

Topic: Overlay District; Zoning; Wetlands & Watercourse Protection
Resource Type: Regulations
State: New York
Jurisdiction Type: Municipal
Municipality: Town of Batavia
Year (adopted, written, etc.): Unknown
Community Type - applicable to: Suburban; Rural
Title: Town of Batavia Wellhead Protection Overlay Zone Ordinance
Document Last Updated in Database: March 23, 2017

Abstract

This law is designed to protect those areas of the town which are important to ensuring a safe and healthful drinking water supply for the Batavia area, local residents, employees and the general public through the preservation of the town's groundwater sources. The designation of two Wellhead Protection Areas (WPA) within the Wellhead Protection Overlay Zone and the careful regulation of activities with these zones will reduce the potential for groundwater contamination. The Wellhead Protection Overlay Zone will preserve and maintain the existing and potential groundwater supplies, aquifers, and aquifer recharge areas of the town and protect them from adverse development or land use practices. The Wellhead Protection Overlay Zone will also conserve the natural resources of the town and prevent pollution.

Resource

Town of Batavia NY Wellhead Protection Overlay Zone
Code of the Town of Batavia NY
Chapter 235: Zoning

General Code

§ 235-33. Wellhead Protection Overlay Zone (WPO).

A. Purpose. The Wellhead Protection Overlay Zone (WPO) is established to preserve and protect those areas of the town which are important to ensuring a safe and healthful drinking water supply for the Batavia area, local residents, employees and the general public through the preservation of the town's groundwater sources. The designation of two Wellhead Protection Areas (WPA) within the Wellhead Protection Overlay Zone and the careful regulation of activities with these zones will reduce the potential for groundwater contamination. The Wellhead Protection Overlay Zone will preserve and maintain the

existing and potential groundwater supplies, aquifers, and aquifer recharge areas of the town and protect them from adverse development or land use practices. The Wellhead Protection Overlay Zone will also conserve the natural resources of the town and prevent pollution.

B. General process. The Wellhead Protection Overlay Zone shall be considered as overlaying other districts as shown on the Zoning Map for the Town of Batavia. Any use not permitted in the underlying zoning districts shall not be permitted in the Wellhead Protection Overlay Zone. Any uses permitted in underlying zoning districts shall be permitted in the Wellhead Protection Overlay Zone, except where the Wellhead Protection Overlay Zone prohibits or imposes greater or additional restrictions and requirements. In those instances where the Wellhead Protection Overlay Zone prohibits a use, such use shall not be allowed. In those instances where the Wellhead Protection Overlay Zone contains additional or greater restrictions or regulations, such uses shall not be allowed until such restrictions and/or regulations are complied with. In any cases where conflicts arise between these regulations and any other existing regulations, the more restrictive regulations shall apply.

C. Zone boundaries. Where the bounds of a particular Wellhead Protection Overlay Zone or any Wellhead Protection Areas as delineated on the Zoning Map are in doubt, the burden of proof shall be upon the owner(s) of the land in question or his official designee to show that the boundaries differ from those that are indicated. At the request of the owner(s) whose land has been designated as part of a Wellhead Protection Overlay Zone, the town may engage a professional hydrogeologist or geologist to determine more accurately the location and extent of an aquifer or recharge area and may charge the owner(s) for all or part of the cost of the investigation. Based upon acceptable documentation that the boundary of a Wellhead Protection Overlay Zone should be modified, the Town Board may consider amendment of such district boundary on the Town of Batavia Zoning Map pursuant to Article VIII of this chapter.

D. Determination of presence and significance of the Wellhead Protection Overlay Zone. For the purposes of this Wellhead Protection Overlay Zone, there are hereby established within the Town of Batavia certain Wellhead Protection Areas which consist of any aquifer, the land above an aquifer, and significant aquifer recharge areas. The establishment of these areas is confirmed by information set forth in the City of Batavia Wellhead Protection Study (DATE) and recommendations by the Wellhead Protection Project Technical Committee and the Water Quality Advisory Committee. These Wellhead Protection Areas are delineated on the Wellhead Protection Area Map and are described as follows:

(1) Wellhead Protection Area 1 (WPA1). As delineated, Wellhead Protection Area 1 shall include those areas within the Primary Wellhead Protection Area delineated WPA1 on the Wellhead Protection Area Map.

(2) Wellhead Protection Area 2 (WPA2). As delineated, Wellhead Protection Area 2 shall include those areas outside of Wellhead Protection Area 1 but within the area

delineated as Secondary Wellhead Protection Area or Wellhead Protection Area 2 (WPA2) on the Wellhead Protection Area Map.

E. Compliance with SEQR for actions within the Wellhead Protection Overlay Zone. Wellhead Protection Area 1 (WPA1) is hereby designated as a critical environmental area pursuant to the State Environmental Quality Review Act (SEQR), 6 NYCRR 617.4(h) and 617.12(12). As such, any unlisted action under SEQR shall automatically be reviewed as a Type 1 action. Refer to 6 NYCRR 617.11 for specific review criteria for Type 1 actions.

F. Use regulations for the Wellhead Protection Overlay Zone.

(1) Prohibited uses and activities. Within all of the Wellhead Protection Areas of the Wellhead Protection Overlay Zone, the following uses and activities are specifically prohibited:

- (a) Sanitary landfills, including construction and demolition debris landfills;
- (b) Junkyards or motor vehicle salvage operations;
- (c) Outside storage of road salt or other de-icing chemicals;
- (d) Disposal of snow that contains de-icing materials and that has been transported from areas outside the Wellhead Protection Overlay District;
- (e) Storage of animal manure, not being used for the primary purpose of agriculture;
- (f) Surface land application of septage, sludge, or human excreta; and
- (g) The discharge, surface land application or disposal of any hazardous substance, hazardous waste, petroleum, or radioactive material.

(2) Permitted uses. All uses currently permitted in the underlying district are permitted in the Wellhead Protection Overlay Zone subject to the additional requirements as indicated in Subsection F(3).

(3) Additional requirements for the Wellhead Protection Overlay Zone. The following requirements and standards shall be observed for proposed land uses other than single- and two-family dwellings and their accessory uses located within any portion of the Wellhead Protection Overlay Zone or particular Wellhead Protection Areas, described as follows:

(a) Runoff/drainage.

[1] Post-development conditions for a proposed use within a Wellhead Protection Overlay Zone shall result in no increase in the frequency and occurrence of stormwater runoff from predevelopment conditions. In addition, the off-site impacts of erosion and sedimentation from the proposed use shall not be any greater during and following land disturbance activities than under predevelopment conditions.

[2] Stormwater runoff shall be treated to prevent water quality degradation of the receiving water body, including groundwater.

[3] All stormwater runoff from impervious surface areas shall be diverted to a nearby surface water body. If a nearby surface water body is unavailable or if other physical constraints prevent such diversion, all stormwater runoff from impervious surfaces shall be recharged into the groundwater on the site via infiltration trenches or infiltration basins.

[4] The stormwater recharge area shall be at the farthest point practical from the municipal wells.

[5] Supplemental stormwater management practices, such as open vegetated swales, vegetated buffer zones or filter strips, may be used to compliment the infiltration trenches and infiltration basins. Supplemental stormwater management practices shall not be used as a substitute for infiltration trenches and infiltration basins.

[6] The design of infiltration trenches, infiltration basins, open vegetated swales, vegetated buffer zones and filter strips shall be in accordance with the design criteria for these stormwater management techniques as described in Chapter 6 of the Department of Environmental Conservation (DEC) manual "Reducing the Impacts of Stormwater Runoff from New Development."

[7] Dry wells shall be used only where other methods may not be feasible, as determined by the Planning Board, due to physical constraints of the site. Dry wells shall be equipped with oil, grease, and sediment traps.

[8] Practices for controlling erosion and sedimentation shall be selected from the New York Guidelines for Urban Erosion and Sediment Control and the DEC manual "Reducing the Impacts of Stormwater Runoff from New Development."

[9] The applicant shall prepare a stormwater management and erosion control plan using the outline presented in Chapter 4 of the DEC manual "Reducing the Impacts of Stormwater Runoff from New Development." The stormwater management and erosion control plan prepared by the applicant shall include, at a minimum, the following components:

- [a] Background information about the scope of the project;
- [b] A statement of stormwater management and erosion and sediment control objectives;
- [c] A comparison of post-development stormwater runoff conditions with predevelopment conditions. The applicant shall submit calculations of the volume of stormwater runoff and peak stormwater discharge rates under predevelopment and post-development conditions for each of the following: the one-year, two-year, ten-year and one-hundred-year twenty-four-hour storm event. The applicant shall use the methodology described in the Soil Conservation Service's TR-20 or TR-55;
- [d] A description of proposed structural and vegetative stormwater management measures, including treatment for the first flush, to ensure that the

quantity, temporal distribution, and quality of stormwater runoff during and after development is not substantially altered from predevelopment conditions. The applicant shall apply the standards and criteria for designing stormwater facilities to capture and treat the first flush as described in Chapters 5 and 6 of the DEC manual "Reducing the Impacts of Stormwater Runoff from New Development";

[e] A description of the temporary erosion and sediment control facilities to be used during land clearing, land grading, and the construction phase;

[f] A description of permanent erosion and sediment control facilities;

[g] A description of the implementation schedule for staging of all stormwater management facilities that includes coordination with staging of erosion and sediment control facilities and construction activities; and

[h] A maintenance plan that describes the type and frequency of maintenance required by the stormwater management and erosion and sediment control facilities, arrangements for ensuring long-term maintenance of stormwater management and erosion and sediment control facilities, backup contingency plans, and the person(s) responsible for implementing the maintenance plan and performing the described maintenance.

[10] The Planning Board may require that, in addition to the preparation of a stormwater management and erosion control plan, the applicant prepare a concise summary report that presents the pertinent information and conclusions contained in the stormwater management and erosion control plan.

(b) Petroleum storage. Proposed uses within the Wellhead Protection Overlay Zone are required to meet the following standards for storage of petroleum in new or replacement storage tanks and/or containers:

[1] The storage of petroleum in underground or aboveground tanks with a combined storage capacity of over 1,100 gallons shall be in accordance with the standards of the New York State Department of Environmental Conservation Rules and Regulations for Petroleum Bulk Storage, 6 NYCRR 614. Additional design requirements for underground and aboveground storage tanks shall include the following:

[a] Piping for all underground storage tanks and all aboveground storage tanks shall be equipped with secondary containment constructed of product-tight materials.

[b] Piping for all underground storage tanks and all aboveground storage tanks shall be equipped with a leak monitoring system.

[c] All aboveground tanks shall be equipped with a dike, berm or other secondary containment structure constructed of material that is impervious to the product stored in the tank. This containment structure shall be designed to contain at least 120% of the volume of the largest tank enclosed by the containment structure.

[d] All outdoor storage areas, loading docks, and product transfer areas shall be equipped with a permanent covering of roof to protect tanks from adverse weather conditions and to prevent stormwater from accumulating in the containment areas.

[e] All loading docks and product transfer areas shall be equipped with a spill pump which empties into a holding tank to catch and store any spilled petroleum and accumulated stormwater within the containment area until such time as it can be removed and properly treated and/or disposed of.

[f] All aboveground tanks shall be equipped with visual gauges to monitor fluid levels.

[g] Storage areas shall be secured against unauthorized entry.

[2] Indoor storage areas for petroleum shall meet all applicable local, state and federal requirements and the design requirements listed below. Indoor storage areas for petroleum used for on-site consumption and the indoor storage of petroleum in quantities necessary for household use (operating lawn care equipment, recreational vehicles, snow blowers, etc.) shall be exempt from the design requirements for indoor storage areas.

[a] Petroleum shall be stored in containers equipped with a lid.

[b] All storage areas shall be equipped with a pad and a dike, berm or other secondary containment structure constructed of material that is impervious to the product stored in the tank. This containment structure shall be designed to contain at least 120% of the volume of the largest container enclosed by the structure.

[c] No storage areas shall be located in proximity to floor drains.

[d] Storage areas shall be secured against unauthorized entry.

[3] A spill control plan shall be prepared for any facility that stores petroleum. Facilities that only store petroleum for on-site consumption and the storage of petroleum in quantities necessary for normal household use (operating lawn care equipment, recreational vehicles, snow blowers, etc.) shall be exempt from the requirement to prepare a spill control plan. The spill control plan shall be posted in a conspicuous location. The spill control plan shall include, at a minimum, the following components:

[a] A site plan illustrating the direction of stormwater and groundwater flow;

[b] A description of operational procedures;

[c] A description of potential spill sources;

[d] The spill response training program for the employees;

[e] The names and telephone numbers of the person or persons responsible for responding to the spill;

[f] The procedures for containing and cleaning up the spill; and

[g] The procedure for notifying the Town of Batavia Fire Department, Town of Batavia Town Supervisor, Town of Batavia Water and Sewer Personnel, and other appropriate local and state officials of a spill, leak or other reportable discharge as defined in 6 NYCRR 613.

[4] Following site development, periodic inspections of facilities involved in petroleum bulk storage may be performed to ensure that these facilities pose no threat to the water supply. To conduct such periodic inspections, the Building Inspector or his/her designee(s) will notify the owner and/or his/her designee(s) by telephone and in writing of the planned inspection. The owner and/or his/her designee(s) shall grant the Building

Inspector or his/her designee(s) access to the site and the petroleum bulk storage facilities for the purpose of a periodic inspection at a mutually agreeable time within 72 hours of notice of the inspection. This aforementioned requirement for prior notification may be waived and the site accessed immediately by the Building Inspector if he/she has reason to suspect an imminent threat exists to the public health, safety and/or welfare. The purpose of these inspections is to ascertain whether petroleum bulk storage facilities are in good operating condition and the facility is in compliance with the applicable requirements and standards of this section.

(c) Hazardous substance storage. Proposed uses within the Wellhead Protection Overlay Zone are required to meet the following standards for storage of hazardous substances in new or replacement storage tanks or containers:

[1] The underground storage or outdoor, aboveground storage of hazardous substances, including pesticides, herbicides, and fertilizers, is prohibited.

[2] Indoor storage areas for quantities of hazardous substances, including pesticides, herbicides, and fertilizers, that total more than 250 pounds dry weight or 50 gallons liquid shall meet all applicable federal and state requirements and the additional design standards and requirements listed below. The indoor storage of hazardous substances, including pesticides, herbicides and fertilizers, in their original, sealed containers for the purposes of resale, shall only be exempt from the following three requirements and standards for indoor storage areas as specified in this Subsection F(3)(c), Hazardous substance storage: Subsection F(3)(c)[2][c], [d] and [e].

[a] All products shall be stored in product-tight containers equipped with a lid.

[b] Each container shall be clearly and visibly labeled.

[c] Drip pans shall be located under the spigots of drums or containers that are stored in a horizontal position on racks to catch spills/leaks. Drip pans shall be routinely emptied and the contents recycled, reused, or disposed of appropriately.

[d] All storage areas shall be equipped with a pad and a dike, berm or other containment structure constructed of material that is impervious to the product stored in the tank, This containment structure shall be designed to contain at least 120% of the volume of the largest containers enclosed by the structure.

[e] Storage areas shall be inspected by the applicant at least once a week for signs of leaks or spills and the aisle space between containers shall be adequate to allow for inspections. A summary report, noting the results of weekly inspections, shall be prepared every six months and sent to the Building Inspector.

[f] Absorbent materials such as kitty litter, sawdust, soil, or clay shall be kept on hand for emergency cleanups and containment in the event of a spill.

[g] No storage areas shall be located in proximity to floor drains.

[h] Storage areas shall be secured against unauthorized entry.

[i] An accurate log or inventory of materials stored on site shall be maintained and provided to the Building Inspector annually.

[3] A spill control plan shall be approved and shall be posted in a conspicuous location. The indoor storage of hazardous substances, including pesticides, herbicides, and fertilizers, in quantities necessary for normal household use or agricultural use, shall be exempt from the requirement to prepare a spill control plan. The spill control plan shall include, at a minimum, the following components:

- [a] A site plan illustrating the direction of stormwater and groundwater flow;
- [b] A description of operational procedures;
- [c] A description of potential spill sources;
- [d] The spill response training program for the employees;
- [e] The names and telephone numbers of the person or persons responsible for responding to the spill; and
- [f] The procedure for notifying the Town of Batavia Fire Department, Town of Batavia Town Supervisor, Town of Batavia Water and Sewer Personnel, and other appropriate local and state officials of a spill, leak or other reportable discharge as defined in 6 NYCRR 595 and 597.

[4] Following site development, periodic inspections of facilities that use or store hazardous substances may be performed to ensure that these facilities pose no threat to the water supply. To conduct such periodic inspections, the Building Inspector or his/her designee(s) will notify the owner and/or his/her designee(s) by telephone and in writing of the planned inspection. The owner and/or his/her designee(s) shall grant the Building Inspector or his/her designee(s) access to the site and the hazardous substance storage facilities for the purpose of a periodic inspection at a mutually agreeable time within 72 hours of notice of the inspection. This aforementioned requirement for prior notification may be waived and the site accessed immediately by the Building Inspector if he/she has reason to suspect an imminent threat exists to the public health, safety and/or welfare. The purpose of these inspections is to ascertain whether aboveground storage containers for hazardous substances are in good operating condition and the facility is in compliance with the applicable requirements and standards of this section.

(d) Individual sewage treatment system design requirements.

[1] Individual sewage treatment systems shall comply with all applicable requirements of the Genesee County Sanitary Code and any applicable rules and regulations of the New York Health Department or Department of Environmental Conservation.

[2] A proposed use in the Wellhead Protection Overlay District is also required to meet the following standards for the design of residential and nonresidential individual sewage treatment systems:

- [a] No floor drains shall be connected to the septic system.
- [b] All individual sewage treatment systems installed to serve uses other than one- and two-family dwelling units shall be equipped with oil/grease separators to prevent clogging of the leaching field by fats, grease, and oil.

(e) Monitoring wells.

[1] At its sole discretion, the Planning Board may require the provision of monitoring wells as a condition of site plan approval for uses located within the Wellhead Protection Overlay District. When monitoring wells are required, a minimum of three groundwater monitoring wells shall be installed prior to site development for the purposes of evaluating predevelopment and post-development groundwater quality, groundwater flow direction, and groundwater elevation.

[2] As other regulations and setback requirements permit, one well shall be installed near an upgradient property boundary, one well shall be installed near a downgradient property boundary, and one well shall be installed between the two upgradient and downgradient wells to facilitate the calculation of groundwater flow direction.

[3] The specific location of the monitoring wells shall be determined by a professional geologist, hydrogeologist, engineer, or other qualified expert trained and experienced in hydrogeology. The location of the monitoring wells shall be approved by the Planning Board prior to site development.

[4] Prior to site development, a groundwater sample shall be collected from each of the monitoring wells and submitted to a New York State certified analytical laboratory for analysis of nitrate-nitrogen, sodium, chloride, coliform bacteria and other appropriate parameters that represent each of the petroleum or hazardous substances proposed to be used, stored or disposed of on site. Groundwater elevations shall also be recorded and groundwater flow direction shall be calculated.

[5] Three months after site development has been completed, a groundwater sample shall be collected from each of the monitoring wells and submitted to a New York State certified analytical laboratory for analysis of each of the parameters tested for under predevelopment conditions. Groundwater elevations shall also be recorded and groundwater flow direction shall be calculated.

[6] An initial summary report shall be prepared that describes predevelopment and post-development groundwater quality, groundwater elevation and groundwater flow direction. This initial summary report shall be submitted to the Building Inspector within six months of the completion of site development.

[7] Following the submission of the initial summary report, the applicant shall begin a monitoring program that includes one sampling event each year during the wet season, defined as the months of March, April, May, September, October and November. Groundwater samples shall be collected from each of the monitoring wells and submitted to a New York State certified analytical laboratory for analysis of the parameters evaluated under predevelopment conditions and/or additional parameters to reflect a change in the type of substances used, stored, or disposed of on site. Groundwater elevations shall be recorded, and groundwater flow direction shall be calculated. An annual summary report that describes trends in groundwater quality and groundwater flow direction shall be provided to the Building Inspector within three months of the annual sampling event.

[8] The costs of installing and operating the monitoring wells, including sampling and laboratory analysis, and preparing the required summary reports shall be borne by the owner or applicant. Access to the monitoring wells shall be provided to the Planning Board and/or its designee(s) for purposes of any additional water quality sampling deemed appropriate by the Planning Board.

(f) Floor drains. Floor drains for other than one- and two-family dwellings are required to be connected to a holding tank or an oil and grit separating tank that is connected to either an approved on-site wastewater treatment system or a municipal sanitary sewer system. Floor drains which are connected to the sanitary sewer must meet discharge limits and permit requirements established by the authority having jurisdiction.

(g) Hazardous waste storage and disposal.

[1] Proposed uses within the Wellhead Protection Overlay Zone are required to meet the following standards for hazardous waste disposal:

[a] The underground storage or outdoor, aboveground storage of hazardous waste is prohibited.

[b] The owner or applicant shall demonstrate the availability and feasibility of indoor storage and proper disposal methods which are in conformance with all applicable local, state and federal laws for any hazardous waste to be produced in quantities greater than those associated with normal household or agricultural use. The owner or applicant shall also demonstrate that wastes will be properly handled and stored until disposed of by a licensed waste hauler.

[2] If a spill control plan is required by this chapter for the storage of petroleum or hazardous substances, the spill control plan shall include provisions for responding to an accidental discharge of hazardous waste and shall include, at a minimum, the following additional components that specifically address hazardous waste:

[a] A description of potential hazardous waste spill sources;

[b] The hazardous waste spill response training program for the employees;

[c] The names, addresses, and telephone numbers of the person or persons responsible for responding to the hazardous waste spill;

[d] The procedures for containing and cleaning up the hazardous waste spill; and

[e] The procedure for notifying the Fire Department, Building Inspector, Town of Batavia officials and other appropriate local and state officials of a hazardous waste spill, leak or other reportable discharge as defined in 6 NYCRR 372, Hazardous Waste Manifest System and Related Standards for Generators, Transporters, and Facilities.

[3] Following site development periodic inspections of facilities that use or store hazardous substances may be performed to ensure that these facilities pose no threat to the water supply. To conduct such periodic inspections, the Building Inspector or his/her

designee(s) will notify the owner and/or his/her designee(s) by telephone and in writing of the planned inspection. The owner and/or his/her designee(s) shall grant the Building Inspector or his/her designee(s) access to the site and the hazardous substance storage facilities for the purpose of a periodic inspection at a mutually agreeable time within 72 hours of notice of the inspection. This aforementioned requirement for prior notification may be waived and the site accessed immediately by the Building Inspector if he/she has reason to suspect an imminent threat exists to the public health, safety and/or welfare.

(h) Road salt storage and application.

[1] Safe alternatives to road salt, defined as sodium chloride, such as calcium chloride and sand, shall be used whenever possible. Signs shall be posted along roadways that receive no salt or reduced salt application to inform motorists.

[2] A proposed use within the Wellhead Protection Overlay Zone is required to meet the following standards:

[a] The outdoor storage of road salt is prohibited; and

[b] The use of more than a 1:5 ratio of salt to sand (20% salt is a sand and salt mixture) is discouraged.

(i) Pesticide application.

[1] A proposed use within the Wellhead Protection Overlay Zone is required to meet the following standards:

[a] The application of liquid or solid pesticides, herbicides, or chemical fertilizers shall be performed in accordance with the recommendations and label of the manufacturer.

[b] Nonagricultural use of liquid or solid fertilizers, pesticides, and herbicides shall be in conformance with the Best Management Practices described in materials developed by the Cornell Cooperative Extension which are available from the Municipal Clerk's office and the Planning Board.

[c] Empty containers and unused pesticides and herbicides shall be disposed of properly.

[d] Property owners who enlist the services of a commercial pesticide or herbicide applicator shall ensure that the applicator is certified and licensed by the New York State Department of Environmental Conservation.

[e] Agricultural use of liquid or solid fertilizers, including the land application of manure, and the use of liquid or solid pesticides and herbicides shall be in conformance with the Best Management Practices described in the DEC manual "Controlling Agricultural Nonpoint Source Water Pollution in New York State - A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality" and/or Best Management Practices as developed by the New York State Soil

and Water Conservation Committee and implemented by the use of farm plans prepared by the Genesee County Soil and Water Conservation District.

[2] As applicable, all pesticide and herbicide use and application shall be under permit as provided in the New York State Environmental Conservation Law, Article 33.

[a] Disposal of containers or unused pesticides and herbicides is prohibited except in accordance with the permit issued as provided in the New York State Environmental Conservation Law, Article 33.

[b] Disposal of water used for makeup water or for washing of equipment is prohibited except pursuant to permit issued as provided in the New York State Environmental Conservation Law, Article 33.

[c] Use of streams or watercourses for makeup water or washing equipment used in conjunction with pesticides and herbicides is prohibited.