

ARTICLE XVII. SANDWICH GROUNDWATER PROTECTION ORDINANCE

§ 150-111 AUTHORITY

The Town of Sandwich 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.

§ 150-112 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 within the Groundwater Protection District.

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

See Article XVII.E for applicability to preexisting uses.

§ 150-113 DEFINITIONS

1. **Aquifer:** a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
2. **Biosolids:** organic solid, semi-solid, or liquid by-product of the wastewater treatment process that meet EPA standards for land application, which include reduction or elimination of pathogens and very low limits for heavy metals, are referred to as Biosolids.
3. **Gasoline station:** that portion of a property where petroleum products are received by tank vessel, or tank vehicle and distributed for the purposes of retail sale of petroleum products including, but not limited to: gasoline, kerosene, and diesel fuel.
4. **Groundwater:** subsurface water that occurs beneath the water table in soils and geologic formations.
5. **Impervious:** not readily permitting the infiltration of water.
6. **Impervious surface:** a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt, 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.
7. **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, and includes garbage dumps and sanitary landfills. 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.
8. **Overlay district.** a district that is superimposed over one or more zoning districts or parts of districts and that imposes specified requirements that are in addition to those otherwise applicable for the underlying zone.
9. **Outdoor storage:** storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
10. **Petroleum bulk plant or terminal:** that portion of the property where petroleum products are received by tank vessel or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, tank vehicle, portable tank, or container.
11. **Public water system:** a system for the provision to the public of piped water for human consumption, if such system has at least 10 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.
12. **Regulated substance:** any of the following, with the exclusion of ammonia, sodium

- hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, and potassium permanganate: (1) Oil as defined in RSA 146-A:2, III; (2) Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and (3) Any substance listed in 40 CFR 302, 7-1-05 edition.
13. **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 Env-Dw 302 (for community water systems); Env-Ws 373.12 and Env-Ws 372.14 (design standards for small community and non-community public water systems, respectively). The radius shall be 150 feet.
 14. **Seasonal high water table:** elevation of the highest annual average groundwater table location and soils data.
 15. **Secondary containment:** a structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest container holding regulated-substances. Secondary containment areas must be covered if regulated substances are stored outside.
 16. **Sludge:** sludge is an organic solid, semi-solid, or liquid by-product of the wastewater treatment process. Sludge characteristics vary depending on each treatment facility's waste stream and the processes that are used.
 17. **Sludge monofill:** a landfill or trench in which sewage sludge and/or septage is the only type of solid waste placed.
 18. **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.
 19. **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.
 20. **Surface water:** streams, lakes, and ponds, including marshes, water-courses and other bodies of water, natural or artificial.
 21. **Wellhead protection area:** the surface and subsurface area surrounding a water well or wellfield supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield; as defined in Env-Dw 301.07 and Env-Dw 302.08.

§ 150-114 GROUNDWATER PROTECTION DISTRICT

The Groundwater Protection District is an overlay district which is superimposed over the existing underlying zoning and includes within its boundaries the Stratified-drift Aquifers in Sandwich as defined in the Geohydrology and Water Quality of Stratified-Drift Aquifers in the Saco and Ossipee River Basins, east-central New Hampshire (USGS 1995). Also to include the most current Wellhead Protection Areas approved by NH Department of Environmental Services or Sandwich Planning Board. District Boundary Disputes: If the location of the Groundwater Protection District in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through application for determination to the Planning Board. The burden of proof shall be upon the owner(s) of the land to demonstrate where the boundaries of the district with respect to their individual parcel(s) of land should be located. Upon application for determination, the Planning Board may engage a professional engineer or geologist as specified in NH RSA's Env-Dw 301 and 302, at the expense of the owner(s) for the cost of the investigation. Based on evidence and findings, the Planning Board may adjust the boundary of the Groundwater Protection District or reduce or expand the designation area to more correctly define the location and the extent of the aquifer on a site-specific, case by case basis.

§ 150-115 APPLICABILITY

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

Preexisting uses not specifically exempt shall comply with Article XVI.I, Performance Standards, 1 thru 7. In addition, preexisting Conditional Uses shall comply with Performance Standard 8.c.

§ 150-116 PERMITTED USES

All uses permitted by right or allowed by special exception in the underlying district that are also located within the Groundwater Protection District remain permitted by right or special exception, as applicable, unless they are Prohibited Uses under this Ordinance.

Uses identified as Conditional Uses under this Ordinance also require a Conditional Use Permit. In the instance that both a Special Exception and a Conditional Use Permit are required, the Special Exception shall be approved prior to the Conditional Use Permit.

All uses must comply with the Performance Standards unless specifically exempt under Article XVI.J.

See Article XVI.E for applicability to preexisting uses.

§ 150-117 PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District:

1. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A;
2. The development or operation of a solid waste landfill;
3. The outdoor storage of road salt or other deicing chemicals in bulk;
4. The development or operation of a junkyard;
5. The development or operation of a snow dump;
6. The development or operation of a wastewater or septage lagoon;
7. The development or operation of a petroleum bulk plant or terminal;
8. The development or operation of gasoline stations;
9. The development or operation of sludge monofills;
10. Storage of animal manure unless covered or contained in accordance with the specifications of the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August 2005, and any subsequent revisions;
11. Facilities that generate, treat, store, or dispose of hazardous waste subject to Env-Hw 500-900 except for:
 - a. household hazardous waste centers and events regulated under Env-Hw 401.03(b)(1) and Env-Hw 501.01(b); and
 - b. water remediation treatment works approved by NH DES for the treatment of contaminated ground or surface waters.
12. Storage of regulated substances in greater than household quantities (> 5 gallons), unless in a free-standing container within a building or above ground with covered secondary containment adequate to contain 110% of the largest container's total storage capacity;
13. Storage of fertilizers, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff

§ 150-118 CONDITIONAL USES

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

1. 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 XVI.I,8(c), is approved by the Sandwich Board of Selectmen, or their designated agent;
2. Any use that will render impervious more than 15% of any lot.
3. In granting a Conditional Use Permit:
 - a. The Planning Board must determine that the proposed use is not a prohibited use;
 - b. The proposed Conditional Uses must comply with the Performance Standards in Article XVI.I as well as all applicable local, state and federal requirements; and
 - c. The Planning Board may, at its discretion, require a performance or other surety bond, in an amount and with conditions satisfactory to the Board, to ensure completion of construction of any facilities required for compliance with the Performance Standards.
4. The Planning Board may require that the applicant provide data or reports prepared by a NH licensed professional geologist or engineer to assess any potential damage to the aquifer that may result from the proposed use. The Planning Board shall engage such professional assistance as it requires at the expense of the applicant to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria.

§ 150-119 PERFORMANCE STANDARDS

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

1. 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, August 2005, and any subsequent revisions;
2. All regulated substances stored in containers with a capacity of 5 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;
3. Facilities where regulated substances are stored must be secured against unauthorized entry.
4. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 125 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;
5. Secondary containment with a cover must be provided for outdoor storage of regulated substances if an aggregate of regulated substances exceeding 5 gallons are stored outdoors on any particular property;
6. 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;
7. Prior to any land disturbing activities, all inactive or abandoned 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.
8. In addition, applicants for Conditional Uses shall:
 - a. Develop and submit a stormwater management and pollution prevention plan that shall include information consistent with Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators. (US EPA 2009) The plan shall demonstrate that the use will:
 - i. Minimize the release of regulated substances into stormwater through a source control plan that identifies pollution prevention measures;
 - ii. Demonstrate that stormwater systems are designed to treat expected contaminants sufficiently in order to ensure that groundwater quality will not be degraded and

- result in violation of Ambient Groundwater Quality Standards (Env-Ws 410.05) at the property boundary;
- iii. Stipulate that expansion or redevelopment activities may, at the discretion of the Planning Board, require an amended stormwater plan; and
 - iv. 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).
- b. For any use that will render impervious more than 15% of any lot, a stormwater management plan shall also be consistent with the New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Sciences. The Planning Board, at its discretion, may waive this requirement if it determines that there is no chance that stormwater from the proposed use and/or development will affect surface or groundwater on or off the property.
- c. For any use of regulated substances, a spill control and countermeasure (SPCC) plan shall be submitted to the Board of Selectmen, or their designated agent, 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. The SPCC plan shall include:
- i. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas;
 - ii. 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;
 - iii. A list of all regulated substances in use and locations of use and storage;
 - iv. 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;
 - v. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

§ 150-120 EXEMPTIONS

The following uses are exempt from the specified provisions of this ordinance provided they comply with all other applicable local, state, and federal requirements:

1. Any private residence is exempt from the Performance Standards set forth in Article XVI;
2. A mobile fuel tank specifically manufactured for the purpose of being transported from site to site for the sole purpose of fueling motor vehicles and/or equipment, provided fuel transfers are conducted over an impervious area and utilize portable spill containment equipment with trained personnel present during transfers. Said tank, transportation and fueling shall comply with all other applicable Regulations.
3. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks (except for liquid propane) are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard 3;
4. 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 3 through 6.
5. Storage and use of office supplies is exempt from Performance Standards 3 through 6;
6. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards 3 through 6 if the construction materials are incorporated within the site development project within twelve months of their deposit on the site;
7. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from

all provisions of this ordinance;

8. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Hw 401.03(b)(1) and 501.01(b) are exempt from Performance Standards 3 through 6;
9. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Article XVI.L of this ordinance.

§ 150-121 RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

Whenever a provision of this ordinance differs from any and all requirements imposed by the State of New Hampshire, or by some other town ordinance, the provision which imposes the greater restriction or higher standard shall govern.

§ 150-122 MAINTENANCE AND INSPECTION

1. 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 Carroll County. The description so prepared shall comply with the requirements of RSA 478:4-a.
2. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Sandwich Board of Selectmen, or their designated agent at reasonable times with prior notice to the landowner.
3. All properties within the Groundwater Protection District known to the Sandwich Board of Selectmen, or their designated agent, as using or storing regulated substances in containers with a capacity of 5 gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance Under Article XVI.J, shall be subject to inspections under this Article.
4. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen as provided for in RSA 41-9:a.

§ 150-123 SAVING CLAUSE

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.

§ 150-124 EFFECTIVE DATE

This ordinance shall be effective upon adoption by the voters of Sandwich.