

I. AUTHORITY

The [City or Town] of [Town Name] hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II relative to innovative land use controls.

II. PURPOSE

The purpose of this ordinance is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas *and to protect surface waters that are fed by groundwater.*

The purpose is to be accomplished by regulating land uses which could contribute pollutants to designated wells and/or aquifers identified as being needed for present and/or future public water supply.

III. DEFINITIONS

- A. Aquifer: a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
- B. Petroleum bulk plant or terminal: means that portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.
- C. Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations.
- D. Gasoline station: means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.
- E. Impervious: not readily permitting the infiltration of water.
- F. Impervious surface: a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Earthen; wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.
- G. Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard. The word does not include any motor

- vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.
- H. Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
 - I. Public water system: a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.
 - J. Regulated substance: petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.
 - K. Sanitary protective radius: The area around a public water supply well which must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems); Env-Dw 373.12 and Env-Dw 372.14 (for other public water systems).
 - L. Seasonal high water table: The depth from the mineral soil surface to the upper most soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydrogeologist, Soils Scientist, Wetlands Scientist, Engineer or other qualified professional approved by the Planning Board.
 - M. Secondary containment: a structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.
 - N. Snow dump: For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.
 - O. Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.
 - P. Surface water: streams, lakes, ponds and tidal waters, including marshes, water-courses and other bodies of water, natural or artificial.

- Q. Wellhead protection area: The surface and subsurface area surrounding a water well or wellfield supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

IV. GROUNDWATER PROTECTION DISTRICT

The Groundwater Protection District is an overlay district which is superimposed over the existing underlying zoning and includes within its boundaries,

(1) all of the Wellhead Protection Areas for public water supply wells as defined under Article III, part (I) of this ordinance. The district is shown on the map entitled, Town of [Town Name] Groundwater Protection District, dated [Date Adopted].

Or . . .

(2) the Stratified Drift Aquifer(s) shown on the map entitled, Town of [Town Name] Groundwater Protection District, dated [Date Adopted].

Or... a combination of the two.

V. APPLICABILITY

This Ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under Article XII (Exemptions) of this Ordinance.

VI. PERFORMANCE STANDARDS

The following Performance Standards apply to all uses in the Groundwater Protection District unless exempt under Article XII:

- A. For any use that will render impervious more than 15 percent or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board determines is consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Services.
- B. Conditional uses, as defined under Article X shall develop stormwater management and pollution prevention plans and include information consistent with Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators (US EPA, Feb 2009) The plan shall demonstrate that the use will:

- 1) Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post-Construction) Stormwater Management,(DES, 2008 or later edition)
 - 2) Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
 - 3) Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI);
 - 4) Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board.
- C. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, July 2008, and any subsequent revisions;
- D. All regulated substances stored in containers with a capacity of five gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
- E. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;
- G. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);

- H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
- I. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.
- J. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells.
- K. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.¹

VII. Spill Prevention, Control and Countermeasure (SPCC) Plan

Conditional uses, as described under Article X, part (A), using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the [Fire Chief, Health officer or Emergency Management officer] who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:

- 1) A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
- 2) Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
- 3) A list of all regulated substances in use and locations of use and storage;
- 4) A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
- 5) A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

¹ A positive limiting barrier (PLB) is a depression (e.g., groove) in the surface of an otherwise level impervious area designed to impede the flow and contain spilled substances within the perimeter of the impervious area. PLBs are typically constructed and maintained to contain small spills or releases (five to fifteen gallons).

VIII. PERMITTED USES

All uses permitted by right or allowed by special exception in the underlying district are permitted in the Groundwater Protection District unless they are Prohibited Uses or Conditional Uses. All uses must comply with the Performance Standards unless specifically exempt under Article XII.

IX. PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A;

- A. The development or operation of a solid waste landfill;
- B. The outdoor storage of road salt or other deicing chemicals in bulk;
- C. The development or operation of a junkyard;
- D. The development or operation of a snow dump;
- E. The development or operation of a wastewater or septage lagoon;
- F. The development or operation of a petroleum bulk plant or terminal;
- G. The development or operation of gasoline stations.

X. CONDITIONAL USES

The Planning Board may grant a Conditional Use Permit for a use which is otherwise permitted in the underlying district, if the permitted use is involved in one or more of the following:

- A. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with Article VII, is approved by the [local Fire Department, Health officer or Emergency Management officer];
- B. Any use that will render impervious more than 15 percent or 2,500 square feet of any lot, whichever is greater.
- C. Any activities that involve blasting of bedrock.

In granting such approval the Planning Board must first determine that the proposed use is not a prohibited use (as listed in Article IX of this Ordinance) and will be in compliance with the Performance Standards in Article VI as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.

XI. EXISTING NONCONFORMING USES

Existing nonconforming uses may continue without expanding or changing to another nonconforming use, but must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices Rules.

XII. EXEMPTIONS

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

- A) Any private residence is exempt from all Performance Standards;
- B) Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons is exempt from Article VI, Performance Standards, sections E through H;
- C) Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard E;
- D) Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standards E through H;
- E) Storage and use of office supplies is exempt from Performance Standards E through H;
- F) Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards E through H if incorporated within the site development project within six months of their deposit on the site;;
- G) The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance;

- H) Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Performance Standards E through H;
- I) Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Article XIV of this ordinance.

XIII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

Where both the State and the municipality have existing requirements the more stringent shall govern.

XIV. MAINTENANCE AND INSPECTION

- A. For uses requiring planning board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for [name of county] County. The description so prepared shall comply with the requirements of RSA 478:4-a.
- B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the [designated agent] at reasonable times with prior notice to the landowner.
- C. All properties in the Groundwater Protection District known to the [designated agent] as using or storing regulated substances in containers with a capacity of five gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Article XII, shall be subject to inspections under this Article.
- D. The [governing body] may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the [governing body] as provided for in RSA 41-9:a.

XV. ENFORCEMENT PROCEDURES AND PENALTIES

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676 or RSA 485-C.

XVI. SAVING CLAUSE

Town of [TOWN NAME]

If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

XVII. EFFECTIVE DATE

This ordinance shall be effective upon adoption by the legislative body.