

ORDINANCE NUMBER 12
TOWNSHIP OF SOUTH BEND, BLUE EARTH COUNTY, MINNESOTA

**AN ORDINANCE PROHIBITING THE USE OF GROUNDWATER FROM THE
GLACIAL DRIFT FORMATION AS A DRINKING WATER OR IRRIGATION
SOURCE IN LEHILLIER AND PROHIBITING INTERFERENCE WITH THE
REMEDY IN PLACE AT THE LEHILLIER/MANKATO SUPERFUND SITE**

An ordinance prohibiting the use of LeHillier groundwater as a potable water or irrigation supply, by prohibiting the installation or use of potable water supply wells or by any other method; prohibiting interference with the remedy in place at the LeHillier/Mankato Superfund Site (Site); and providing penalties for violations thereof.

WHEREAS, certain properties in the Township of South Bend, Blue Earth County, Minnesota, (Township) have been used over a period of time for commercial, residential, and industrial purposes; and

WHEREAS, in 1981, contamination was identified in groundwater in the LeHillier area of South Bend Township and portions of the City of Mankato, ~~and the area~~ Site was listed on the Superfund National Priorities List (NPL) by the United States Environmental Protection Agency (U.S. EPA); and

WHEREAS, in September 1981, an advisory was mailed to licensed well contractors working in the Mankato area regarding parts of Sections 14 and 23, Township 108N, Range 27W, Blue Earth County, bounded by East Hawley on the west and the Blue Earth River on the east, ~~north,~~ south and ~~south~~ the Minnesota River on the north; and

WHEREAS, in this advisory, well drilling contractors were specifically told that residents with elevated levels of trichloroethene (TCE) had been advised to use an alternate ~~drinking~~ drinking water source and that the Health Department was not advising that contaminated wells be deepened or that new deeper wells be constructed until the source, extent, nature and hydraulics of the contamination were known; and

WHEREAS, the advisory area included approximately 200 homes, most of which were supplied by individual drive-point wells approximately 30 feet in depth; and

WHEREAS, the construction of an alternate groundwater supply well was completed by ~~Blue Earth County~~ the LeHillier Water User District in 1984; and

WHEREAS, the remedy selected for the Site in the U.S. EPA Record of Decision (ROD) signed in 1985 included: extraction of groundwater in the area of highest concentrations, treatment by air stripping, and discharge to the Blue Earth River; control of river recharge and prevention of plume migration toward City of Mankato municipal water wells by pumping existing groundwater flood control wells; the extension of the LeHillier community water system to affected residents and businesses not serviced; and proper abandonment, in accordance with State well codes, of individual wells formerly used as drinking water supplies; and

WHEREAS, recent groundwater sample results show that levels of TCE in portions of LeHillier still exceed the cleanup standard of 2.8 ug/l established in the 1985 ROD (see Attachment X);

ARTICLE III LEHILLIER RESTRICTIONS AND PROHIBITIONS

Section 1. The use of or attempt to use groundwater by any person as potable water or irrigation ~~from within LeHillier within the corporate limits of South Bend Township of Blue Earth County, Minnesota,~~ by the operation, installation or drilling of wells or by any other method is hereby prohibited. The Township of ~~South Bend~~ may operate existing groundwater wells if authorized through a Memorandum of Understanding described in Article V.

Section 2. ~~Pursuant to Local Ordinance 11, Sewer and Water Use Regulations, Article III(B):~~ Restrictions and prohibitions on existing wells and cross connections between private and public water supply systems.

- A- It shall be unlawful to have any cross connections between private well/water systems and the Township Municipal central water system.
- B. ~~Installation of new wells in the water use district for private use is prohibited. As~~ Existing private wells are taken out of service, they shall be abandoned and sealed as per EPA, MPCA and Minnesota Department of Health regulations as they are taken out of service. ~~Wells which are found to have water below acceptable quality standards shall also be abandoned.~~
- C. Wells which are found to have water below acceptable quality standards shall also be abandoned and sealed in conformance with regulations.

Section 3. ~~The construction of wells or other devices to extract groundwater for consumption and irrigation is prohibited.~~ The construction of wells or other devices to extract groundwater for cooling water, or other industrial or commercial purposes, is permitted provided the operation of the well does not exacerbate the contaminant plume, does not draw contaminated groundwater outside of the current area of contamination or into areas for which no groundwater use restrictions exist, or result in some unacceptable human exposure. The person who operates such a well may be liable for costs of exacerbating the groundwater contamination or for damages under common law.

Section 4. Short-term dewatering for the purposes of construction is permitted as long as it is done in accordance with state and federal statutes and regulations and groundwater is managed and disposed of in an appropriate manner as well as in accordance with state and federal statutes and regulations.

Section 5. Damage to, disturbance of, or interference with any element of the constructed response activities, e.g., damage to monitoring wells, installation of a well that may draw contaminated groundwater outside of the current area of contamination, or installation of a well that draws contaminated groundwater into areas for which no groundwater use restrictions exist, are prohibited.

ARTICLE IV PENALTIES AND INJUNCTIVE RELIEF

Any person violating the provisions of this ordinance shall be subject to a fine of up to _____ as established by the Town Board and listed on the Fee Schedule for each violation. Any person that violates this ordinance must close the well within thirty (30) days by methods specified in regulation by the State. The county will close any well that is not closed within thirty (30) days and may recover the cost of completing the closure from the owner of the property on which the

and

WHEREAS, the Township of ~~South Bend~~ desires to limit potential threats to human health, public welfare and the environment from groundwater contamination while facilitating the redevelopment and productive use of properties.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ~~SOUTH BEND TOWNSHIP,~~
~~BLUE EARTH COUNTY, MINNESOTA:~~

ARTICLE I DEFINITIONS

"Board" is the Board of Supervisors of the Township.

"Fee Schedule" is the list of fees and charges established by the Town Board and reviewed on an annual basis.

"LeHillier" is the area within the jurisdictional limits of the Township described as the northeast corner bounded on the north by the East-West Railroad Tracks (owned by Union Pacific at the time of ordinance adoption), bounded on the east and south by the Blue Earth River, bounded on the west by natural limestone bluffs below Hillcrest Healthcare Center (as named at the time of ordinance adoption).

"MPCA" is the Minnesota Pollution Control Agency.

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, ~~political subdivision~~, or any other private sector legal entity, or their legal representatives, agents or assigns.

"Site" is the area known as the LeHillier/Mankato Superfund Site identified in 1981 after discovery of trichloroethene (TCE) contamination in its groundwater.

"Town" or "Township" is the Township of South Bend, Blue Earth County, MN.

"U.S. EPA" is the United States Environmental Protection Agency.

"Water Use District" or "Service Area" is the area within the limits of the Township which the Township Board has defined will be serviced by ~~the~~ municipal wastewater collection and potable water facilities owned and operated by the Township (see Attachment Y).

[Reserved]

ARTICLE II CONTROL BY THE TOWNSHIP BOARD

The Township Board shall have control and general supervision of all groundwater use in LeHillier ~~the area known as LeHillier~~ and shall be responsible for administering provisions of this ordinance to the end that public health, safety and welfare is protected from exposure to contamination related to the LeHillier/Mankato Superfund site.

well is located.

ARTICLE V MONITORING AND ENFORCEMENT OF ORDINANCE

Responsibility for monitoring and enforcing this ordinance resides with the Township Board. By March 31 of each year, or some other date as agreed upon in writing by the Township, MPCA, and U.S. EPA, the Chairman of the Board of South Bend Township will send a letter to the MPCA, with a copy to the U.S. EPA, stating any known violation(s) of the ordinance over the prior year, actions that were taken to correct the violation(s), and current status of the violation (s). In accordance with MN State Statutes, ~~This ordinance must be published and maintained in the same manner as a zoning ordinance and the ordinance must be readily accessible to property owners who may be using or considering using groundwater in the area. The Township shall notify by mail all owners of parcels of land included in the use restriction area of the proposed and final ordinance within LeHillier.~~ This ordinance shall be filed with the register of deed as an ordinance affecting multiple properties. If the lack of public awareness leads to a violation, the Township shall undertake actions to more widely disseminate information about the general provisions of the ordinance.

ARTICLE VI MEMORANDUM OF UNDERSTANDING

The Board of ~~South Bend Township~~ is hereby authorized and directed to enter into a Memorandum of Understanding with the ~~Minnesota Pollution Control Agency (MPCA)~~ for tracking remediated sites and notifying the MPCA of changes to this ordinance. The Memorandum of Understanding specifies that the Township will notify the MPCA, with a copy to the U.S. EPA, at least thirty (30) days prior to modifying or revoking the ordinance or allowing it to lapse (e.g., under "sunset" provisions). This notice should be provided by registered mail to the Director of MPCA. Any updated diagrams from the MPCA or the U.S. EPA showing the size of the pollution plume or its migration will be attached to this ordinance as addendums when they are made available to the Township.

ARTICLE VII REPEALER

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

ARTICLE VIII SEVERABILITY

If any provision of this ordinance or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

ARTICLE IX EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage, approval, and publication as required by law.

ADOPTED: _____
(Date) (Chairman of the Board)

APPROVED: _____
(Date) (Township Clerk)

Officially published in the _____ on the ____ day of _____, 20__.