

By M.S. Whaley No. 31427-15

AN ORDINANCE

Amending Chapter 53 of the Revised Code of General Ordinances to Provide for Prevention of Potential Public Water Supply Pollutants and Providing Penalties for Violations Thereof, and Declaring an Emergency.

WHEREAS, The City of Dayton's Source Water Protection Program, endorsed by the Ohio EPA in 1996, provides protection of the area's drinking water supply from future contamination, ensuring the long-term availability of an abundant supply of safe drinking water; and

WHEREAS, The groundwater in the Great Miami Buried Valley Aquifer underlying the Miami Valley and the City of Dayton is the source of the drinking water supply in this area; and

WHEREAS, The City desires to approach source water protection in a rational and objective manner by instituting pollution prevention measures; and

WHEREAS, The City desires to maintain a leadership role in protection of regional drinking water resources through its own efforts and in cooperation with other local governments and state and federal agencies; and

WHEREAS, To follow guidance from the Ohio EPA, the term "Well Field" is replaced by the term "Source Water" throughout this Chapter, and the Well Field Protection Fund and the Well Field Protection Board are renamed the Source Water Protection Fund and Source Water Protection Board, respectively; and

WHEREAS, The City desires to regulate potential pollutants to the fullest extent authorized by law by enacting this legislation as a measure to ensure the protection and availability of public drinking water supplies; and

WHEREAS, It is determined that such legislation is consistent with the City's policy of protecting water resources; and

WHEREAS, The timely implementation of the ordinances set forth herein is necessary for the prevention of contamination of the water supply and the protection of public health, it is necessary that this ordinance take effect at an early date; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That Sections 53.01 through 53.42, inclusive, and 53.99 of the Revised Code of General Ordinances (R.C.G.O.) be amended to read as follows:

GENERAL PROVISIONS

§ 53.01 Purpose, Scope, and Definitions.

(A) Purpose

The purpose of this chapter is to safeguard the public health, safety and welfare and to provide for the protection and availability of existing and future potable water supply by instituting requirements, standards and criteria for the restriction of substances which are known or potential Health Hazards within specifically defined areas in and around the City's present and future wells and well fields, thereby enhancing the protection of the public potable water supply from risk of contamination.

(B) Scope

(1) The provisions of this Chapter are effective within the City of Dayton corporate limits, except as otherwise provided. This Chapter provides for risk reduction measures pertaining to the protection of the public water supply.

(2) Nothing contained in this Chapter shall be construed so as to interfere with any existing or future lawful requirements that may be, or heretofore were, imposed by any other public body authorized to enact sanitary, health or water pollution abatement restrictions so long as such requirements are consistent with, or more stringent than, the stated purpose of this Chapter.

(3) Nothing contained in this Chapter shall be construed so as to interfere with the duties and powers of the Director of Water as set forth in Section 50.40 of the R.C.G.O.

(C) Definitions

In addition to the definitions contained in Chapter 10 of the R.C.G.O., and Sections 150.200.1 and 150.200.2 of the City of Dayton Zoning Code, the following definitions shall apply to this Chapter unless the context clearly requires otherwise:

Facility Hazard Potential Rating (FHPR). A value from 1-9 which reflects the overall threat to occupational health and safety and potential adverse impacts to groundwater presented by the chemical activity, regulated substances and uses on a zoning lot, with 9 representing the highest threat and 1 representing the lowest threat, that is established as the maximum permitted for the zoning lot.

Globally Harmonized System of Classification and Labeling Chemicals (GHS). System for standardizing and harmonizing the labeling of chemicals as implemented under 29 CFR 1910.1200.

Handle. To place, deposit, store, process, use, produce, dispose of, transport, or Release Regulated Substances; or permit Regulated Substances to be placed, deposited, stored, processed, used, produced, disposed of, transported or Released.

Health Hazard. Posing any of the following hazardous effects: acute toxicity (any route of exposure); skin corrosion or irritation; serious eye damage or eye irritation; respiratory or skin sensitization; germ cell mutagenicity; carcinogenicity; reproductive toxicity; specific target organ toxicity (single or repeated exposure); or aspiration hazard. The criteria for determining whether a substance or mixture of substances may pose a health hazard are detailed in Appendix A to 29 C.F.R. § 1910.1200—Health Hazard Criteria.

Miami Well Field. The Miami Well Field is located within the Well Head Operation District in the City of Dayton, County of Montgomery, State of Ohio, with said boundary identified by the following description:

The point of beginning being the intersection of the west bank of the Great Miami River and the east right-of-way line of the CSX railroad , also being the southwest corner of City Lot# 76667;

Thence northwardly along the west bank of the Great Miami River approximately 2.25 miles or 11,880 feet to the northeast corner of City Lot# 76652;

Thence westwardly along the north lot line of City Lot# 76652 approximately 0.119 miles or 630 feet to the east lot line of City Lot# 76651;

Thence northwardly 0.131 miles or 691 feet to the north lot line of City Lot# 76651;

Thence westwardly approximately 0.493 miles or 2,605 feet along the north lot lines of City Lot#s 76651 and 76627 to the east right-of-way line of Wagner Ford Road;

Thence southwardly approximately 0.926 miles or 4,889 feet along the east right-of-way line of Wagner Ford Road to the east right-of-way line of the CSX railroad;

Thence southwardly approximately 0.658 miles or 3,475 feet along the east right-of-way line of the CSX railroad to the west bank of the Great Miami River to the point of beginning containing 805 acres more or less.

Owner and/or Operator. Any person who occupies, owns, leases, operates, controls, or supervises real property, a business, facility, building, structure or installation within the Source Water Protection Area. Including person(s) that hold the fee simple title to property and person(s) who have acquired any interest in the property by contract, purchase, or otherwise. This includes but is not limited to any part owner, lessee, or licensee.

Regulated Substances. Substances that pose health hazards. Regulated Substances include, but are not limited to, the following:

(A) Hazardous substances as defined in § 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, and in any regulations issued under such Act;

(B) Any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act, 42 U.S.C. § 2011 *et seq.*, and in any regulations issued under such Act;

(C) Substances listed by the U.S. Environmental Protection Agency as “extremely hazardous substances,” “hazardous chemicals,” or “toxic chemicals” pursuant to the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 *et seq.* or pursuant to any regulations issued under such Act;

(D) Chemical substances and mixtures for which the U.S. Environmental Protection Agency has concluded, pursuant to § 5 Toxic Substances Control Act, 15 U.S.C. § 2605 (or regulations issued under said Act), that the manufacture, processing, distribution, use, or disposal thereof presents or will present an unreasonable risk of injury to health or the environment;

(E) Substances that are active ingredients in any pesticide regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*;

(F) Petroleum (including crude oil or any fraction thereof), natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel;

(G) Substances promulgated under the 1996 Safe Drinking Water Act Amendments Unregulated Contaminant Monitoring Program and/or the Contaminant Candidate list;

(H) Substances for which the manufacturer or importer has prepared a Safety Data Sheet or GHS pursuant to 29 C.F.R. § 1910.1200; and

(I) Mixtures containing any of the foregoing at a concentration greater than one percent (1%) of the mixture, or where the total of all carcinogenic ingredients constitute one tenth of one percent (0.1%) of the mixture.

Regulated Substance Activity Inventory Report (RSAIR). A report submitted for a zoning lot in the Source Water Protection Overlay District that includes the Owner and/or Operator's contact information and provides details on the types and amounts of Regulated Substances Handled on the Zoning Lot.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.)

Safety Data Sheet (SDS). Document containing information about the characteristics and actual or potential hazards of a substance as required pursuant to 29 CFR 1910.1200.

Source Water Protection Area (SWPA). The Source Water Protection Area is comprised of two Source Water Protection Districts: the Well Head Operation District and the Water Protection Overlay District.

Total Maximum Daily Inventory (TMDI). A value in pounds that is established as the largest quantity of Regulated Substances permitted to be Handled at any one time on the Zoning Lot, not including Regulated Substances which are excluded or exempted pursuant to Chapter 53 of the R.C.G.O. and/or the Zoning Code.

Water Resource Area (WR). A geographical area between the Water Protection Overlay District and the five-year time of travel boundary, as shown in the attached map.

Well Field Protection Districts. The area composed of the Well Head Operation District (WO) and the Well Field Protection Overlay District (WP) that was in effect prior to the adoption of the Source Water Protection Area.

§ 53.02 Director of Water Department to Administer.

Except as otherwise provided, the Director of the Department of Water for the City of Dayton, or designated agents, hereinafter referred to as Director, shall administer, implement, and enforce the provisions of this chapter.

§53.03 Subject Areas.

The areas subject to the provisions of this chapter are in the Source Water Protection Area which is comprised of the Well Head Operation District and the Water Protection Overlay District as shown on the official zoning map of the City. In addition, the Water Resource Area shall be subject to §§53.04, 53.05, 53.06, 53.07, 53.24, 53.25, 53.26, 53.27, 53.40, 53.41, 53.42, 53.43, and 53.99.

§ 53.04 Determination of Applicability.

It is the responsibility of any Owner and/or Operator of a Zoning Lot within the Source Water Protection Area and/or within the Water Resource Area to determine the applicability of this Chapter as it pertains to their property and/or Use. Failure of the Owner and/or Operator to do so shall not excuse any violation of this chapter.

§ 53.05 Severability.

A finding by any court or other jurisdiction that any part or provision of this ordinance is invalid shall not affect the validity of any other part or provision of this ordinance which can be given effect without the invalid parts or provisions.

§ 53.06 Entrance Upon Private Property.

The Director or authorized designee bearing proper identification is authorized to enter private property within the Source Water Protection Area or the Water Resource Area at any reasonable time with reasonable cause, or with prior notification, for purposes such as inspection, observation, measurement, sampling, and records examination pertaining to the requirements of this Chapter to ensure that activities occurring on the property are in accordance with the provisions of this chapter.

Within the Water Resource Area inspections shall be conducted to determine environmental risk posed by chemical management practices and types and amounts of chemicals, which, if released into the environment, have the potential to adversely impact the City's drinking water.

Upon refusal, the Director or authorized designee may apply for a search warrant to enter upon the property.

§ 53.07 Acceptance of Conservation Easements.

The City Manager is authorized to accept any conservation easement granted by a property owner in connection with any program established by the Source Water Protection Board to reduce the risk of pollution of the public water supply.

Sections. 53.08-53.20 - Reserved.

REPORTING AND PROTECTION REQUIREMENTS

§ 53.21 Determination of the Total Maximum Daily Inventory and Facility Hazard Potential Rating

(A) Total Maximum Daily Inventory (TMDI)

(1) Purpose.

The purpose of the TMDI is to quantify and memorialize the non-conformity of a Zoning Lot for the Handling of Regulated Substances. The City of Dayton first adopted the Well Head Operation District and the Well Field Protection Overlay District restricting the use of Regulated Substances on August 3, 1988. The Zoning Administrator, upon the recommendation of the Director, determined the TMDI of Zoning Lots within the Well Head Operation District and the Well Field Protection Overlay District based upon the Uses of the Zoning Lots at the time that the Districts were adopted, analysis of the RSAIRs, and inspection of the property. Now, with the passage of the amendments to this Chapter and the Zoning Code, the boundaries and the name of the Districts are changed. This change will require the Director to analyze and make a recommendation as to the TMDI of properties that are now in the Source Water Protection Area, but that were not in the Well Field Protection Districts. All of the Zoning Lots located in the Well Field Protection Districts that were nonconforming with respect to the amount of Regulated Substances have been assigned a TMDI. The remaining lots were deemed conforming, and have a TMDI of 160 pounds.

(2) Determination of TMDI for Zoning Lots that were a part of the Well Field Protection Districts.

The Zoning Lots that were a part of the Well Field Protection Districts and continue to be a part of the Source Water Protection Area shall have the same TMDI as they last had in the Well Field Protection Districts, subject to further reduction based upon discontinuance of use or risk point buy downs by the Source Water Protection Fund Board.

(3) Determination of TMDI of Zoning Lots that are in the Source Water Protection Area and were not a part of the Well Field Protection Districts.

For those Zoning Lots that are now in the Source Water Protection Area and that were not in the Well Field Protection Districts, the Zoning Administrator, upon the recommendation of the Director, shall determine the TMDI of the Zoning Lot based upon the uses of the Zoning Lot at the time it became part of the Source Water Protection Area, analysis of the RSAIRs, and inspection of the Zoning Lot.

(4) Prior Determinations.

The TMDI established for properties located in the Well Field Protection Districts and that are also located in the Source Water Protection Area shall remain in effect, subject to further reduction based upon discontinuance of use or Risk Point Buy Downs by the Source Water Protection Fund Board.

(5) Once the TMDI is established for a Zoning Lot, it shall not be exceeded, except as provided for in Section 150.120 of the Zoning Code.

(6) Zoning Lots with Dwellings, Single-Family (attached, detached, or clustered) and Dwellings, Two-Family, shall have a TMDI of 160 pounds.

(B) Facility Hazard Potential Rating (FHPR)

(1) Purpose.

The purpose of the FHPR is to quantify the risk for potential groundwater contamination for the Regulated Substances that comprise the TMDI for a Zoning Lot. While the TMDI limits the amount of Regulated Substances that can be Handled on a Zoning Lot at one time, the FHPR limits the type of Regulated Substances that a Zoning Lot can Handle. The Zoning Administrator, upon the recommendation of the Director, determined the FHPR for a Zoning Lot by deciding the appropriate chemical class and range of Hazard Potential Ratings for each Regulated Substance stored on the Zoning Lot. Then, a weighted average of

all of the Hazard Potential Ratings was performed to determine the FHPR for each Zoning Lot. The FHPR was only assigned to a Zoning Lot that exceeded the 160 pound conforming use. Conforming use properties were not assigned an FHPR. Now, with the passage of the amendments to this Chapter and the Zoning Code, the boundaries and the name of the Districts are changed. This change will require the Director to analyze and make a recommendation as to the FHPR of properties that are now in the Source Water Protection Area, but that were not in the Well Field Protection Districts.

- (2) Determination of FHPR for Zoning Lots that were a part of the previous Zoning Districts.

The Zoning Lots that were a part of the Well Field Protection Districts and continue to be a part of the Source Water Protection Area shall have the same FHPR as they last had in the Well Field Protection Districts, subject to further reduction based upon discontinuance of use or risk point buy downs by the Source Water Protection Fund Board.

- (3) Determination of TMDI of Zoning Lots that are in the Source Water Protection Area and were not a part of the Well Field Protection Districts.

For those Zoning Lots that are now in the Source Water Protection Area and that were not in the Well Field Protection Districts, the Zoning Administrator, upon the recommendation of the Director, shall determine the FHPR of the Zoning Lot based upon the type and quantity of Regulated Substances lawfully Handled on the Zoning Lot at the time it became part of the Source Water Protection Area, analysis of the RSAIRs, and inspection of the Zoning Lot. The Director, subject to approval from the City of Dayton Commission, shall adopt rules and regulations for the determination of the FHPR of these properties.

- (4) Once the FHPR is established for a Zoning Lot, it shall not be exceeded.

(C) This section shall not apply to Zoning Lots owned by the City of Dayton and engaged in municipal water department activities.

§ 53.22. Regulated Substance Activity Inventory Reporting.

- (A) Applicability.

(1) The provisions in this section only apply to Zoning Lots located within the Source Water Protection Area. The provisions in this section shall not apply to Zoning Lots containing only Dwellings, Single-Family (attached, detached or cluster) and Dwellings, Two-Family.

(2) The Owner and/or Operator of every Zoning Lot in the Source Water Protection Area shall have an RSAIR on file with the Director.

(3) For any Zoning Lot in the Source Water Protection Area that was not a part of the Well Field Protection Districts, the Owner and/or Operator shall file an initial RSAIR with the Director within thirty (30) days of the date that this Ordinance was passed.

(4) Before a new Owner and/or Operator of a Zoning Lot occupies the Zoning Lot, the Owner and/or Operator must file an RSAIR with the Director listing the Regulated Substances projected to be Handled on the Zoning Lot.

(5) Before any Owner and/or Operator of a Zoning Lot conducts a different Use on the Zoning Lot, the Owner and/or Operator must submit an RSAIR to the Director listing the Regulated Substances projected to be Handled on the Zoning Lot.

(6) The Owner and/or Operator of a Zoning Lot is required to obtain a Zoning Certificate of Occupancy prior to conducting a different Use on the Zoning Lot.

(7) Every Owner and/or Operator of a Zoning Lot with a TMDI greater than 160 pounds shall file an RSAIR with the Director by December 1 every two (2) years.

(8) The Owner and/or Operator of a Zoning Lot with a TMDI equal to or less than 160 pounds shall maintain an RSAIR on file with the Director, and is required to update the RSAIR within thirty (30) days of any changes in the information contained in the RSAIR.

(9) The Owner and/or Operator of a Zoning Lot that does not have an established TMDI will be inspected annually and must file an RSAIR with the Director on December 1 of every year until the TMDI is established.

(10) The Owner and/or Operator of any Use engaged in agricultural, golf course, recreation and parks, or any activities on City-owned property shall file an RSAIR by December 1 of every year. The RSAIR shall list the total amount of each Regulated Substance that is projected for use on site in the following twelve (12) months whether stored in the Source Water Protection Area or brought in from other locations. The RSAIR shall indicate which Regulated Substances are projected to be stored on site for over seventy-two (72) hours. The RSAIR shall indicate which of the Regulated Substances are for land application, and shall include a Safety Data Sheet for each Regulated Substance.

(11) Where a Person is the Owner and/or Operator of more than one Zoning Lot, an RSAIR shall be filed for each Zoning Lot as required in this section.

(B) Exclusions to Regulated Substance Activity Inventory Reporting.

Any exclusion set forth below applies to Regulated Substance Activity Inventory Reporting only, and any Release or mishandling is subject to the reporting provisions of R.C.G.O.

Section 53.27. Any exclusion granted by this section does not remove or limit the liability and responsibility of any person or Use involved.

(C) The following are excluded from the reporting requirements set forth in R.C.G.O. Section 53.22:

(1) Routine business activities for a Zoning Lot, provided that the total of Regulated Substances does not exceed one hundred sixty (160) pounds at any time.

(2) Regulated Substances for non-routine maintenance or repair of property, provided that the total of Regulated Substances does not exceed four hundred (400) pounds at any time.

(3) Cleaning agents, provided such cleaning agents are packaged for personal or household use or are present in the same form and concentration as a product packaged for use by the general public, and provided the total inventory of such cleaning agents does not exceed one thousand six hundred (1,600) pounds at any time. Cleaning agents containing Chlorinated Compounds are not excluded from reporting.

(4) Medical and research laboratory Use, provided that such Regulated Substances are Handled in containers not to exceed forty (40) pounds and the total inventory of such Regulated Substances shall not exceed two thousand (2,000) pounds at any time.

(5) Melting ice from walking and driving areas of a property or use in water softeners, provided that such Regulated Substances are salts and are stored inside a building that has an impervious floor.

(6) The Regulated Substances contained in an operable Motor Vehicle or watercraft. Except as provided in §53.22(B)(7), the contents of the tanker portion of a tractor trailer are not excluded from reporting.

(7) Regulated Substances being transported within the Source Water Protection Area, provided that the Motor Vehicle transporting the Regulated Substances is in compliance with applicable City ordinances and Federal and Ohio laws and regulations, and provided that the Motor Vehicle is in continuous transit, making delivery, or is stopped for no more than seventy-two (72) hours.

(8) Food or drink for a person or animal, except that Regulated Substances Handled in the manufacture and extraction of such are not excluded from reporting.

(9) Regulated Substances Handled for swimming pool water quality maintenance, provided that the total of Regulated Substances does not exceed eight hundred eighty (880) pounds at any time.

(10) Regulated Substances Handled for on-site paving, pouring of concrete, or construction for which all necessary permits have been obtained and pursuant to the requirements listed in Section 53.29(D).

(11) Regulated Substances contained in equipment for the operation of elevators, escalators, moving walkways, and similar devices that are an integral part of a building or structure.

(12) Regulated Substances contained in equipment used for on-site air-cooling or contained in household appliances.

(13) Cosmetics as defined by Section 321 of Title 21 of the United States Code. Regulated Substances Handled in the manufacture and extraction of cosmetics and warehoused cosmetics are not excluded from reporting.

(14) Office supplies Handled on the premises, in which they are located, provided such supplies are prepackaged in a form ready for use by the general public. Regulated Substances Handled in the manufacture of office supplies and warehoused office supplies are not excluded from reporting.

(15) Provided the substances are contained in their original packaging and are stored inside a building that has an impervious floor, the solid form of plastic resins, solid inks, dry wall mud, fertilizers, caulking, joint and topping compounds, and similar solids and semi-solids. Materials containing chlorinated compounds or coal tar are not excluded.

(16) Gasses, with the exception of ammonia, halogens, and halogenated compounds. Gasses for retail are not excluded from reporting. Regulated Substances Handled in the manufacture and extraction of gasses, and repackaged or warehoused gasses are not excluded from reporting.

(17) Food Grade Citric Acid.

(18) Batteries in use in equipment and the storage of prepackaged replacement batteries of in-house equipment provided the batteries are stored inside a building that has an

impervious floor. Batteries for retail, to be disposed, or to be recycled are not excluded from reporting. Regulated Substances Handled in the course of the manufacturing and warehousing of batteries are not excluded from reporting.

(19) Petroleum and non-solid petroleum derivatives, not containing polychlorinated biphenyls (PCB), in use in equipment for the transmission of electric power to homes and businesses. Dielectric fluids containing PCBs are not excluded from reporting.

§ 53.23 Exemptions to Regulated Substance Activity Inventory Reporting.

(A) The City of Dayton Environmental Advisory Board (EAB) may exempt a substance from being designated as a Regulated Substance if the EAB determines that the substance does not pose a risk to groundwater. A request for such an exemption shall be submitted to the Director in writing, containing all of the supporting documentation that the requestor has to establish that the substance does not pose a risk to groundwater, in addition to any other information or documentation that the EAB may reasonably require to make its determination. Within ninety (90) days of receiving the written request and all of the information or documentation that the EAB reasonably requests to make its determination, the EAB shall issue a written decision listing its reasons for granting or denying the request. The decision of the EAB shall be final and binding and may not be appealed to any other City board or agency. If a decision is not made within ninety (90) days, the request is deemed denied. The EAB, subject to the approval of the City Commission, shall adopt rules and regulations for the determination of exempted substances that are consistent with this Chapter. A list of all exempt substances will be kept by the Director and made available upon request.

(B) The EAB may revoke an exemption previously granted under this section if a more recent Safety Data Sheet indicates a change in the chemical formulation of the substance or if new information suggests the substance is a threat to the groundwater.

§ 53.24 Falsifying Information.

No person shall make any false statement, representation, or certification in any report or other document filed or required to be maintained pursuant to this ordinance.

§ 53.25 Retention of Records.

Any reports or records compiled or submitted by the Owner and/or Operator pursuant to this section shall be maintained by the Owner and/or Operator for a minimum of five (5) years or so long as enforcement or judicial proceedings are being pursued, whichever is longer.

§ 53.26 Vandalism.

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, property, or equipment which is a part of or used in conjunction with the City's water facilities, or which results in the violation of this Chapter.

§ 53.27 Releases.

(A) Any person with direct knowledge of a Release of a Regulated Substance within the Source Water Protection Area or the Water Resource Area shall, if such Release escapes containment, and contacts a permeable/pervious surface area, storm drain or dry well shall give notice immediately, but no later than within thirty (30) minutes to the Manager of Water Supply and Treatment, or the drinking water treatment plant operator on duty. The notification shall include at a minimum, the location of the incident, name and contact information, date and time thereof, type of substances(s), concentration and volume, and control or corrective action taken. Such notification shall in no way alleviate other local, state, and federal reporting obligations as required by law.

(B) In addition to any fines imposed under local, state or federal law, any entity or person who Releases any Regulated Substance(s) shall be liable for any reasonable expense, loss or damages incurred by the City in response to such an incident. This includes but is not limited to costs incurred by the City to investigate, sample, remediate, and continue to provide water customers with potable water. Said entity or person shall document and maintain sufficient records so as to reflect accurately the circumstances related to any such incident and develop and implement procedures to substantially eliminate the likelihood of reoccurrence of such Release as soon as practicable following the incident, but no later than one hundred eighty (180) days after the incident.

§ 53.28 Well Head Operation District.

(A) The Director may prohibit the Handling of any substance in the Well Head Operation District, including the Miami Well Field, upon the determination that the substance constitutes an immediate risk to the public drinking water. Upon making such determination, the Director shall provide notice to the Owner(s) and/or Operator(s) in the Well Head Operation District by mailing a letter listing the prohibited substance(s) to the address of the Owner and/or Operator listed on the latest RSAIR submitted for each Zoning Lot in the Well Head Operation District. The Owner and/or Operator shall remove the prohibited substance from the Well Head Operation District within thirty days from the date the Director sent the letter as described above. The Director shall maintain a list of prohibited substances. No person may Handle any such prohibited substance(s) in the Well Head Operation District.

(B) The Owner and/or Operator of any Zoning Lot in the Well Head Operation District shall maintain and provide written documentation as requested to the Director prior to the application of any pest management chemicals. Information shall include: date, time, location, amount, type, and product name.

§ 53.29 Management of Regulated Substances.

(A) No person shall Handle any Regulated Substance on public or private property within the City, or in any area under the jurisdiction of said City, in a manner inconsistent with this Chapter.

(B) With the exception of Dwellings, single-family (attached, detached or cluster) or Dwellings, two-family wherein the Regulated Substances are for the maintenance of the residence or vehicles under control of the occupant, the use of any land, building, or structure in the Source Water Protection Area in which any Regulated Substances are Handled and for which a Zoning Occupancy Certificate has not been issued is hereby determined to be a public nuisance.

(C) Except in the case of a seasonal discontinuation of operation, in the event any nonresidential property either becomes unoccupied or discontinues operation for a period of ninety (90) consecutive days or longer, the owner or operator shall remove all Regulated Substances and excluded and exempted substances from the property other than those used exclusively for heating, cooling, and providing electrical lighting for the premises within ninety (90) days after the date upon which the property initially became unoccupied or the operation discontinued. The owner or operator shall secure the Regulated Substances and

excluded and exempted substances on the property until they have been removed. The owner or operator shall notify the Director in writing of the date of the cessation of operation or the property becoming unoccupied no later than the day upon which the operation actually ceases or the property becomes unoccupied, and such notification shall include the owner's name, phone number, and address and the operator's name, phone number, and new address.

(D) Regulated Substances used for on-site paving, pouring of concrete, or construction in the Source Water Protection Area for which all necessary permits have been obtained may be Handled in the Source Water Protection Area provided the following management practices are implemented:

(1) Storage containers of fifty-five (55) gallons or four hundred forty (440) pounds or more containing any amount of Regulated Substances shall have secondary containment constructed of impervious material of sufficient thickness, density, and composition that will prevent the discharge to the land, groundwater, surface water, or storm sewer catch basins of any containment which may emanate from said storage container.

(2) Each containment system shall be able to contain one hundred fifty (150) percent of the contents of all storage containers above or within the containment system.

(3) Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction area by the responsible contractor and shall be disposed of in a proper manner as prescribed by law.

(4) Regulated Substances not used in the construction process and all wastes generated during construction shall be removed from the construction site no later than at the time of the completion of the construction.

(5) If construction activity has ceased for forty-five (45) days, all Regulated Substances shall be removed from the site until such time as the construction activity is to resume.

Sections. 53.30-53.39 – Reserved.

ADMINISTRATION

§ 53.40 Source Water Protection Fund/Source Water Protection Board.

(A) Establishment of the Source Water Protection Fund

(1) The Source Water Protection Fund is hereby established to remediate pollution that could affect the public water supply and/or to pay the costs of activities that will reduce the risk of pollution to the public water supply.

(2) The City of Dayton Water Rates shall be amended to include a Source Water Protection Charge applicable to the entire rate base. This Charge is to generate revenue for the Source Water Protection Fund.

(3) All interest and payments resulting from Source Water Protection Fund activities will be paid to the Source Water Protection Fund. All directly related administrative costs of the Source Water Protection Fund are reimbursable from the Source Water Protection Fund.

(4) Costs for Source Water Protection activities advanced from the Water Fund or any other City source of funds are reimbursable from the Source Water Protection Fund.

(5) Limitations.

(a) The Source Water Protection Fund shall be limited to \$10,000,000.

(b) Interests in private property will not be acquired with funding under the Source Water Protection Fund in order to compensate the owner for compliance with:

- (i) A lawful order, requirement or declaration from any regulatory agency; or
- (ii) A requirement to obtain or maintain insurance coverage.

(c) The Source Water Protection Fund can only be used for activities which reduce risk of groundwater contamination within the designated Source Water Protection Area or for activities outside the Source Water Protection Area that reduce risk to groundwater.

(B) Source Water Protection Board (“Board”).

(1) The Source Water Protection Board is hereby established. The Board shall consist of the Directors of the Departments of Water, Finance, and Planning & Community Development of the City of Dayton, and the County Administrator of Montgomery County. Each Board member may appoint a designee to act on the member’s behalf in circumstances where the Board member is unable to act personally. Each designee so appointed is subject to approval by the Board. Each designee shall serve for a period of two (2) years or until such time as the member appointing said designee is no longer a member of the Board. The Board shall determine the Source Water Protection Charge to be part of the City of Dayton Water Rates subject to approval by the City Commission.

(2) The Board shall reduce the Source Water Protection Charge if the Source Water Protection Fund exceeds the limitations as set forth in Section 53.40(A)(5) subject to approval by the City Commission.

(3) The Board shall, subject to approval by the City Commission, develop rules and regulations for the administration of the Source Water Protection Fund.

§ 53.41 Public Water Supply Protection Authorities.

(A) Application.

If any activity or use of Regulated Substance is deemed by the Director to pose an immediate risk of contaminating surface and/or ground water which would normally enter the public water supply, the Director is authorized to:

(1) Cause cessation of said activity or Use of Regulated Substances;

(2) Require the provision of administrative and/or engineering controls to mitigate risk potential; and/or,

(3) Cause the provision of abatement activities to remove contamination from affected environmental media.

(B) Considerations.

When considering the exercise of any of the above authorities or actions, the Director shall ensure that the City's public water supply is reasonably and adequately protected from contamination for the present and the future. The Director shall make every reasonable effort to coordinate and act in concert with other regulatory entities in the exercise of the above authorities. The Director may take into consideration any evidence represented by the entity regarding cost effectiveness and the economic effectiveness and the economic impact imposed by the requirements or actions.

§ 53.42 Appeals from the Director's Actions.

(A) Appeals. Any aggrieved person may appeal a Notice of Violation issued under this chapter, an assessment of a civil penalty under Section 53.99, or an action of the Director made pursuant to Section 53.41 by filing with the Director a Notice of Appeal within twenty-one (21) days of service of the Notice of Violation, assessment, or action taken under Section 53.41, respectively. A Notice of Appeal shall include at a minimum: name; address; telephone number; date; a statement of intent to appeal; a description of the nature of the appeal; and any pertinent documentation.

(B) Appeals Board.

The Environmental Advisory Board is hereby given the authority to take appeals, investigate matters related to said appeals, deny, uphold or otherwise modify or waive the Director's actions on a case by case basis from Notices of Violation or assessments issued under this chapter and/or from actions taken by the Director pursuant to Section 53.41. Said Board, subject to approval of the City Commission, shall develop rules and regulations of operation consistent with this Chapter. For purposes of appeal, the decision of said Board shall be a final appealable order. For purposes of appeal pursuant to Ohio Revised Code Chapter 2506, the City of Dayton shall be considered an aggrieved person with the right to appeal the determination of the Board whenever the Board modifies or rescinds an action taken by the Director.

§ 53.43 Notice of Violation.

(A) Any person found in violation of any provision of this chapter or any order, requirement, rule or regulation issued under the authority of this chapter shall be served with a written notice of violation stating the nature of the violation and providing reasonable time for compliance; provided however, written notice of violation may be dispensed with in the event of a Release described in Section 53.27. If the Director has previously promulgated a schedule of compliance or issued an order addressing the same type of or a similar violation and the time for compliance has passed, the Director may dispense with establishing another time period for compliance.

(B) Each notice of violation shall list the time, place, and manner in which an administrative appeal can be initiated and shall contain the following warning:

FAILURE TO TIMELY COMPLY WITH THIS NOTICE OF VIOLATION
SUBJECTS YOU TO A FINE of up to \$500.00 AND/OR INCARCERATION up to
60 DAYS UPON CONVICTION, OR A CIVIL PENALTY of up to \$1,000 PER
DAY OR \$50,000 TOTAL, OR BOTH A CIVIL PENALTY AND CRIMINAL
PROSECUTION.

(C) The notice shall be served in accordance with Section 10.13. Where the address of the violator is unknown, service may be made upon the owner of the property involved at the tax-mailing address of the owner as shown on the County tax record.

Sections. 53.44-53.98-Reserved.

§ 53.99. Enforcement.

(A) Whenever the Director finds a person has violated a provision or failed to meet a requirement of this chapter, other than Section 53.26, the Director may order compliance by written notice of violation to the person as described in Section 53.43. Such notice will establish a deadline by which compliance must be achieved.

(B) The Director may cause to be filed a misdemeanor complaint or assess a civil penalty, or both, against a person who violates Section 53.26 or fails to comply with a notice of violation issued pursuant to this chapter, provided, however, that as to any one person and violation the Director shall not assess a civil penalty following a misdemeanor conviction, nor shall the Director file a misdemeanor complaint following payment of a civil penalty and correction of the underlying violation. The Director may pursue additional legal or equitable remedies, including injunctive relief, as necessary to enforce the provisions of this chapter. The imposition of a civil penalty or a misdemeanor conviction, or both, will not foreclose or prevent the Director from obtaining reimbursement for all reasonable costs expended in investigating, responding to, and remediating spills, leaks, or other dangers to the groundwater.

(C) Any violation of this chapter is hereby declared to be a public nuisance. In addition to any other relief provided by this chapter, the City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit any violation or threatened violation of this chapter. Such application for relief may include seeking a temporary restraining order, preliminary injunction and permanent injunction. The City Attorney may also sue for money damages on behalf of the City.

(D) Subject to subsection (B), above, any person who fails to comply with a notice of violation issued pursuant to this chapter shall be guilty of a misdemeanor of the third degree. No culpable mental state is required to violate a notice issued pursuant to this chapter; it being the express intent of this section to impose strict criminal liability for each violation. Each day a violation continues is a separate offense.

(E) Subject to subsection (B), above, the Director may assess a civil penalty against any person who fails to comply with a notice of violation issued pursuant to this chapter. The civil penalty shall not exceed \$1,000 per day or \$50,000 total. The Director shall send written notice of assessment to a person assessed a civil penalty pursuant to this chapter. The

Director shall send the notice by ordinary mail to the last known address of the person. The notice shall state the total amount assessed against the person based upon the schedule of assessed penalties established by the Director. The notice shall also inform the person assessed the civil penalty that the person may appeal the assessment as provided in section 53.42, above.

(F) The property where the violation has occurred may be subject to disconnection from the City's public drinking water supply

(G) Upon the passage of any applicable appeal time, the Director shall send to the Director of Finance for collection any unpaid civil penalty assessed pursuant to this chapter.

Section 2. That Sections 53.01 through 53.42, inclusive, and 53.99 of the Revised Code of General Ordinances as previously enacted are hereby repealed.

Section 3. For the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION..... July 29, 2015
SIGNED BY THE MAYOR..... July 29, 2015
Man Whelley
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

Rashella Lavender
Clerk of the Commission

Approved as to form:

Stephen P. Donaldson
City Attorney