

## **CHAPTER 25. ZONING**

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## CHAPTER 25. ZONING

### DIVISION H. OVERLAY DISTRICTS

#### Article LI. Source Water Protection Overlay (SWPO) Districts.

##### § 25-511. Purpose and Objectives.

The purpose of the SWPO Districts is to protect public health, safety and welfare by preventing adverse impacts due to contamination of water or loss of water in aquifers which currently serve as groundwater supply sources. The aquifers of Augusta County are integrally connected with and recharged by waters at the land surface and are therefore particularly vulnerable to spills and discharges of toxic and hazardous materials. These overlay districts are intended to preserve existing sources of drinking water to meet present and future public need.

The SWPO District zoning contained herein provides a framework for certain land use activities that have the potential to adversely impact groundwater quality in delineated groundwater recharge areas. The degree of water supply protection sought by the provisions of this article is considered reasonable for regulatory purposes based on the standards and policies of the Virginia Department of Health, Office of Drinking Water, and accepted hydrogeological methods of study. This does not imply that groundwater will not be impacted by natural causes or those unanticipated land uses located within or outside of the SWPO Districts.

##### § 25-512. Applicability and Enforcement.

A. This article shall apply to all lands within the County of Augusta which are identified as being in a SWPO District established by this article. Other areas deemed to be essential to the protection of public groundwater supply sources may be included in a SWPO District in accordance with § 25-514. A copy of the Source Water Protection Map Set shall be filed in the Community Development Department and shall be available for inspection by the public. Properties or portions of that property located within a SWPO District shall be governed by the restrictions contained herein.

B. Any person who fails to comply with any of the requirements or provisions of this article shall be subject to the penalties listed in division J of this chapter. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the county to be a public nuisance and abatable as such.

C. Surface water supply protection areas are excluded.

## § 25-513. Definitions.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this article:

Aquifer. A geological formation, group of formations or part of a formation that contributes to a public groundwater supply source or that is capable of storing and yielding groundwater to public wells and springs.

Best Management Practices (BMPs). Improved environmental protection practices including but not limited to practices applied to stormwater, agriculture, well drilling, industrial, land development, and other land use applications. These are performance or design standards established to minimize the risk of contaminating groundwater or surface waters while managing the use, manufacture, handling or storage of chemicals that could potentially contaminate groundwater.

Class II Injection Wells. Wells that inject fluids associated with oil and natural gas production.

Class V Injection Wells. A shallow well used to place a variety of fluids at shallow depths below the land surface. Examples of Class V injection wells include: motor vehicle waste disposal wells, large capacity cesspools, storm water drainage wells, aquifer remediation wells, and large capacity septic systems.

Large Concentrated Animal Feeding Operation (CAFO). An animal feeding operation that confines or stables at any one time for a total of 45 days or more in any 12-month period at least the number of animals described below and discharges or proposes to discharge from the production or the land application areas and thus would require coverage under a Virginia Pollutant Discharge Elimination System (VPDES) permit. The quantities would include but not be limited to:

- a. 700 mature dairy cattle, whether milked or dry;
- b. 1,000 cattle other than dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;
- c. 55,000 turkeys;
- d. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- e. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- f. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

Contamination. An impairment of water quality by the introduction of contaminants, including chemicals, radionuclides, biologic organisms, or other extraneous matter into a water source, whether or not it affects the potential or intended beneficial use of water.

Disposal. The deposition, injection, dumping, spilling, leaking, incineration, or placing of any hazardous materials into or on any land or water so that such hazardous materials or any constituent thereof may enter the environment or be discharged into any waters including groundwater.

Groundwater Recharge. The portion of precipitation and/or surface runoff that infiltrates into the subsurface and reaches the water table or portion of the subsurface that is saturated, and then may ultimately flow to wells, springs, or streams.

Hazardous Material. A material that may pose a present or potential hazard to the groundwater supply when improperly stored, transported or disposed of or otherwise managed including without exception hazardous materials identified and listed in accordance with the Resource Conservation and Recovery Act of 1976.

Karst. Geologic setting where dissolution of bedrock (primarily carbonate bedrock such as limestone or dolomite) forms subsurface voids capable of rapid transmission of water. The subsurface features can be unseen or evident as sinkholes, caves, sinking streams, and springs that make the underlying aquifer particularly susceptible to contamination from activities at the land surface.

Leachable Material. Material, including solid wastes, sludge, and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

Nonconventional Sewage Disposal System. See Augusta County Code Section 11-13.A.2.

On-Site Sewage System. A Type I, Type II, Type III or Type IV sewage disposal system as referenced in 12 VAC § 5-610-250 of the Sewage Handling and Disposal Regulations.

Person or Party. An individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Public Groundwater Supply Source. A well, spring or other groundwater source that is owned or leased by a governmental unit or agency and is currently utilized or is currently under active development as a public water supply. The term shall exclude any source utilized as a water supply for a transient or other non-community water system.

Secondary Containment System. A supplemental tank, catchment pit, pipe, liner or vessel that meets the requirements of 40 CFR § 264.193 or successor requirements and limits and contains liquid or chemical leaking or leaching from a primary containment area, where monitoring and product recovery can be conducted.

Sinkhole. Any surface depression formed by the removal (typically underground) of water, surficial soil, rock, or other material in a karst setting.

Source Water Protection Overlay (SWPO) District. The zoning district established to protect public groundwater supply sources and overlaying other zoning districts in the jurisdiction of Augusta County. This district includes specifically designated groundwater recharge areas that collect and convey groundwater recharge to public groundwater supply zones.

Spill Containment and Prevention Plan. A working document for the facility which addresses storage and secondary containment, spill response, and waste disposal.

Underground Storage Tank. Any one or any combination of tanks, including connecting pipes, used to contain an accumulation of petroleum products or other products that may adversely contaminate groundwater quality, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground.

**§ 25-514. Boundaries of SWPO Areas.**

A. Area 1 SWPO Districts include areas within a 1,000-foot fixed radius measured in a flat horizontal plane without regard to changes in ground elevation around a public groundwater supply source. Their purpose is to protect wells and springs from the accidental or intentional introduction of contaminants into the aquifer from spills, surface runoff, or leakage from storage facilities or containers. Any additional Area 1 boundaries shall be established by ordinance adopted by the Board of Supervisors, without hydrogeologic studies upon development of future public water sources by the ACSA, Craigsville, Staunton, or Waynesboro.

B. Area 2 SWPO Districts are the defined areas that contribute recharge to a public groundwater supply source. Area 2 is exclusive of Area 1. Area 2 boundaries may be established as deemed necessary, by ordinance adopted by the Board of Supervisors, based on standard hydrogeologic principles, including water table mapping, analytical solutions, dye tracing, aquifer testing, computer models, or other acceptable means, to ensure protection of public groundwater supply sources.

C. The boundaries of any SWPO Area 2 may be revised by the Board of Supervisors, in consultation with the Augusta County Service Authority, where natural or man-made changes have occurred, where more detailed studies have been conducted or undertaken by any qualified agency, or an individual documents the need for such change. The costs incurred by the County to evaluate materials submitted by a party other than the Augusta County Service Authority, including, without limitation, costs of an outside consultant, shall be reimbursed by such party.

D. Interpretations of the boundaries of any SWPO Area shall be made by the Director of Community Development. Should a dispute arise concerning the boundaries of any district, the Board of Supervisors shall make the necessary determination upon appeal.

**§ 25-515. Exempted Uses in Areas 1 and 2.**

The following uses shall be permitted within Source Water Protection Overlay Districts:

A. Agricultural and forestry uses, provided that fertilizers, pesticides, manure and other leachable potential contaminants are used according to prevailing Best Management Practices as prescribed by the appropriate regulatory agency, if applicable. All said potential contaminants must be stored under shelter or in a container or tank. The property owner shall provide specific notification in writing to the applicators under his or her supervision that they are working with pesticides, herbicides, fungicides and rodenticides at a site located in a SWPO District for which particular care is required.

B. Normal on-site residential use.

**§ 25-516. Prohibited Uses in Area 1.**

The following uses shall be prohibited in Area 1:

1. Asphalt processing plants.
2. Chemical manufacturing.
3. Class II injection wells as it relates to oil and gas sites that inject brine or other fluids below the underground source of drinking water.
4. Class V injection wells, as classified in 40 CFR § 144.6 or successor requirements.
5. Dry cleaners that conduct on-site cleaning and store cleaning agents, unless connected to public sewer. Dry cleaning facilities that utilize non-toxic cleaning agents are exempt.
6. Electrical or electronic manufacturing, on-site disposal or recycling facilities.
7. Electroplating facilities, unless connected to public sewer.
8. Extraction of minerals, rocks, gravel, sand or similar materials.
9. Facilities with underground petroleum storage tanks of over 660 gallon capacity or underground petroleum product pipelines.
10. Fertilizer storage facilities (commercial).
11. Funeral homes and mortuaries, unless connected to public sewer.
12. Hazardous materials treatment, storage, generation, or disposal facilities as defined in 40 CFR 260.10 or successor requirements.
13. Junkyards and demolition facilities.
14. Land application of contaminated soils as defined by the State Code, wastewater residuals (sludge), or septage.
15. Large concentrated animal feeding operations.
16. Machine shops (commercial).
17. Photo processing labs, unless connected to public sewer.
18. Railroad or heavy equipment maintenance or fueling facilities.
19. Storage of chemicals or petroleum products in structures for subsequent resale to distributors or retail dealers or outlets.
20. Stormwater discharge into karst solution features, sinkholes or drainage wells.
21. Uncovered stockpiles of leachable materials, including bulk salt stockpiles.
22. Vehicle service and repair (commercial), including motor vehicles, boats and farm equipment.
23. Wood preserving facilities.

**§ 25-517. Prohibited Uses in Area 2.**

The following uses shall be prohibited in Area 2:

1. Class II injection wells, unless proof is provided that the use has an appropriate EPA permit

2. Class V injection wells, unless proof is provided that the use has an appropriate EPA permit
3. Junkyards and demolition facilities

**§ 25-518. Uses Permitted by Special Administrative Permit in Area 2.**

The uses listed in this section shall be permitted within Area 2 only upon the issuance of a Special Administrative Permit by the Director of Community Development in a manner consistent with the provisions of article LVI of division I of this chapter. Special Administrative Permits are to be issued only for uses where the applicant can demonstrate that the proposal meets the standards required by this chapter and the uses will not have an undue adverse impact on the public water supply.

The County may grant approval for a Special Administrative Permit only after written findings of fact are made that all of the following are true:

1. The proposed use is not expected to detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants; and
2. Sufficient recharge to the aquifer is not expected to be inhibited or prevented; and
3. The proposed use complies with all other applicable sections of this ordinance.

The Director of Community Development shall make a determination of whether or not to issue a Special Administrative Permit within 30 days of the receipt of an application.

A. Chemical manufacturing; dry cleaners; electrical or electronic manufacturing, on-site recycling or disposal; or electroplating facilities; which involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The use is connected to public sewer; and
2. The use installs a secondary containment and spill detection and control system for any bulk storage of chemicals, whether underground or above ground; and
3. The applicant submits a Spill Containment and Prevention Plan; and
4. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

B. Asphalt processing plants; extraction of minerals, rocks, gravel, sand, or similar materials; facilities with underground petroleum storage tanks; commercial fertilizer storage facilities; commercial machine shops; railroad or heavy equipment maintenance or fueling facilities; storage of chemicals or petroleum products in structures for subsequent resale to distributors or retail dealers or outlets; and wood preserving facilities which involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The use installs a secondary containment and spill detection and control system for any bulk storage of chemicals, whether underground or above ground; and
2. The applicant submits a Spill Containment and Prevention Plan; and
3. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

C. Funeral homes and photo processing labs which involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The use is connected to public sewer; and
2. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

D. All such uses listed in §25-516 which do not involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The applicant certifies that the use does not involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials; and
2. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

**§ 25-519. On-site Sewage Disposal System Requirements.**

In Area 1 SWPO Districts, no new on-site sewage systems shall be constructed within 250 feet of a public groundwater supply source.

**§ 25-520. Prohibitions on buildings and structures.**

In Area 1 SWPO Districts, no new buildings or structures (except those required for transferring water from a public groundwater supply source into the ACSA water distribution system) shall be constructed within 250 feet of a public groundwater supply source.

**§ 25-521. Criteria for specific utilities.**

A. On-site sewage systems (applies to Area 1 only).

1. The Health Department shall be provided with maps of established SWPO Districts and shall consider source water protection criteria before issuing a new on-site sewage system construction permit.

2. Subject to §25-519 above, a nonconventional sewage disposal system may be constructed on a lot or parcel only in accordance with Chapter 11 of this Code.

B. Water Wells.

1. The Health Department shall be provided with maps of established SWPO Areas and shall consider whether any special conditions should apply before issuing a new water well construction permit.

2. Any party developing additional or expanding groundwater supplies that in aggregate will use more than 10,000 gallons per day (300,000 gallons per month) and are intended to be developed within the designated Sourcewater Protection Overlay District Areas 1 and 2 must obtain a Special Administrative Permit from the County prior to obtaining a VDH and/or DEQ well construction permit/approval. An application for a Special Administrative Permit shall be forwarded to the ACSA for their recommendation. Any costs incurred by the County to evaluate such materials including, without limitation, costs of an outside consultant, shall be reimbursed by the applicant. The application for Special Administrative Permit shall include the following information:

- a. A graphics section or maps containing:
  - i. Topography with land and water features
  - ii. Proposed development
  - iii. Surrounding property 1000 feet beyond the limits of the intended use, with wells and septic system locations
- b. A narrative containing:
  - i. Activity being proposed.
  - ii. List and quantity of materials being used and stored on site
  - iii. Method of wastewater disposal and quantity of materials being discharged
  - iv. Proposed water supply source and quantity.
  - v. Field survey summary
  - vi. Groundwater management plan addressing practices during and after construction, in addition to a contingency plan if existing wells on surrounding property 1000 feet beyond the limits of the intended use experience a significant reduction in yield or become contaminated
  - vii. Assessment of well drilling and testing, if applicable
- c. New water wells drilled in Area 1 shall meet the Class IIIB well construction requirements of the VDH Private Well Regulations. In addition, geothermal wells shall meet the Class IIIB grouting requirement of the same regulations.
- d. Unused wells in SWPO Districts shall be properly abandoned in accordance with the applicable private well regulations of the Virginia Department of Health

### 3. Standards

The County may grant approval for a Special Administrative Permit only after written findings of fact are made that all of the following are true:

- a. The proposed well(s) is not expected to detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
- b. The proposed well(s), either alone or on a cumulative basis, is not expected to cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;
- c. Sufficient recharge to the aquifer is not expected to be inhibited or prevented.

#### **§ 25-522. Conditional Exemptions.**

A. Exemptions shall be granted only after the Board of Supervisors has determined that there is good and sufficient cause for such exemption and that the granting of such exemption will not result in an unacceptable possibility of hazardous material being discharged in the District or additional risks to public health. In addition, the granting of the exemption will not create nuisances or conflict with local laws or ordinances.

B. Such exemptions shall be granted only if the Board of Supervisors has determined that the exemption will be the minimum required to provide relief from any hardship to the applicant.

C. Before any exemption under this section shall be granted, any applicant proposing a petition for any change in land use or activity that involves any prohibited use that would be located either partially or wholly within a SWPO Area must submit an Operations and Contingency Plan to the County for approval. The County will consult with the Augusta County Service Authority for their recommendation on the Operations and Contingency Plan. Any costs incurred by the County to evaluate such materials including, without limitation, costs of an outside consultant, shall be reimbursed by the applicant.

D. The Operations and Contingency Plan shall contain the following aspects of the activity:

1. Types of prohibited use proposed for the site;
2. Types and quantities of hazardous materials or hazardous wastes that may be used or stored on site;
3. Means to be employed to contain or restrict the spillage or migration of hazardous materials or hazardous wastes from the site into groundwater;
4. Means to be used to contain or remediate accidental spillage of such materials;

5. Means to notify the County Emergency Communications Center, ACSA, and any appropriate federal and state agencies, about any accidental spillage of such materials;

E. The applicant must demonstrate that the proposed use and/or activity would employ, to the maximum extent possible, best management practices to minimize the risk of potential groundwater contamination in the SWPO Area. This demonstration shall also include a professional evaluation by a qualified, state-licensed engineer or geologist that the otherwise prohibited use would minimize the risk of potential groundwater contamination based upon the proposed use, site soils, site geology, and any other relevant factors.

F. The County shall review, and shall approve or reject any Operations and Contingency Plan prior to the Board of Supervisors approving or denying the application for a change in land use or activity. Upon receipt of an application for Conditional Exemption and the approved Operations and Contingency Plan, the Director of Community Development shall send written notice to the Augusta County Service Authority and forward the request to the Board of Supervisors for their consideration. In the event that the Operations and Contingency Plan is rejected by the Department of Community Development, the applicant may appeal its decision to the Board of Supervisors. In such a case, the Board of Supervisors shall consider the Operations and Contingency Plan together with the application for a change in land use or activity.

G. Unless otherwise provided by the Board of Supervisors, an exemption granted pursuant to this section, shall be issued to the applicant and shall be non-transferable.

#### **§ 25-523. Sourcewater Protection Overlay Areas.**

Sourcewater Protection Overlay Area 1 shall consist of a one thousand foot (1000') radius around each of the following sources and are further identified on maps entitled "SWP Mapsets" which are declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development:

- Augusta Springs Spring
- Augusta Springs Well
- Berry Farm Spring
- Berry Farm Well #1
- Berry Farm West Well
- Berry Farm East Well
- Blue Hole
- Churchville Wells #1-8
- Craigsville Wells #1-4
- Craigsville Old Spring
- Craigsville New Spring
- Crimora Mines Well
- Deerfield Spring
- Deerfield Well
- Dices Spring

Gardner Spring  
Harriston Wells #1 and 2  
Hershey Well  
Hurdis Well  
Lyndhurst Well  
Middlebrook Well  
Ridgeview Well  
Vesper View Well

**Blue Hole Source Water Protection Area 2-** The boundary of the Blue Hole Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapset- Map #24, which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

**Churchville Source Water Protection Area 2-** The boundary of the Churchville Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapsets,” which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development. (Ord. 10/28/15)

**Dices Spring Source Water Protection Area 2-** The boundary of the Weyers Cave Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapset- Map #10, which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

**Dooms Source Water Protection Area 2-** The boundary of the Dooms Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapsets,” which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development. (Ord. 10/28/15)

**Harriston Wells Source Water Protection Area 2-** The boundary of the Harriston Wells Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapsets,” which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development. (Ord. 10/28/15)

**Hershey, Hurdis,, Ridgeview Source Water Protection Area 2 -** The boundary of the Hurdis, Hershey, Ridgeview Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapset- Maps #12/13 which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

**Lyndhurst Source Water Protection Area 2 -** The boundary of the Lyndhurst Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapset- Maps #14 which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

**Berry Farm Source Water Protection Area 2** – The boundary of the Berry Farm Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapset – Map #28 which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development. (Ord. 10/26/2016)

**Middlebrook Source Water Protection Area 2** – The boundary of the Middlebrook Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “SWP Mapset – Map #29 which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development. (Ord. 10/26/2016)

**Deerfield Source Water Protection Area 2** – The boundary of the Deerfield Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled “Public Ground Water Facility Map Deerfield Wells & Spring SWP Mapset – Map #30” which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development. (Ord. 04/26/2017)

(Ordinance 1/27/2011)