds one percent (1.0 %) of the reportable quantity for that material set forth in 40 C.F.R. 302.4 or exceeds fifty-five (55) gallons, or its equivalent in kilograms or pounds, whichever quantity is less.
- F. The applicant has applied for permission to conduct the ancillary activity in accordance with Section 47.6 of these Regulations.

47.5 Pre-Existing, Nonconforming Uses

47.5.1 Continuation of Pre-Existing, Nonconforming Uses

- A. Uses which were being lawfully conducted on the date of adoption of this Section 47 (and any amendment thereto) but which became nonconforming under the terms of this Section 47 (and any amendment thereto) are termed “pre-existing, nonconforming uses.”
- B. Such pre-existing, nonconforming uses are permitted to continue pursuant to the terms of this Section 47.5 and Section 24 of these Regulations.

47.5.2 Extension or Expansion of Pre-Existing, Nonconforming Uses

- A. Applications to extend or to expand a pre-existing, nonconforming use shall be made pursuant to Section 24.4 and Section 47.6.1(G) of these Regulations.
- B. The Commission may permit the extension or expansion of a pre-existing, nonconforming use notwithstanding the fact that the use does not comply with the provisions of Section 47.6.4(E) because it is a prohibited activity set forth in Section 47.4.3 of these Regulations.
- C. Extended or expanded pre-existing, nonconforming uses shall conform to the standards, and shall be subject to the conditions, set forth in Section 47.6.5.

Section 47.5.2 (continued)

- D. Extended or expanded pre-existing, nonconforming uses shall be required to conform to the appropriate “Recommendations for Existing and New/Expanded Facilities” found in the DEP publication, “Best Management Practice for the Protection of Ground Water, A Local Official’s Guide to Managing Class V UIC Wells,” referred to in Section 47.6.5(E) of these Regulations.

47.6 Aquifer Protection Overlay Zone Permit

47.6.1 Permit Procedure

- A. No regulated activity, including ancillary activities, shall be conducted within any aquifer protection overlay zone without a Aquifer Protection Overlay Zone permit.
- B. An Aquifer Protection Overlay Zone permit shall be a special permit; however, in lieu of the special permit regulations set forth in Section 40 of these Regulations, the requirements of this Section 47 shall control and supercede the Section 40 requirements for all Aquifer Protection Overlay Zone permits.
- C. Any person proposing to conduct or to cause to be conducted a regulated activity, including any ancillary activities, within an aquifer protection overlay zone shall file the original and eleven (11) copies of an application for a permit with the Cheshire Planning Department on a form provided by it. The application shall include and be accompanied by the following information:
 - 1. The applicant's name, address, and telephone number.
 - 2. If the applicant is not the record title owner of the property, the property owner's name, address, telephone number, and a written consent to the proposed action set forth in the application.
 - 3. The applicant's interest in the property (owner, lessee, etc.).
 - 4. The address of the subject property.
 - 5. The application processing fee.
 - 6. A list of the names and addresses of all current, abutting property owners (including those across any street) as indicated in the most recent Assessor's records.
 - 7. An A-2 Zoning Location Survey of the subject property, drawn to a scale of not fewer than 100 feet to the inch, prepared by a licensed professional engineer, a licensed registered land surveyor, or a registered landscape architect (all licensed to practice in the State of Connecticut), containing the following information:

Section 47.6.1(C)(7) (continued)

- a.** The geographic location of the subject property, including the names of all current, abutting property owners (including those across any street) as indicated in the most recent Assessor's records;
 - b.** The proposed development of the property, including the location of each of the areas to be used at the site and their intended purpose;
 - c.** The zoning district boundary lines and the aquifer protection overlay zone boundary lines; and
 - d.** The distance to the nearest public or private drinking water supply well, to streams classified as AA by the DEP or which are tributary to a public drinking water supply, and to wetlands.
- 8.** Subject to the terms of Section 47.6.1(C)(8)(a) and (b) below, a report, prepared, sealed, and certified by a Certified Hazardous Materials Manager, providing the following documentation:
 - a.** If the Certified Hazardous Materials Manager certifies that the quantity of hazardous material that will be used, handled, stored, generated, treated, or disposed of on the property at any one time is less than one percent (1.0 %) of the reportable quantity for that material set forth in 40 C.F.R. 302.4 or that it is no more than fifty-five (55) gallons, or its equivalent in kilograms or pounds (whichever quantity is less), then the report required by this Section 47.6.1(C)(8) shall contain only that information required by subsections (c), (d), (e), (f), (g), and (h).
 - b.** If no hazardous material will be used, handled, stored, generated, treated, or disposed of on the property, then the report required by this Section 47.6.1(C)(8) shall contain only that information required by subsections (c), (d), and (f).
 - c.** A description of the purpose and nature of the proposed regulated activity and of all processes and activities performed to undertake the regulated activity, including all ancillary activities.
 - d.** A description of the type, amount, chemical composition, and means of disposal of any waste (including wastewater, but excluding sanitary waste) generated or to be generated in connection with the proposed activity and any ancillary

Section 47.6.1(C)(8d) (continued)

activities. If any wastewater is or will be discharged to a water of the State, the applicant shall submit a plan, prepared by a professional engineer licensed to do business in the State of Connecticut, detailing all points at which such discharge occurs or will occur.

- e. A description of the type, amount, and chemical composition of all hazardous materials that will be used, handled, stored, generated, treated, or disposed of on the property.
 - f. Whether public sanitary sewers are available or proposed at the location.
 - g. The method of using, handling, treating, storing, and disposing of any hazardous materials. The types of containers to be used shall be specified. Disposal provisions shall include provisions for the removal of any fuel or chemical spills (including those contained in a secondary containment system) by a qualified waste hauler, licensed to do business in the State of Connecticut.
 - h. An emergency plan to detect and control leaks and spills of hazardous materials. The plan shall include, but is not limited to, inspections; containment structures; emergency equipment; emergency contacts (fire, police, response teams, etc.); emergency procedures to respond to a spill; notification of appropriate local, state, and federal agencies in the event of a release; and spill clean-up procedures.
 - i. A pollution prevention plan to be implemented in connection with the proposed regulated activity and any ancillary activities. The plan shall provide for complete containment of any hazardous material spills.
 - j. A “best management practices plan” that details the best management practices the owner and operator will implement at the property. The plan shall be consistent with the DEP publication, “Best Management Practice for the Protection of Ground Water, A Local Official’s Guide to Managing Class V UIC Wells,” prepared by Oswald Inglese, Jr., P.E., dated September 21, 1992, as it may be amended from time to time. The Guide is available for reference in the Cheshire Town Planner’s office.
9. A storm water runoff management plan for all new development within an aquifer protection overlay zone which plan shall be designed to prevent pollution of the ground water and shall conform to the requirements of Section 47.6.5(A)(4) of these

Section 47.6.1(C)(9) (continued)

Regulations. The plan shall be prepared by a professional engineer licensed to do business in the State of Connecticut and shall also identify the means of, and the persons responsible for, the maintenance of the storm water controls and the drainage structures after construction.

- 10.** Such other relevant information as the Commission deems necessary to make an informed decision concerning the application.
- D.** The Commission may, by a majority vote of its membership (that is, by not fewer than five (5) votes), waive specific submittal requirements, provided the applicant has submitted a written waiver request simultaneously with its application and provided the request is supported by good cause and the information is not required by the Commission to make a decision on the application.
- E.** The applicant bears the burden of proving that the application complies with the provisions of this Section 47, that the proposed regulated activity does not or will not pose a reasonable ground for concern for pollution of the ground water, that the proposed regulated activity does not pose a reasonable ground for concern of a threat to existing or potential well fields, that storm water discharge from the subject property is managed in a manner that prevents pollution of the ground water; and that the permit should be granted.
- F.** If the applicant proposes to conduct any ancillary activities, he bears the burden of proving that the application complies with the provisions of Section 47.4.4 of these Regulations.
- G.** Expansions or Extensions of Pre-Existing, Nonconforming Uses
 - 1.** If the applicant proposes to extend or expand a pre-existing, nonconforming use pursuant to Section 24.4 and 47.5.2 of these Regulations, he shall apply for an Aquifer Protection Overlay Zone permit pursuant to this Section 47.6.
 - 2.** The application shall include a certification by a Certified Hazardous Materials Manager that the extended or expanded use conforms to the appropriate "Recommendations for Existing and New/Expanded Facilities" found in the DEP publication, "Best Management Practice for the Protection of Ground Water, A Local Official's Guide to Managing Class V UIC Wells," prepared by Oswald Inglese, Jr., P.E., dated September 21, 1992, as it may be amended from time to time. The Guide is available for reference in the Cheshire Town Planner's office.

47.6.2 Notice of the Application

- A.** Notice of the application shall be provided to the Cheshire Inland Wetlands and Watercourses Commission as required by Section 8-3c of the General Statutes. The applicant shall provide such notice by submitting copies of the application and all supporting documentation to the Commission staff not later than the day the applicant submits the application to the Cheshire Planning Department.
- B.** Notice of the application shall be provided to adjoining municipalities as required by Section 8-3h of the General Statutes. The applicant shall provide such notice by sending copies of the application and all supporting documentation to all affected municipalities and to the planning and zoning commission of such municipalities by certified mail, return receipt requested, within two (2) business days after the applicant submits the application to the Cheshire Planning Department.
- C.** Notice of the application shall be provided to water companies as required by Section 8-3i of the General Statutes. The applicant shall provide such notice by sending copies of the application and all supporting documentation to all affected water companies by certified mail, return receipt requested, within two (2) business days after the applicant submits the application to the Cheshire Planning Department.
- D.** If the regulated activity, including any ancillary activities, involves the use or storage of hazardous material the quantity of which at any one time exceeds one percent (1.0%) of the reportable quantity for that material set forth in 40 C.F.R. 302.4 or which exceeds fifty-five (55) gallons, or its equivalent in kilograms or pounds, whichever quantity is less, then notice of the application shall be provided to the DEP and DPH. The applicant shall provide such notice by sending copies of the application and all supporting documentation by certified mail, return receipt requested, within two (2) business days after the applicant submits the application to the Cheshire Planning Department.
- E.** Not later than the first day of the public hearing on the application, the applicant shall file with the Commission, an affidavit confirming that the requirements of Section 47.6.2(A) through 47.6.2(D) have been met. The affidavit shall list the names and mailing addresses of the persons and agencies notified and shall have attached copies of the certified and return receipts.
- F.** The applicant's failure to comply with the requirements of Section 47.6.2 shall be cause for the Commission to deny the application.
- G.** Failure of any notified agency, town, or entity to provide the Commission with comments concerning the application shall not be a reason to delay the Commission's decision on the application nor shall it be a reason to deny the application; however, the Commission's decision may be delayed

Section 47.6.2(G) (continued)

pursuant to Section 8-7d(e) of the General Statutes concerning an application which required notice to the Cheshire Inland Wetlands and Watercourses Commission.

47.6.3 Public Hearing Requirement

- A. The Commission shall hold a public hearing at which the parties and the public shall have an opportunity to be heard concerning the application.
- B. The public hearing shall be noticed, commenced, conducted, and closed as required for a special permit being considered by the Commission pursuant to Section 40 of these Regulations.
- C. The published notice of the hearing shall be in a newspaper having a general circulation in the Town of Cheshire and in each town where the affected aquifer, or any part thereof, is located.
- D. In addition to providing notice of the application as required in Section 47.6.2(A) through 47.6.2(D), the applicant shall provide notice of the public hearing to be held on the application to all agencies, towns, or entities which were given notice of the application. The applicant shall provide such notice, at least ten (10) days before the first day of the hearing, by mailing a copy of the public hearing notice by certified mail, return receipt requested. The applicant's failure to comply with the requirements of this Section 47.6.3(D) shall be cause for the Commission, in its discretion, to postpone the hearing and/or to deny the application.
- E. Not later than the first day of the public hearing on the application, the applicant shall file with the Commission, an affidavit confirming that he has complied with the requirements of Section 47.6.3(D). The affidavit shall list the names and mailing addresses of the persons and agencies notified and shall have attached copies of the certified and return receipts.
- F. The Commission may also send notice of the public hearing (seeking information and comment) to such other agencies as it deems appropriate, including but not limited to, the DEP and DPH.
- G. Failure of any notified agency, town, or entity to provide the Commission with comments concerning the application shall not be a reason to delay the Commission's decision on the application nor shall it be a reason to deny the application; however, the Commission's decision may be delayed pursuant to Section 8-7d(e) of the General Statutes concerning an application which requires notice to the Cheshire Inland Wetlands and Watercourses Commission.

47.6.4 Decision-Making

- A. The Commission shall decide the application within the same time period as required for the Commission's decision concerning a special permit pursuant to Section 40 of these Regulations.

Section 47.6.4 (continued)

- B.** The Commission's decision shall be in writing and shall include the reason for it.
- C.** The Commission shall base its decision on the record before it and on the provisions of these Regulations, in particular this Section 47, and on the relevant State statutes and regulations.
- D.** The Commission may deny an application; it may grant an application as submitted; or it may grant an application subject to such terms, conditions, limitations, or modifications of the proposed activities which are reasonably related to the purpose of aquifer protection and intended to carry out the legislative findings and purposes of Section 47.1 of these Regulations.
- E.** The Commission may grant an Aquifer Protection Overlay Zone permit only if the Commission finds that the application complies with the provisions of this Section 47, that the proposed regulated activity does not or will not pose a reasonable ground for concern for pollution of the ground water, that the proposed regulated activity does not pose a reasonable ground for concern of a threat to existing or potential well fields, that storm water discharge from the subject property is managed in a manner that prevents pollution of the ground water; and that the permit should be granted. In making these findings, the Commission shall consider the following:
 - 1.** The size and intensity of the proposed regulated activity;
 - 2.** The nature, toxicity, and quantities of hazardous materials to be employed and their frequency and manner of use.
 - 3.** The proximity of the proposed activity to existing and potential well fields.
 - 4.** The nature of the subject property, including its area, topography, and soil conditions, which could affect the infiltration of spilled materials.
 - 5.** The location, arrangement, design, and estimated effectiveness of any structures meant to contain spilled materials.
 - 6.** Whether access to the property by public or private streets and driveways enables a prompt response to a spill or other emergency at the property which could impact the aquifer.
 - 7.** Whether the application complies with all the requirements of this Section 47 and other applicable sections of the Zoning Regulations and with the Plan of Development and Conservation of the Town.

Section 47.6.4 (continued)

- F.** The Commission may permit the operation of any ancillary activity proposed by the applicant as a part of an Aquifer Protection Overlay Zone permit only if the Commission finds that the application complies with the provisions of this Section 47 and the specific requirements of Section 47.4.4.
- G.** Expansions or Extensions of Pre-Existing, Nonconforming Uses
 - 1.** The Commission may permit the extension or expansion of a pre-existing, nonconforming use pursuant to Section 24.4 and Section 47.5.2 of these Regulations notwithstanding the fact that the use does not comply with the provisions of Section 47.6.4(E) because it is a prohibited activity set forth in Section 47.4.3 of these Regulations.
 - 2.** If the Commission permits such an extension or expansion, the use shall conform to the standards, and shall be subject to the conditions, set forth in Section 47.6.5.
 - 3.** If the Commission permits such an extension or expansion, it shall require the extended or expanded use to conform to the appropriate “Recommendations for Existing and New/Expanded Facilities” found in the DEP publication, “Best Management Practice for the Protection of Ground Water, A Local Official’s Guide to Managing Class V UIC Wells,” referred to in Section 47.6.5(E) of these Regulations.

47.6.5 Permit Standards and Conditions

- A.** Every regulated activity, including ancillary activities, authorized pursuant to an Aquifer Protection Overlay Zone permit shall conform to the following standards:
 - 1.** Storage of hazardous materials within an aquifer protection overlay zone shall conform to the following requirements:
 - a.** The total of any hazardous material produced annually or stored at the facility at any time shall not exceed fifty percent (50%) of the reportable quantity for that material set forth in 40 C.F.R. 302.4.
 - b.** Hazardous materials shall be stored in an enclosed structure or under a roof which minimizes storm water entry to the primary and secondary containment areas.
 - c.** Floors within a structure where hazardous materials may be stored shall be coated to protect the surface of the floor from deterioration due to spillage of any such materials. All structures which may be used for storage or transfer of hazardous materials shall be protected from storm water run-on and ground water intrusion.

Section 47.6.5(A)(1) (continued)

- d.** Hazardous materials shall be stored within an impermeable, structurally diked containment area with a minimum secondary containment of at least 150% to contain any leaks or spills with no overflow of released hazardous materials from the containment area. The containment area shall have no drains.
 - e.** Hazardous materials shall be stored in a manner that will prevent the contact of chemicals with such hazardous materials so as to create a hazard of fire, explosion, or the generation of toxic substances.
 - f.** Hazardous materials shall be stored only in a container that has been certified by a state or federal agency or the American Society of Testing Materials as being suitable for the transport or storage of such hazardous materials.
 - g.** Hazardous materials shall be stored only in areas that are secured against entry by the public.
 - h.** These storage requirements are intended to supplement, and not to supersede, any other applicable requirement of federal, state, or local law, including applicable requirements of the Resource Conservation and Recovery Act of 1976, as amended.
- 2.** No floor drains, dry wells, or other infiltration devices or appurtenances which allow the release of waste water to the ground shall be installed, used, or maintained.
 - 3.** No discharge to the ground in an aquifer protection overlay zone shall be made unless such discharge is permitted by applicable law, including, but not limited to, Section 22a-430 of the General Statutes.
 - 4.** Storm water runoff management for all new development within an aquifer protection overlay zone shall be designed to prevent pollution of the ground water and shall conform and be maintained to the following requirements:

 - a.** Prior to discharge and aquifer recharge within an aquifer protection overlay zone, all storm water runoff shall be pre-treated to remove at least eighty percent (80%) of particulate and dissolved pollutants.
 - b.** Prior to discharge and aquifer recharge, all storm water runoff associated with a regulated activity authorized

Section 47.6.5(A)(4b)(continued)

pursuant to an Aquifer Protection Overlay Zone permit shall be pre-treated to remove at least eighty percent (80%) of particulate and dissolved pollutants, including those pollutants associated with road and parking lot runoff.

- c.** Infiltration of clean or pre-treated storm water runoff shall be maximized for all new development in aquifer protection overlay zones, except in those areas subject to an unusually high risk of hazardous material spillage.
 - d.** Acceptable methods of infiltrating storm water runoff from paved or other impervious surfaces include the following: Open vegetated basins, buffer strips, and depressions.
 - e.** The Commission may supplement these storm water runoff standards for a particular application as necessary to adopt appropriate recommendations of the Cheshire Inland Wetlands and Watercourses Commission contained in that Commission's report pursuant to General Statutes, Section 8-3c(b).
- 5.** All regulated activities, including ancillary activities, shall comply with all appropriate federal, state, and local standards for the collection, handling, manufacture, use, storage, transfer, and disposal of all hazardous waste.

B. Each permit granted shall be subject to the following conditions:

- 1.** That the owner or operator of an approved regulated activity shall complete all work and comply with all conditions of approval within five (5) years after the date a copy of the permit is filed and recorded with the Cheshire Town Clerk pursuant to Section 8-3c(b) and Section 8-3d of the General Statutes. Failure to complete all such work and comply with all such permit conditions shall render the permit subject to being declared null and void by the Commission after a hearing held by the Commission on the matter. The Commission may, however, extend the time to complete the work and to comply with permit conditions, for good cause shown in an application for extension filed by the owner or operator no fewer than sixty (60) days before date the time to complete and comply will expire.
- 2.** That the owner of an approved regulated activity shall file and record a copy of the permit with the Cheshire Town Clerk as set forth in Section 8-3c(b) and Section 8-3d of the General Statutes within thirty (30) days of the date the Commission approves the permit.

Section 47.6.5(B) (continued)

3. The owner or operator of an approved activity shall comply with the “As-Built Survey and Certificate of Occupancy” requirements of Section 40.7 of these Regulations.
- C. By accepting a permit, the owner shall be deemed to have granted an irrevocable license to the Town of Cheshire and to the Regional Water Authority, acting by their respective enforcement agents and consultants, to inspect the property to determine if the activities being conducted at the property conform to the terms of the Commission’s permit and any permit conditions and also to address any emergency circumstances.
- D. If the regulated activity, including any ancillary activities, involves the use or storage of hazardous material the quantity of which at any one time exceeds one percent (1.0 %) of the reportable quantity for that material set forth in 40 C.F.R. 302.4 or exceeds fifty-five (55) gallons, or its equivalent in kilograms or pounds, whichever quantity is less, then the Commission may attach the following conditions to the permit:
1. That the owner and operator hire a Certified Hazardous Materials Manager to conduct periodic inspections of the property and operations there to determine if the best management practices plan is being followed. Within ten (10) days after his inspection, the Manager shall prepare and submit a sealed, written report to the Commission certifying that the operations are being conducted in accordance with the best management practices plan. The cost of such inspections and report shall be borne by the owner or operator. The inspections and reports may be required at any interval deemed appropriate by the Commission, but not more frequently than monthly.
 2. That the owner or operator hire a Certified Hazardous Materials Manager to conduct periodic inspections of catch basins and other protective devices to determine if they are functioning as required. Within ten (10) days after his inspection, the Manager shall prepare and submit a sealed, written report to the Commission certifying that catch basins and other protective devices are functioning as required. The cost of such inspections and report shall be borne by the owner or operator. The inspections and reports may be required at any interval deemed appropriate by the Commission, but not more frequently than monthly.
 3. That the owner or operator hire a Certified Hazardous Materials Manager to conduct periodic evaluations of the use(s) being conducted at the site to determine if they are being conducted as proposed and in accordance with the terms of the Commission’s permit. Within ten (10) days after his inspection, the Manager shall prepare and submit a sealed, written report to the Commission certifying that the use(s) are being conducted as proposed and in accordance with the terms of the Commission’s

Section 47.6.5(D3) (continued)

permit and exemption (if any). The cost of such evaluations and report shall be borne by the owner or operator. The evaluations and reports may be required at any interval deemed appropriate by the Commission, but not more frequently than monthly.

4. That the owner or operator establish a record-keeping system to account for the types, quantities, and disposition of any such hazardous materials which are used, stored, or otherwise handled at the property or which are discharged or emitted therefrom. The records shall identify the individual(s) who are responsible for maintaining the record-keeping system. The records shall be maintained at the property and shall be available for inspection there, during normal business hours, by the Town's and the Regional Water Authority's enforcement agents and consultants.
- E. The Commission may attach such additional conditions to the permit as it deems necessary to protect the public health, safety, convenience, and property values, provided such conditions are related to the purpose of aquifer protection and intended to carry out the legislative findings and purposes of Section 47.1 of these Regulations. In determining such additional conditions, the Commission shall be guided by the DEP publication, "Best Management Practice for the Protection of Ground Water, A Local Official's Guide to Managing Class V UIC Wells," prepared by Oswald Inglese, Jr., P.E., dated September 21, 1992, as it may be amended from time to time. The Guide is available for reference in the Cheshire Town Planner's office.

47.6.6 Other Approvals and Permits

- A. If the applicant is required by these Regulations or by the Subdivision and Other Land Use Regulations to obtain planning and/or zoning approval (special permit, site plan, subdivision approvals, etc.) to conduct the regulated activity, including ancillary activities, the applicant shall apply for such approvals simultaneously with the Aquifer Protection Overlay Zone application.
- B. If the applicant is required by the Regulations of the Cheshire Inlands Wetland and Watercourses Commission to obtain its approval to conduct the regulated activity, including ancillary activities, the applicant shall apply for such approval no later than the date the applicant submits the Aquifer Protection Overlay Zone application.
- C. No person shall conduct any regulated activity, including ancillary activities, within an aquifer protection overlay zone which also requires such zoning, subdivision, and/or inland wetlands approval without first having obtained that approval.
- D. No permit granted by the Commission pursuant to this Section 47 shall relieve any person of any other obligations under federal, state, or local law.

47.7 Enforcement

The Commission shall have all the rights and remedies provided by law for the enforcement of this Section 47 and the terms and conditions of the Commission's decisions and permits. Such enforcement rights and remedies include, but are not limited to, issuance of notices of violation, cease and desist orders, and/or orders to correct violations (and recording them on the land records); seeking the judicial assessment of fines, civil penalties, costs, fees, and expenses (including attorney's fees); and seeking court orders for injunction, correction and/or removal of violations, and imprisonment of violators.

47.8 Modification or Revision of A Regulated Activity

Any substantial or material change, enlargement, extension, or moving of an approved regulated activity, and any substantial or material reconstruction, enlargement, extension, moving, or structural alteration of a building or structure used in connection therewith, shall be submitted to the Commission for approval as for a permit as provided in Section 47.6 of these Regulations.