

Local Law 1-2024-Amend and Update Local Law 2-2003 Zoning Law
**Village of Allegany Zoning Law Amendment
To Add Section 7.3 Aquifer Protection Overlay
District to Article VII District Use Regulations**

Section 7.3 Aquifer Protection Overlay District

GROUNDWATER QUALITY AND CAPACITY PROTECTION

A. Legislative Findings, Intent, and Purpose

The purpose of the Aquifer Protection Overlay District (APOD) is to protect the health and welfare of residents of the Village and Town of Allegany by minimizing the potential for aquifer contamination and aquifer depletion.

The Village of Allegany lies over its water supply aquifers. They can be divided into two areas described in Subsection B. Both can provide drinking water and their natural discharge is essential to the maintenance of healthy aquatic and associated terrestrial ecosystems in wetlands, streams and lakes. The Village has determined that a limiting factor on the residential and commercial carrying capacity of Allegany is its capability to provide groundwater in sufficient quality and quantity so that water use by some users does not adversely affect other users.

B. Applicability of Ordinance

1. The Aquifer Protection Overlay District (APOD) encompasses the entire Village and is divided into two primary subdistricts to protect different types of aquifer conditions, as follows:
 - a. An Allegany Community Core Aquifer (CCA) subdistrict, where groundwater recharge is estimated to reach the Village's Community Water System water supply wells in five or fewer years, and a Regional Aquifer (RA) subdistrict, which covers the remainder of the Village.
 - b. The CCA and RA subdistricts are delineated on the Aquifer Protection Overlay District (APOD) Map adopted as part of this Chapter.
 - c. Whenever Town and Village municipal boundaries are modified, the prevailing APOD Town and Village RA and CCA subdistrict boundaries at the time of the modification shall apply to reassigned municipal areas.
2. The official Village APOD District Map is located at the Village offices with the other official zoning maps. Any reduction of this map attached to this chapter is for reference purposes only. The Aquifer Protection Overlay District (APOD) District map and any amendments to it must be reviewed and approved by a hydrogeologist working for the Village prior to adoption by the Village Trustees.
3. The official APOD District Map shall be used to determine the boundaries of subdistricts within the APOD District. In case of a question or dispute as to the exact location of a boundary on a specific parcel of land by an applicant proposing a land use project within the Village, the

Village may retain a qualified hydrogeologist at an applicant's expense to make such a determination in the field based upon the criteria in this APOD. An applicant may challenge the Village's determination by retaining a qualified hydrogeologist to make such determination independently based upon these criteria. In the event of such a challenge, the Village's hydrogeologist shall review the report of the applicant's hydrogeologist at the applicant's expense and shall make the final determination as to the location of a specific boundary or other element of the inquiry. Any such boundary delineation or determination shall not, by itself, effect a change in the APOD District Map. The APOD District Map may only be changed by action of the Village Trustees. In the event that an applicant proposing a project in the Town challenges the similarly managed APOD described in Section 5.27 of the Town code indirectly challenges the Village APOD boundaries, the Village's review process and fee assignments apply as described above.

4. Within the APOD District map, all of the underlying land use district rules shall remain in effect except as specifically modified by this APOD. In case of a conflict between this APOD and the underlying use regulations, the more restrictive shall control. Nothing in this APOD shall be construed to allow uses that are not permitted by the underlying land use district.
5. With the exception of the prohibition on underground fuel tanks in §of the APOD, the regulatory elements of this APOD do not apply to any 1) single-family, two-family, or multi-family residential use of land on a single lot containing five or fewer dwelling units, or 2) to any home occupation unless such residential use or home occupation includes one of the activities listed in subsection E below. The APOD does apply to all other subdivisions or uses of land.
6. This APOD shall not apply to farm operations within a county-designated agricultural district created in accordance with NYS Agricultural & Markets Law.
7. Review fees may be applied to a project applicant by the Village Trustees, Planning Board, or Zoning Board of Appeals to assist with review of any submittal element relevant to the APOD.

C. Definitions

For purposes of this APOD, the following definitions shall apply:

Action: A project or physical activity as defined in the SEQR Regulations of the NYS Department of Environmental Conservation, 6 NYCRR Part 617, including all actions subject to SEQR that are covered by this Chapter, as well as subdivision applications and other actions requiring local government approval under SEQR.

Aquifer/Aquifers: A consolidated or unconsolidated geologic formation, group of formations or part of a formation capable of yielding a significant or economically useful amount of groundwater to wells, springs or infiltration galleries.

Aquifer Protection Overlay District (APOD) District Map: The Village's overlay map showing Aquifer Protection Overlay District subdistricts.

Community Core Aquifer (CCA) Subdistrict: The area delineated as the Community Core Aquifer (CCA) subdistrict on the Aquifer Protection Overlay APOD District Map. The CCA delineates the portion of a **Community Water System** aquifer recharge area within a five-year travel time of public water system wells.

Community Water System: A Public Water System defined by and regulated by the New York State Department of Health, typically understood to serve at least five full-time service connections or regularly serving at least 25 year-round residents.

Conditionally Exempt Small Quantity Generators: As defined by the Resource Conservation and Recovery Act and amendments thereto, sites generating in a month time no more than 100 kg **hazardous waste**, or 1 kg **acute hazardous waste** or 100 kg spillage cleanup of acute hazardous waste; and at any-time store no more than 1000 kg hazardous waste or 1 kg of acute hazardous waste.

Consumption of Water: The net loss of water from a site or a watershed through local

groundwater export to a surface water discharge or through evaporation and transpiration processes caused by human land use activities, including evaporative losses from septic system leaching lines. The definition of Consumption of Water also includes water which must be allocated to dilute subsurface wastewater discharges such that groundwater quality at the downgradient property line of sites are unlikely to exceed 50% of the New York State 6 NYCRR Part 703.5 Groundwater (GA) Water Standard for nitrate.

Discharge: Any intentional or unintentional action or omission resulting in substances or materials entering the waters of the State either directly or by passing through other land, or in any other way resulting in damage to the lands, waters, or natural resources of the State.

Farm Operation: The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.

Generator of Hazardous Waste: Any person or site whose act or process produces hazardous waste.

Groundwater: Water contained in interconnected pores and fractures in the saturated zone in an aquifer.

Hazardous Substance: Any substance, including any petroleum by-product, which may cause harm to humans or the environment when improperly managed. A complete list of all hazardous substances except for petroleum by-products can be found in 6 NYCRR Part 597.3 Tables 1 and 2 and amendments thereto.

Hazardous Waste: See 6 NYCRR Part 371 and amendments thereto for the identification and listing of hazardous wastes.

Hazardous Waste, Acute: See **Hazardous Substances** definition in this section -Table 1 & 2 designated chemicals with the letter A

Herbicide: Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed, including those substances defined as herbicides pursuant to Environmental Conservation Law § 33-0101, and amendments thereto.

Large Quantity Generator: As defined by the Resource Conservation and Recovery Act and amendments thereto, sites generating in a month time more than 100 kg hazardous waste, or 1 kg acute hazardous waste or 100 kg spillage cleanup of acute hazardous waste; and at any-time store more than 1000 kg hazardous waste or 1 kg of acute hazardous waste.

Major Oil Storage Facilities: Facilities with a storage capacity of 400,000 gallons or more of petroleum.

Natural Recharge: The normal rate at which precipitation replenishes groundwater, without interruption or augmentation by human intervention.

Non-point Discharge: Discharges of pollutants not subject to SPDES (State Pollutant Discharge Elimination System) permit requirements.

Pesticide: Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, including any substances defined as pesticides pursuant to Environmental Conservation Law § 33-0101 et seq. and amendments thereto.

Petroleum: Oil or petroleum of any kind and in any form including but not limited to oil, petroleum fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline, and kerosene, as defined in 6 NYCRR Part 613-1.3 and amendments thereto.

Point Source Discharge: Pollutants discharged from a point source as defined in Environmental Conservation Law §17-0105 and amendments thereto.

Pollutant: Any material or byproduct determined or suspected to be hazardous to human health or the environment.

Radioactive Material: Any material that emits radiation.

Regional Aquifer (RA) Subdistrict: The area delineated as the Regional Aquifer (RA) subdistrict on the APOD District Map. As defined or approved by a hydrogeologist working for the Village, the RA subdistrict consists of all areas on the APOD District Map not included in the CCA

subdistrict.

Small Quantity Generator: As defined by the Resource Conservation and Recovery Act and amendments thereto, sites that do not qualify as Conditionally Exempt Small Quantity Generators and that generate and store less than 1000 kilograms per month of a listed and /or characteristic hazardous wastes, and that generate or store less than 1 kilogram per month of acutely hazardous waste.

Solid Waste: Generally refers to all putrescible and non-putrescible materials or substances, except domestic sewage, sewage treated through a publicly owned treatment works, or irrigation return flows, that is discarded or rejected as being spent or otherwise worthless, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, and discarded automobiles, as defined in 6 NYCRR Part 360.2(a)(1) and amendments thereto.

State Pollutant Discharge Elimination System (“SPDES”): The system established pursuant to Article 17 Title 8 of Environmental Conservation Law for issuance of permits authorizing discharges to the waters of the state of New York.

Storage: Refers to the regulatory definition of storage for compounds, process materials, or products defined in regulatory programs (see Section D.2 below). Where no regulatory definition exists, storage refers also to the holding or accumulation of any materials in an unconstrained or unsecured manner such that a reasonable person could believe the held materials might lead to groundwater contamination due to the nature of the material and duration of presence.

Wastewater: Aqueous-carried solid or hazardous waste.

Watershed: All land contributing surface runoff and groundwater flow to the flow of a particular stream.

Water Supply: The groundwater resources of the Village of Allegany, or the groundwater resources used for a particular well or community water system.

Well: Any present or future artificial excavation used as a source of public or private water supply which derives water from the interstices of the rocks or soils which it penetrates including bored wells, drilled wells, driven wells, infiltration galleries, and trenches with perforated piping, but excluding ditches or tunnels, used to convey groundwater to the surface.

D. General Provisions for Groundwater Protection

1. Non-Degradation Standard: No use shall be allowed which can be calculated, shown, or anticipated to degrade the quality of groundwater in a manner that poses a potential danger to public health or safety and no permits or approvals shall be issued for any use which violates this standard. Compliance in with applicable standards, requirements, and permit conditions imposed by federal, state, or county agencies shall be deemed to constitute compliance with this standard. Based on reasonable cause or concern, the Village may require a property owner or potentially responsible party to collect data clarifying whether the non-degradation standard has been breached or has the potential to be breached.
2. The manufacture, use, storage, or discharge of any products, materials, or by-products subject to these regulations, such as wastewater, solid waste, hazardous substances, or any pollutant, must conform to the requirements of these regulations.
3. In addition to the list of Statewide Type I Actions contained in 6 NYCRR 617.4(b), all proposed actions resulting in discharges calculated to exceed groundwater effluent standards provided in 6 NYCRR Part 703.6(e) and amendments thereto, shall be designated as Type I Actions under the Implementing Regulations of the State Environmental Quality Review Act (6 NYCRR Part 617), unless the action is listed as a Type II action under such regulations.
4. Projects where proposed site Groundwater Consumption exceeds site Natural Recharge, as defined in Appendices B and C, or where more than 5,000 gallons daily are withdrawn from

wells, see Appendix A, must review through SEQRA how such water budget and any associated impacts on groundwater quality will be mitigated. Mitigation measures may include identifying compensatory recharge to permanently prevent adverse impacts to water supply on adjoining and downgradient land. Such compensatory recharge may be located either upgradient or downgradient of the project. Where the project is located adjacent to a wetland, watercourse, parkland, or other land that is permanently protected from development, the recharge benefit of such adjacent protected land may be counted toward the required mitigation of the impact of the project, provided that such recharge capacity is not claimed in connection with another project.

5. Closed loop geothermal heating or cooling wells are permitted.
6. Any water supply well, monitoring well, or geothermal well not in active use must be secured (examples: welded cap, locked cap, intact well casing) and preferably formally grouted and abandoned. Any well in active use must be managed and secured in a manner that prevents contaminant entry to the underlying aquifer.

E. Prohibitions, Restrictions, and Permit Requirements for Aquifer Management

In accordance with Article of the Village of Allegany Zoning Ordinance, "Special Use Permits and Site Plan Review," the Planning Board shall review and act upon Special Permit applications within the Village of Allegany. If the uses listed below are regulated by any state or federal agency, the definitions and regulations of such uses contained in applicable state or federal laws and regulations shall apply.

1. Prohibited Uses throughout the Village of Allegany

- a. Because NYS regulates only fuel tanks with capacity over 1,100 gallons, installation of a new or replacement underground fuel tank or tanks, whose combined capacity is less than 1,100 gallons is prohibited. This applies to all uses throughout the Village, including single-family, two-family, and multi-family dwellings.
- b. Land application of septage, sludge, or human excreta, including land application facilities defined in 6 NYCRR Part 360-2. This prohibition shall not apply to land application of treated wastewater for irrigation when duly approved by county, state, or federal agencies with regulatory jurisdiction.

2. Prohibited uses within the CCA subdistricts only:

- a. Municipal, private, and construction and demolition landfills as defined in 6 NYCRR Part 360 and 6 NYCRR Part 360-5.
- b. Disposal, by burial, of any hazardous waste, as defined in 6 NYCRR Part 371
- d. Large Quantity Generators of Hazardous Waste
- e. Junkyards and automobile cemeteries
- f. Gas stations and Major Oil Storage Facilities.
- g. On-site dry cleaning.

3. Special Use Permits within the Community Core Aquifer (CCA) subdistrict. The following uses, if permitted in the underlying land use district, shall require the issuance of a Special Use Permit within the CCA subdistrict:

- a. Photo labs;
- b. Auto repair facilities and truck terminals, including engine repair and machine shops
- c. Furniture stripper/painter, metal works, wood preservers
- d. Printers and the use of printing presses
- e. Conditionally Exempt or Small Quantity Generators of Hazardous Waste.

- f. Solid waste management facilities not involving burial, including incinerators, composting facilities, liquid storage, regulated medical waste, transfer stations, recyclables handling & recovery facilities, waste tire storage facilities, used oil, C&D processing facilities, each as defined in 6 NYCRR Part 360.
 - g. Salt storage facilities
 - h. Septic systems where daily discharge exceeds 20% of the project site aquifer recharge rate as defined in Appendix B, or use of individual residential septic systems where average density is less than 1 acre per septic system.
 - i. Cemeteries, including pet cemeteries
 - j. Veterinary hospitals and offices
 - k. Funeral parlors engaging in embalming
 - l. Storage or disposal of manure, fertilizers, pesticides/herbicides. No special permit shall be required for storage of less than 500 pounds or where such storage or disposal is conducted in connection with a farm operation.
 - m. open loop geothermal wells
4. Special Conditions for proposed uses within the CCA subdistricts requiring a Special Use Permit:
- a. Storage of chloride salts is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.
 - b. Upon request by the Village, generators of Hazardous Waste shall provide the Village with copies of all applicable permits provided by State and/or Federal regulators and copies of all annual, incident, and remediation-related reports.
 - c. Embalming byproducts may not be discharged to a septic system.
 - d. Projects requiring special use permits responsive to Section (3)(h) must reduce septic loading density or demonstrate compensatory mitigation, including providing supplemental wastewater treatment before discharges pass to groundwater or demonstrating the presence of other compensatory dilution from adjoining land as referenced in Section D (4).
 - e. The Village may require additional monitoring and reporting for any chemicals of concern or sustainable groundwater availability.
 - f. Open loop or standing column geothermal wells. The Village will require confirmation that water returned to the subsurface by a geothermal system introduces or results in no changes in groundwater quality aside from subsurface thermal modification. If water from an open loop geothermal system is returned to the surface environment, compliance with Appendix A of this regulation will apply.
5. Special Permits within the RA subdistrict. The following uses, if permitted in the underlying land use district, shall require the issuance of a Special Use Permit within the RA:
- a. Gasoline service stations
 - b. Major Oil Storage Facilities
 - c. Junkyards and automobile cemeteries
 - d. Salt storage facilities
 - e. The three categories of Conditionally Exempt, Small Quantity, or Large Quantity Generators of Hazardous Waste
 - f. Disposal of any hazardous waste, as defined in 6 NYCRR Part 371, by burial.
 - g. Cemeteries, including pet cemeteries
 - h. Veterinary hospitals and offices
 - i. Funeral parlors engaging in embalming

- j. Storage or disposal of manure, fertilizers, pesticides/herbicides. No special permit shall be required for storage of less than 500 pounds or where such storage or disposal is conducted in connection with a farm operation.

6. Special Conditions for proposed uses within the RA subdistricts requiring a Special Use Permit:

- a. Upon request by the Village, gasoline service station operators shall provide the Village with copies of all applicable permits provided by State and/or Federal regulators and copies of all annual, incident, and remediation-related reports.
- b. Junkyard operators shall drain fuels, lubricants, and coolants from all cars stored on site to properly permitted above-ground holding tanks, and upon request by the Village, provide to the Village copies of all applicable permits provided by State and/or Federal regulators and copies of all annual and incident reports, provide the Village with an annual summary of numbers of vehicles on site and total gallons of various classes of fluids drained from vehicles and disposal manifests or other documentation of disposition of such fluids.
- c. Storage of chloride salts, coal, and/or cinders is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.
 - d. Upon request by the Village, generators of Hazardous Waste shall provide the Village with copies of all applicable permits provided by State and Federal regulators and copies of all annual, incident, and remediation-related reports.
 - e. The Village may require additional monitoring and reporting for any chemicals of concern or sustainable groundwater availability.

7. Application Requirements for Special Use Permits: In addition to the Special Use Permit application requirements set forth in Article of the Village of Allegany zoning ordinance, applicants proposing actions listed in subsections (3) and (5) above shall identify the following as part of their applications:

- a. The source of water to be used
- b. The quantity of water required
- c. Water use minimization measures to be implemented
- d. Water recycling measures to be implemented
- e. Wastewater discharge measures
- f. Point Source or Non-Point Discharges
- g. A complete list of any Hazardous Substances to be used on site along with quantity to be used and stored on site; and
- h. A description of Hazardous Substance storage or handling facilities and procedures.

F. Reporting of Discharges

Any person or organization responsible for any discharge of a Hazardous Substance, Solid Waste, Hazardous Waste, petroleum product, or radioactive material shall notify the Village Clerk of such discharge within 24 hours of the time of discovery of the discharge. This notification does not alter other applicable reporting requirements under existing law and applies to all uses, whether conforming or non-conforming in any respect.

G. Non-conforming Uses, Structures, and Lots

See Article of in the Village of Allegany Zoning Ordinance. For any non-conformity which requires a Special Use Permit to expand or change, all requirements of this APOD shall apply to such expansion or change.

APPENDIX A – Well Testing

For any other projects requiring withdrawals of more than 5,000 daily gallons of water from wells, and where onsite recharge as defined in Appendix B herein is less than the proposed Consumption of Water as defined in Appendix C, a minimum 24-hour flow test of proposed wells is required including impact analysis including water level monitoring in wells on abutting parcels.

APPENDIX B Determination of a Parcel’s Natural Rate of Aquifer Recharge

The natural recharge rate for a parcel shall be determined by identifying the soil types on the property, classifying them by hydrologic soil groups (A through D, A/D and C/D), and applying a recharge rate of 18.2 inches/year for A and A/D soils, 13.3 inches/year for B soils, 6.8 inches/year for C and C/D soils, and 3.8 inches/year for D soils, and multiplying the recharge rate(s) by the number of acres in the parcel for each soil group.

APPENDIX C Consumption of Water

The following table establishes the method to calculate projected site or watershed consumption of water, as defined in Section C above. Consumption may be considered to be zero where the source of water used on a proposed site is the Allegany River.

| <u>Use</u> | <u>Gallons per day</u> | <u>Multiplied by Dilution factor</u> | <u>Consumption/day</u> |
|---|--|--|------------------------|
| Irrigated Lands (non-agricultural) | Irrigated Acres x 4,000 ⁽¹⁾ | x 1 | = _____ |
| Uses with Surface Discharge of Wastewater if Source water is from surface water | Calculated Demand | x 0.2 | = _____ |
| Uses with Surface discharge of Wastewater if Source water is from On-Site Groundwater Wells | Calculated Demand | x1 | = _____ |
| Residential Uses with Conventional Subsurface Wastewater Discharge ⁽²⁾ | 70 gpd/capita | x 8 | = _____ |
| Nonresidential Uses with Conventional Subsurface Wastewater Discharge ⁽²⁾ | Daily Use | x 8 | = _____ |

(1) Applicable for vegetation requiring 1 inch/week irrigation. May be adjusted for vegetation with other water requirements.

(2) Calculate use per NYSDEC intermediate wastewater disposal guide. Discharge must not exceed NYSDEC Title 10, Part 703 effluent limits.

(3) where projects meet more than one condition listed on the table above, the calculation resulting in the greatest Consumption value must be used.

EFFECTIVE DATE

This law becomes effective when filed with the Secretary of State of New York State.