

BOROUGH OF KUTZTOWN

Berks County, Pennsylvania

ORDINANCE NO. - 3, 1995

AN ORDINANCE OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY, PENNSYLVANIA, ESTABLISHING A WELLHEAD PROTECTION OVERLAY DISTRICT, PROVIDING FOR THE REGULATION OF LAND USES WITHIN SUCH OVERLAY DISTRICT FOR THE PURPOSE OF PROTECTING GROUND WATER SUPPLIES; PROVIDING FOR REPORTING REQUIREMENTS FOR CERTAIN REGULATED LAND USES WITHIN THE WELLHEAD PROTECTION OVERLAY DISTRICT; AND ESTABLISHING THE MEANS FOR ENFORCEMENT OF THE ORDINANCE.

BE IT ENACTED AND ORDAINED by the Council (hereinafter referred to as the "Council") of the Borough of Kutztown, Berks County, Pennsylvania (hereinafter referred to as the "Borough"), and it is hereby ENACTED and ORDAINED by the authority of the same as follows:

SECTION 1. PURPOSE AND INTENT: AUTHORITY.

(a) The Borough and its residents depend exclusively on ground water for a safe drinking water supply. The Borough has developed and owns the drinking water wells utilized by the Borough, which are located upon a parcel of land adjacent to the corporate boundary of the Borough. Certain land use practices and activities outside and within the Borough can seriously threaten or degrade ground water quality. The purpose of this Ordinance is to protect the public health, safety and welfare through the preservation of the ground water resources of the Borough public water supplies and to ensure a future supply of safe and healthful drinking water for the residents of the Borough. The designation of the Wellhead Protection Overlay District, as provided hereinbelow, and the regulation of activities within such Wellhead Protection Overlay District will reduce the potential for ground and surface water contamination of the Borough owned water wells and thereby preserve irreplaceable ground water resources. The delineation of the Wellhead Protection Overlay District

and the development of the provisions of this Ordinance are based upon a professional study of the hydrogeologic and other features of the Borough and contiguous areas conducted for the benefit of the Borough and certain nearby municipalities.

(b) This Ordinance is enacted pursuant to the authority contained in Article I, Section 27 of the Constitution of the Commonwealth of Pennsylvania and Sections 501, 503, 601, 604(1), and 603(b) of the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended by Act 170 of 1988, as amended by Act 209 of 1990 and as further amended by Act 131 of 1992, which provisions authorize the Borough to enact ordinances regulating development and land uses to (i) ensure the public health and safety, (ii) provide a safe, reliable and adequate water supply, and (iii) preserve natural values and aquifers.

SECTION 2. ESTABLISHMENT AND DELINEATION OF WELLHEAD PROTECTION OVERLAY DISTRICT AND WELLHEAD PROTECTION ZONES

The "Wellhead Protection Overlay District" shall be defined as that area within the corporate boundaries of the Borough as is set forth on the map attached hereto, marked as Exhibit "A" and incorporated herein by reference thereto. Within the Wellhead Protection Overlay District, the following Wellhead Protection Zones are hereby established:

(a) Zone 2 shall be that area marked on Exhibit "A" as Zone 2, which Zone 2 represents an area determined, by methods applicable to that hydrogeologic setting, as having a ten year time-of-travel of ground water supply to public well sites; and

(b) Zone 3 shall be that area marked on Exhibit "A" as Zone 3, which Zone 3 represents the upland area that contributes surface and ground water to Zone 2.

SECTION 3. REGULATED LAND USES.

Within the Wellhead Protection Overlay District, land uses shall be regulated as follows:

(a) Lots and tracts of land located within the Wellhead Protection Overlay District, as delineated on Exhibit "A", shall be governed by the restrictions applicable to the Wellhead Protection Zone in which such lots and tracts of land are located.

(b) Land uses within the Wellhead Protection Overlay District will be regulated (hereinafter "Regulated Land Uses") according to the Schedule of Regulated Land Uses attached hereto, marked Exhibit "B" and incorporated herein by reference. Certain particular Regulated Land Uses will be prohibited, or permitted only by Special Exception, within Zone 2 or Zone 3, as applicable, as is set forth in the Schedule of Regulated Land Uses.

SECTION 4. REPORTING REQUIREMENTS.

As to each lot or tract of land located within the Wellhead Protection Overlay District, upon which there is conducted a Regulated Land Use, the record owner thereof shall submit, or cause to be submitted, to the Code Enforcement Officer of the Borough the following reports and information in the manner prescribed:

(a) Copies of all federal, state and county operational approvals, certificates, permits and applications, on-going environmental reports and monitoring results, relating to environmental, pollution control, hazardous substance and drinking water laws and regulations pertaining to such lot or tract of land, as and when required to be submitted to federal, state and county governmental authorities;

(b) In the event that any contaminants and/or substances regulated under federal, state or state environmental, pollution control, hazardous substance and drinking water laws and regulations are released on or from any lot or tract of land within the Wellhead Protection Overlay District, copies of any and all notices, reports and documents which such owner filed, or caused to be filed, with any federal, state and/or county governmental authorities which provide notice of or relate to

such release, as and when such notices, reports and documents are required to be filed with such governmental authorities; and

(c) Copies of all notices, orders, rules, decisions, recommendations, enforcement actions and similar documentation, as and when received by or on behalf of such record owner or the occupant of any such lot or tract of land from any federal, state or county governmental authority in connection with the enforcement of environmental, pollution control, hazardous substance and drinking water laws and regulations.

SECTION 5. ADMINISTRATION.

(a) The Code Enforcement Officer of the Borough is hereby designated as the Borough official responsible for the administration and enforcement of this Ordinance. The Zoning Hearing Board of the Borough shall hear appeals from the written decisions, determinations and orders of the Code Enforcement Officer regarding applications, enforcement notices, cease and desist orders and other matters, and shall also hear substantive and procedural challenges to the validity of this Ordinance.

(b) Uses of lots or tracts of land in existence on the date of enactment of this Ordinance which are Regulated Land Uses shall be deemed to be "non-conforming uses" of land under the terms of this Ordinance. Such non-conforming uses of land may be continued by the present or any subsequent owner so long as:

(i) such use is and remains otherwise lawful and in compliance with all federal, state, and county environmental, pollution control, hazardous substance and drinking water laws and regulations;

(ii) such non-conforming use has not been and is not discontinued for a period of twelve (12) consecutive months;

(iii) such non-conforming use is not, after the date of enactment of this Ordinance, materially altered, changed or expanded;

(iv) the record owner of the lot or tract of land on which such non-conforming use is located is in compliance with Section 4 of this Ordinance, regarding reporting requirements; and

(v) such non-conforming use is not an actual source of ground water contamination.

(c) A Regulated Land Use shall be deemed to be new or materially altered, changed or expanded if:

(i) the land use which constitutes the Regulated Land Use was not previously present and conducted upon the lot or tract of land in question;

(ii) the production and/or storage capacity of the Regulated Land Use is increased;

(iii) the types of any substances which give rise to the Regulated Land Use are changed;

(iv) the number of types of any substances which give rise to the Regulated Land Use is increased; and/or

(v) the quantity of any substances which give rise to the Regulated Land Use is materially increased.

(d) . Following the date of enactment of this Ordinance, Regulated Land Uses which are new or which constitute material changes, alterations or expansions of non-conforming Regulated Land Uses will be prohibited in accordance with the terms of Exhibit "B" annexed hereto, thereby prohibiting such Regulated Land Uses or permitting such Regulated Land Uses only upon the granting of a Special Exception. Any Regulated Land Use which is permitted to be conducted within the Wellhead Protection Overlay District as a result of the granting of a Special Exception in accordance with the terms of this Ordinance shall not be deemed to be a non-conforming use of land

under the terms of this Ordinance, but shall without further action be considered a land use which is in conformity with the terms of this Ordinance.

(c) As to any new Regulated Land Use or any proposed material change, alteration or expansion of a Regulated Land Use which is a non-conforming Regulated Land Use and as to which such Regulated Land Use is permitted to be conducted within the applicable Wellhead Protection Zone upon the granting of a Special Exception, such Special Exception shall only be granted upon the following conditions:

(i) such Regulated Land Use is one which is specifically authorized as a Special Exception use in the Wellhead Protection Zone in question, as set forth on Exhibit "B";

(ii) such Regulated Land Use will not, during construction or thereafter, cause the average ground water quality upon or beneath the lot or tract of land in question or upon or beneath adjacent lots or tracts of land to violate safe drinking water standards promulgated by federal or state governmental authorities;

(iii) satisfactory evidence has been provided to the Borough's Code Enforcement Officer, or Zoning Hearing Board, as applicable, that the proposed Regulated Land Use is in compliance with all federal, state and county laws and regulations applicable to such Regulated Land Use and the record owner or occupant has received all necessary approvals of federal, state and county governmental authorities for the conduct of such Regulated Land Use.

(f) Application for a Special Exception shall be made to the Code Enforcement Officer of the Borough in writing on such form as may be prescribed by the Code Enforcement Officer and approved by Resolution of the Council and such application shall include, at a minimum, a detailed description of each of the activities to be conducted upon the lot or tract of land in question which constitute a Regulated Land Use, including a listing of all substances which are to be stored, handled,

used or produced in connection with each Regulated Land Use being proposed and which substances are subject to regulation by federal, state and/or county governmental authorities.

(g) The Code Enforcement Officer of the Borough shall issue a written decision approving or disapproving the application for a Special Exception, or conditioning the granting of the Special Exception upon adherence to any or all of the following requirements by the applicant for the Special Exception, where the Code Enforcement Officer has found that such adherence is reasonably necessary to fulfill the ground water protection purposes of this Ordinance:

(i) the installation of adequate containment facilities and systems so as to prevent the contamination of ground water by substances regulated by federal, state and/or county governmental authorities;

(ii) the preparation, filing (with the Code Enforcement Office) and periodic revision of an emergency plan addressing the means by which any potential contamination of ground water will be controlled, collected and remediated, including emergency contacts and identification of potential contaminants;

(iii) regular inspection and/or monitoring of the Regulated Land Use by the owner, occupant and/or third parties; and

(iv) compliance by the applicant with the provisions of the Borough Subdivision and Land Development Ordinance then in effect pertaining to sanitary sewage disposal, water supply, storm water management, utilities and easements and subsurface carbonate areas.

(h) Applications to the Borough Code Enforcement Officer for a Special Exception under this Ordinance, as well as written decisions of the Code Enforcement Officer and appeals from the written decisions of the Code Enforcement Officer to the Borough Zoning Hearing Board and appeals to the courts of the Commonwealth of Pennsylvania, shall be subject to the same procedure and shall

be processed in the same manner as is applicable to applications for special exceptions under the terms of the Zoning Ordinance of the Borough in effect at the time the application is filed.

SECTION 6. SUBDIVISION AND LAND DEVELOPMENT REVIEW.

All subdivision proposals and other proposed new development plans to be located within the Wellhead Protection Overlay District shall be reviewed by the Code Enforcement Officer and the Borough Planning Commission for compliance with the provisions of this Ordinance. It shall be the responsibility of the Code Enforcement Officer and the Borough Planning Commission to recommend approval, disapproval or approval with conditions or modifications, of the proposed subdivision or development plan, so as to assure compliance with the provisions of this Ordinance.

SECTION 7. GENERAL EXCEPTIONS.

The following General Exceptions specify those activities that are permitted by right and do not require a Special Exception:

(a) Transit: the transportation of any hazardous or governmentally regulated substance through the Wellhead Protection Overlay District shall be exempt from provisions of this Ordinance, provided that the transporting vehicle is in transit through the Wellhead Protection Overlay District and further provided that such transportation is conducted in compliance with all applicable federal and state laws and regulations;

(b) Residential: to the extent otherwise permitted or regulated by federal, state and/or county statutes and regulations, the owners and/or occupiers of lots and tracts of land which are primarily utilized for the purpose of single or multi-family residential dwellings are permitted to utilize and store fuels, hazardous chemicals, pesticides, fertilizers, inflammable liquids and gases, and toxic and regulated substances in such quantities and in such manner as is associated with normal consumer, household use, and such limited utilization shall not be deemed a Regulated Land Use for

the purposes of this Ordinance.

SECTION 8. PREVENTIVE AND ENFORCEMENT REMEDIES.

For the purpose of preventing violations of this Ordinance and enforcing the provisions of this Ordinance, the Borough shall have available to it the same preventive and enforcement remedies, including civil actions and summary criminal actions, as are set forth in the Subdivision and Land Development Ordinance of the Borough in effect from time to time. In addition, the Code Enforcement Officer of the Borough is authorized to issue cease and desist orders whenever such Code Enforcement Officer becomes aware of violations of this Ordinance. The Code Enforcement Officer is authorized to issue Enforcement Notices with respect to violations of this Ordinance, such Enforcement Notices to be issued in accordance with the Enforcement Notice provisions of the Zoning Ordinance of the Borough in effect from time to time.

SECTION 9. MISCELLANEOUS.

(a) **Conflicts.** Whenever there is a difference between any of the minimum standards specified in this Ordinance and any standard included in any other ordinance, law or regulation of the Borough, the more stringent requirement shall apply. The provisions of this Ordinance shall be deemed to be supplementary and in addition to the provisions of the Zoning Ordinance and Subdivision and Land Development Ordinance of the Borough as in effect from time to time.

(b) **Severability.** The provisions of this Ordinance are severable, and should any article, section, subsection, paragraph, clause, phrase or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part so declared to be invalid.

(c) **Savings Clause.** This Ordinance shall not affect any act done or any offense committed prior to its effective date, nor affect any action to enforce any prior ordinance or to punish any offense

against a prior ordinance.

(d) Effective Date. This Ordinance shall become effective thirty (30) days after the date of its enactment and such advertisement thereof as is required by law.

ENACTED AND ORDAINED as an Ordinance of the Borough of Kutztown, Berks County, Pennsylvania, by the Borough Council this 14th day of February, 1995, in lawful session duly assembled.

BOROUGH OF KUTZTOWN

By: Richard B. Landis
Richard B. Landis
President of Borough Council

Attest: Keith A. Hill
Keith A. Hill
Secretary of Borough

APPROVED AS AN ORDINANCE this 14th day of February, 1995

James W. Schwoyer
James W. Schwoyer, Mayor

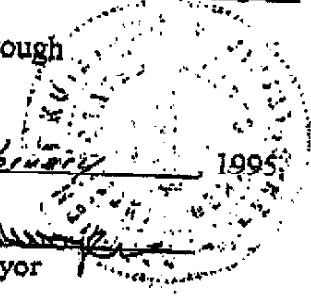


EXHIBIT "B"

SCHEDULE OF REGULATED LAND USES

Use	Zone 2	Zone 3
1. Bulk Storage of Regulated Substances	X	SP
2. Dry Cleaning Establishments; Coin or Commercial Laundries	X	SP
3. Garage, Service Station	X	SP
4. Heavy Manufacturing Uses	X	SP
5. Junk Yards	X	X
6. Land Application of Wastewater and Sludges	X	X
7. Livestock Animals in Excess of 25 Animal Equivalent Units per Acre in Yarding Areas	X	X
8. Metal Plating Establishments	X	SP
9. Open Burning Sites and Dumps	X	X
10. Quarries and Mining Operations	X	X
11. Road Salt Stockpiles	SP	SP
12. Sales, and/or Storage of Fuels	SP	SP
13. Sanitary Landfill	X	X
14. Sewage Treatment Facilities with On-site Disposal of Primary or Secondary Treated Effluent in Excess of 5,000 gpd	X	X
15. Storage and Mixing of Regulated Substances	X	SP
16. Storage of Inflammable Liquids and Gases	SP	SP
17. Use which involves as a principal activity the manufacture, storage, use, transportation or disposal of Regulated Substances	X	X
18. Use which involves use or storage of Regulated Substances in quantities greater than those associated with normal household use	SP	SP
19. Used Motor Vehicle Sales Area	SP	SP

Notes: X = Not Allowed
 SP = Special Permit

As used in this Exhibit "B", the term "Regulated Substances" shall mean any substances regulated under federal, state or county environmental, pollution control, hazardous substance and drinking water laws and regulations.

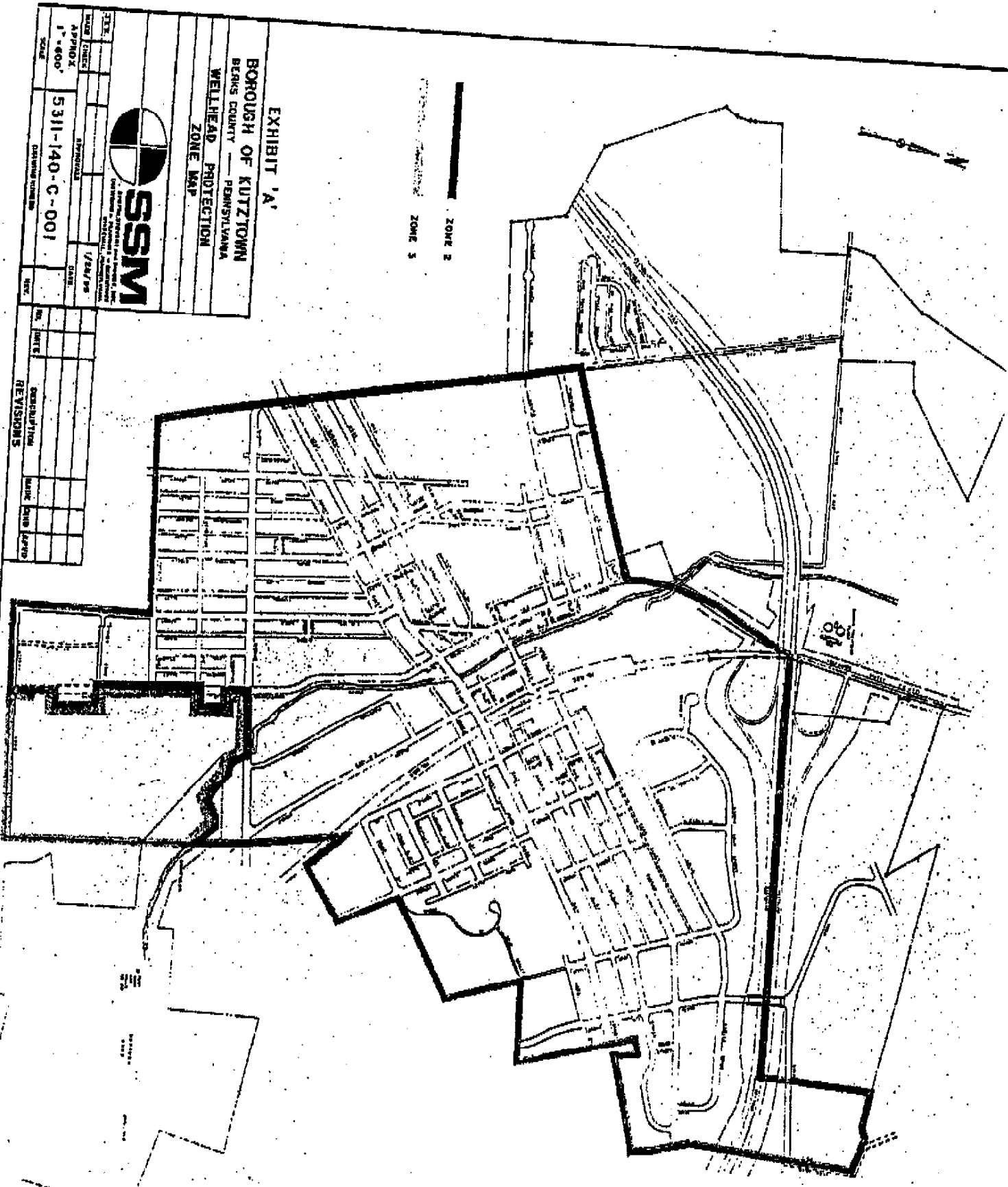


EXHIBIT 'A'

BOROUGH OF KUTZTOWN
BERKS COUNTY — PENNSYLVANIA

WELLHEAD PROTECTION
ZONE MAP



APPROX
1" = 400'

5311-140-C-001

DATE	BY	REVISIONS

NO.	DATE	REVISIONS