

TOWN OF WESTFORD

HAZARDOUS MATERIALS STORAGE AND UNDERGROUND TANK REGULATIONS

**REGULATIONS AFFECTING STORAGE OF HAZARDOUS MATERIALS AND HAZARDOUS WASTES
AND AFFECTING UNDERGROUND STORAGE TANKS**

APPROVED AT BOARD OF HEALTH HEARING: FEBRUARY 19, 2015

EFFECTIVE DATE: APRIL 1, 2015

SECTION 1 - AUTHORITY

The Board of Health of the Town of Westford, Commonwealth of Massachusetts (the Board), pursuant to the authority granted under Massachusetts General Laws (M.G.L.) Chapter 111, Section 31, as amended, and by any other power thereto enabling, and acting thereunder and in accordance therewith, has, in the interest of and for the preservation of the public health, duly made and adopted the following rules and regulations governing storage of hazardous materials and hazardous wastes in the Town of Westford and also governing registration and testing of underground storage tanks. These regulations enforce the Hazardous Materials Storage Bylaw, Chapter 61, as amended on March 22, 2014.

The effective date of this regulation is April 1, 2015.

SECTION 2 - FINDINGS AND PURPOSE

Improper storage of hazardous materials, hazardous wastes and leaking underground storage tanks containing hazardous materials are an important source of contamination of groundwater, surface water, soil, sediment, wetland resources and indoor and outdoor air. The purpose of this regulation is to protect, preserve, and maintain the existing and potential groundwater supply, groundwater recharge areas, surface waters, air quality and natural environment within the Town of Westford from contamination, and to protect public health and safety. Nothing in this regulation shall be construed as inconsistent with, or in interference with, the authority vested upon the Fire Chief under M.G.L. ch. 148, or any state rules and regulations adopted pursuant thereto or with the provisions of the Massachusetts Contingency Plan (MCP) 310 CMR 40.0000 or any other Massachusetts or Federal regulation.

SECTION 3 - DEFINITIONS

As used in this regulation the following words shall have the following meanings unless the context requires otherwise:

Abandoned: A tank or storage facility licensed under M.G.L. ch. 148 that is out of service for more than 180 days or any other tank or storage facility that is out of service for more than 12 months.

Above-ground storage tank (AST) or storage facility: Any tank or storage facility, whether inside or outside a building, without backfill over the sides of the tank. A fuel oil tank contained inside a building or vault, including a cellar, is considered to be an above-ground tank.

Board of Health: The Board of Health of the Town of Westford and/or its Agent.

CASRN: The Chemical Abstract Service Registry Number, which is a unique numerical designation assigned to each chemical substance described in the open literature.

Container: Any portable device in which hazardous materials or wastes or special wastes are stored, transported, treated, disposed of or otherwise handled.

CFR: Code of Federal Regulations.

CMR: Code of Massachusetts Regulations.

Discharge: Disposal, deposit, injection, dumping, spilling, leaking, escape, incineration, or placing of any hazardous material or any constituent thereof into or on any land or water so that such material may enter the environment or be emitted into the ambient or indoor air, a drywell, catch-basin, landfill, sewage system, or discharged into any waters, including groundwater.

Double-walled tank: A container with two complete shells, which provide both primary and secondary containment. The container shall have continuous 360 degrees interstitial space between the primary and secondary shells. The interstitial space shall be designed so that an approved interstitial space monitor is able to continuously monitor this space. All double-walled tanks shall be UL-listed.

Facility: A commercial, industrial, retail, institutional or municipal location, including a home business that requires a permit in accordance with this regulation.

Fire Chief: The Fire Chief of the Town of Westford and any designee of the Fire Chief.

Flood Zone: The 1% annual flood zone (commonly referred to as the 100-year flood zone) as depicted on the most current Flood Insurance Rate Map (FIRM) and/or by other document/amendment recognized by the Federal Emergency Management Agency (FEMA).

Groundwater Protection Area: An area identified as Zones I and II in the Water Resource Protection District (WRPD) in the Town of Westford Zoning Bylaw and the area within a 100-foot radius of private drinking water wells.

Hazardous Materials: Any substance or mixture with physical, chemical, infectious, flammable, combustible, radioactive, genotoxic, carcinogenic or toxic characteristics posing a significant actual or potential hazard to water supplies, air or land or other hazards to human health, safety and welfare if such substance or mixture were discharged to land, water or into the air. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as toxic or hazardous under M.G.L. ch. 21C and 21E and 310 CMR 40.0000.

Hazardous Waste: Any substance included on the Massachusetts Oil and Hazardous Materials List (MOHML), 310 CMR 40.1600, when disposed of as a waste.

Health Department: The Health Department of the Town of Westford.

Label: Any written, printed, or graphic material displayed or affixed to containers of toxic or hazardous materials.

Hazardous Waste Generator: Any person or Facility whose processes and actions create hazardous waste.

Hazardous Material User: Any commercial enterprise, government agency, owner or operator that utilizes hazardous materials for any purposes.

MassDEP: The Massachusetts Department of Environmental Protection.

Massachusetts Oil and Hazardous Materials List or MOHML: The MassDEP list that compiles reportable concentrations and reportable quantities of chemicals and is found at 310 CMR 40.1600.

MSDS/SDS: The most current version of the (Material) Safety Data Sheet, which defines any written or printed material concerning a hazardous chemical and which is prepared in accordance with 29 CFR 1910.1200(g).

Owner: Any person or legal entity with legal ownership of a site or facility and/or business.

Operator: A lessee or person(s) in control of and having responsibility for the daily operation of a facility for the storage and dispensing of toxic and hazardous materials.

Out of service: Not in use, with no regular filling or drawing; or not being maintained, without adherence to the requirements of this bylaw; or uncontrolled, without being attended or secured; or any combination thereof.

Release: Any uncontrolled movement of any hazardous material out of a tank or storage facility or its components, or any uncontrolled movement of water into a tank or storage facility or its components, measured as set forth in 527 CMR.

Reportable discharge: The quantity of a specific material under the Massachusetts Contingency Plan, 310 CMR 40.0000 that must be reported to MassDEP; the threshold quantity above which a spill or release of oil or a hazardous material must be reported to the MassDEP as reported in the MOHML.

Residential/Residence: Buildings occupied for living purposes.

Site: A commercial, residential, retail, institutional or municipal establishment and/or property/parcel.

Storage Facility: An area where hazardous materials are stored until transported to a treatment facility.

Special Waste: Any solid waste that is determined not to be a hazardous waste pursuant to 310 CMR 30.000 and that exists in such quantity or in such chemical or physical state, or any combination thereof, so that particular management controls are required to prevent an adverse impact from the collection, transport, transfer, storage, processing, treatment or disposal of the solid waste. Without limitation, special wastes include waste that will require special management to ensure protection of public health, safety or the environment based upon the physical, biological or chemical processes of the waste. Special wastes include but are not limited to: asbestos waste, infectious wastes, except as specified in 310 CMR 19.061(6), sludges including wastewater treatment sludges and industrial process wastewater treatment sludges. For the purposes of this regulation, special wastes do not include drinking water treatment sludges. (Ref: 310 CMR 19.006 and 19.061(2) and (3).).

Town: The Town of Westford

UL Listing: UL (Underwriters' Laboratories) has tested representative samples of the product and determined that it meets UL's requirements. These requirements are based primarily on UL's published and nationally recognized Standards for Safety.

Underground Storage Tank (UST): Any tank or storage facility including fill lines, supply lines, vent lines and all associated connections and appurtenant structures where 10 percent or more of the tank volume is below the ground surface (527 CMR). This definition does not include storage in a freestanding container or tank inside a building.

SECTION 4 – PERMITS

- (1) All residences, home businesses, industrial, commercial, retail, institutional and municipal establishments, including schools, that maintain tanks or other storage containers with an individual capacity to hold more than 50 gallons liquid measure and which are used to store, use, process or generate hazardous materials, hazardous wastes, or special wastes must apply for and obtain a permit for each tank or container from the Health Department. Permits required by the Health Department are in addition to other permits and licenses that may be required by other Town or State regulation, including Fire Prevention regulations.
- (2) Permit applications are available from the Health Department or can be downloaded from the Health Department's web page. The permit application shall provide the following information:
 - a) Name, address and telephone numbers (day and night) of the owner or operator.
 - b) Capacity and contents of tanks and containers including the names of the hazardous materials or wastes being stored along with the CASRN.
 - c) The date of installation, if known.
 - d) Types, sizes, ages, and locations of all tanks and containers.
 - e) Written emergency plan that includes descriptions of leak detection, spill prevention, spill containment and control measures in use for each tank or container.
 - f) Evidence that employees have been trained to respond appropriately to emergencies involving hazardous materials per Occupational Safety and Health Act (OSHA) regulations.
 - g) A site plan or drawing showing the locations of each tank or container. A hand-drawn sketch is acceptable.
- (3) For underground tanks, the following information is required for each tank:

- a) A plan or drawing of the site showing the location of each tank, fill pipe, vent pipe, and other appurtenant structures. A hand-drawn sketch is acceptable. In complex situations, the Health Department may require a plot plan certified by a Registered Land Surveyor.
 - b) The depth of the bottom of the tank referenced to ground surface.
 - c) The capacity of the tank.
 - d) The date the tank was installed.
 - e) The tank construction material, i.e. steel, fiberglass, etc.
 - f) The presence of double walls, interstitial monitoring, or other monitoring systems, i.e. monitoring wells.
 - g) The results of any previous tightness tests or other tests of tank integrity, if applicable.
- (4) All owners or operators of tanks and storage containers must obtain an initial permit within 90 days of the enactment of this regulation and afterwards annually by January 31. Owners and operators that currently are registered under the provisions of Ch. 61 in effect prior to the enactment of this regulation shall obtain a permit within 90 days of enactment.
 - (5) Owners and operators shall maintain a written inventory, reconciled on a monthly basis, of purchase, sale, use, disposal or discharge of the stored material. The written inventory may be kept using a form available from the Health Department. Upon the request of the Health Department, owners or operators shall produce, within 24 hours, their latest reconciled inventory.
 - (6) Owners and operators shall notify the Health Department within ten (10) business days of any changes in the information provided on the initial application. The Health Department may require a new permit if there is substantial change in method of generation or storage, or in the types or quantities of materials or wastes stored. The Health Department will require a new permit if the owner changes.
 - (7) The owners of all residences with an underground fuel storage tank used to store No. 2 fuel oil must obtain a permit from the Health Department. The permit application must include the information required in Sections 4 (2) and (3) above. Residential owners of tanks are not required to maintain a written inventory but must be able to provide the quantity of oil purchased within ten (10) business

days if requested by the Health Department. Sales receipts from the oil delivery company are sufficient for this purpose.

SECTION 5 - EXCEPTIONS

- (1) The following activities are exempt from the requirements of this regulation, however, storage of materials referenced is not exempt unless otherwise specified:
 - a) Application of deicing chemicals in conformance with the Massachusetts Snow and Ice Control Program.
 - b) Application of water treatment chemicals by the Town of Westford Water Department or by other Community Water Systems and storage of these chemicals.
 - c) Discharge of ordinary sanitary wastewater into a septic system installed in accordance with applicable state and local regulations.
 - d) Ordinary use of household or garden products in accordance with labeling instructions and consistent with state and federal regulations.
- (2) Permits are not required under this regulation for the following tanks and storage containers:
 - a) Septic systems
 - b) Diesel fuel stored in tanks mounted on a vehicle and used to fuel vehicles on a construction site.
 - c) Hydraulic oil reservoir tanks on heavy equipment.
 - d) Use and storage of domestic biodegradable cleaners for residential and business maintenance.
 - e) Aboveground fuel oil tanks, including tanks in a basement, installed solely for the purpose of heating the building, providing hot water, and/or as fuel for an emergency generator. Aboveground fuel oil tanks used to store fuel for industrial processes require a permit.
 - f) Aboveground and underground propane tanks and liquefied petroleum gas (LPG) tanks installed for the purpose of heating the building and/or providing hot water and/or cooking fuel, to operate an emergency generator or for a propane filling station.

- g) Storage of consumer-sized containers of hazardous materials such as motor oil, cleaning supplies, paint, paint thinner, lawn chemicals, weed killer, and any other such commercially available products intended for retail, provided that each individual container holds less than 50 gallons liquid volume.
- h) Industrial wastewater holding tanks (IWHT) provided they conform to 314 CMR 18.00.

SECTION 6 - OBLIGATIONS OF PERMIT HOLDERS

In addition to the general requirements in Section 4, all holders of permits under this regulation must comply with the following requirements and obligations.

- (1) Owners and operators or other Persons in Charge must take immediate response actions and must report via telephone any discharge of hazardous materials or hazardous wastes, leaking tanks or abnormal loss of material above the Massachusetts Contingency Plan Reportable Quantity (RQ) for the material to the Health Department and the Fire Chief within 12 hours of knowledge of the event. Leaving a message on the Health Department voice mail constitutes reporting under this regulation. This reporting must be done in addition to any required reporting, if applicable, under the Massachusetts Contingency Plan, 310 CMR 40.0300 et seq. All permit holders must familiarize themselves with the Notification Requirements of the Massachusetts Contingency Plan, including Reportable Quantities.
- (2) Although releases, spills and discharges less than the RQ do not have to be reported to the MassDEP, permit holders must arrange for cleanup of the release and proper disposal of the material. Use of sorbent material may be an appropriate response in many situations. Permit holders must notify the Health Department and the Fire Chief within 12 hours of spills or releases less than the RQ if those spills enter the environment. Additionally the caller should report how the spill was managed. Spills within the confines of a building do not have to be reported provided those spills do not enter a floor drain to the environment.
- (3) Areas where materials governed by this regulation are used, stored, or generated may not contain a floor drain that leads to a storm drain, septic system or leaching structure of any kind or to a wetland or other surface water body. Floor drains in such areas must drain to a containment vessel or tight tank and collected material must be removed by a MassDEP-approved hazardous waste hauler for disposal. If the drain cannot meet these requirements it must be sealed.

- (4) All hazardous waste and other waste from materials governed by this regulation must be removed by a MassDEP-approved hazardous waste hauler for disposal.
- (5) All storage containers and tanks permitted under this regulation must meet the following criteria:
 - a) Storage areas must provide adequate systems to prevent spills and to prevent discharges that do occur from entering the environment.
 - b) Tanks and containers stored indoors must have containment systems that will hold a volume equal to 110 percent of the volume of the largest container.
 - c) Tanks and containers stored outdoors must have containment systems that will hold a volume equal to the volume of the largest container plus 10 percent of the total storage volume. The containment system must be a permanent dike or other structure constructed of impervious material with an impervious, chemical resistant base. The storage area must be under permanent cover and sheltered from the weather to exclude rain and snow from filling the containment area unless otherwise allowed by the Board of Health. All piping and other appurtenant structures that contain or convey the material being stored must be included within the containment structure.
 - d) Owners and operators of aboveground storage tanks, with the exception of residential and other heating oil tanks, must monitor tank or container conditions weekly. The monitoring must be recorded in written or electronic form and shall consist of a visual inspection, inventory of materials present, any noted leakage or unaccounted loss, and the condition of the containment/dike structure. The recorded information must be available upon request by the Health Department. Owners and operators that are required to conduct inspections of storage areas under other state or federal regulations may use the same reporting forms to meet the requirements of this regulation. The Health Department will provide a form that others can use to record the required information.
 - e) All records produced to meet the requirements of this regulation shall be maintained by the applicant for at least seven (7) years.
 - f) All waste containers must be labeled to conform to the requirements of 310 CMR 30 based on their generator status. At a minimum, hazardous waste containers must have a label that includes the words “Hazardous Waste” and

must also provide the name of the waste and the category of the waste (ignitable, corrosive, reactive, toxic). Satellite Accumulation Area (SAA) containers must be dated when full and moved to a main accumulation area. The main accumulation area containers must be dated upon the first addition of waste.

- g) Hazardous materials that are not hazardous waste must be labeled with the name of the chemical in the container.
 - h) All commercial, industrial, retail, institutional and municipal permit holders must have in place a contingency plan for managing spills or other releases from containers that have permits under this regulation. Upon request the permit holder must provide documentation to the Health Department that relevant employees are trained in proper response to spills or releases, appropriate personal protection equipment (PPE) is available, and that the relevant employees have been trained in their use.
 - i) Residential and other owners of aboveground or basement fuel oil tanks used solely to store heating oil used to heat the building, provide hot water or to serve emergency generators do not have to comply with the containment requirements of this Section. Owners of heating oil tanks (or diesel tanks used for emergency generators) must comply with the reporting requirements of Sections 6(1) and 6(2). The Health Department recommends that owners of basement tanks consider sealing floor drains to prevent contamination from entering the environment. The Health Department also recommends that owners of basement tanks have the oil company inspect the tank annually.
 - j) All owners and operators of aboveground fuel oil tanks, including residential or other fuel oil tanks, upon removal of the tank, must ensure that all appurtenant devices and structures, including fill pipes, vents and fuel delivery piping are removed in such a manner as to prevent accidental release of fuel oil to the basement or to the environment.
- (6) Aboveground tanks that store propane or liquefied petroleum gas (LPG) are exempt from this regulation.

SECTION 7 - UNDERGROUND STORAGE TANKS

All owners and operators of Underground Storage Tanks, including residential and other fuel oil tanks, must comply with the permit requirements stated in Section 4(3). Owners and operators of Underground Storage Tanks must also comply with the following:

- (1) No later than 15 years after the date of installation and annually thereafter, all steel Underground Storage Tanks at industrial, commercial, retail, institutional and municipal facilities must be tested for tightness using a procedure capable of detecting a leak of 0.10 gallons per hour with the probability of detection of 0.95, and the probability of false results of 0.05. The tightness test must include the tank and all piping leading to and from the tank.
- (2) All residential Underground Fuel Storage Tanks must be tested for tightness using a procedure capable of detecting a leak of 0.10 gallons per hour with the probability of detection of 0.95, and the probability of false results of 0.05 no later than 20 years after the date of installation of the tank and every third year thereafter.
- (3) If an owner or operator does not know the date of tank installation, s/he shall provide the Health Department with alternate information that will allow the Health Department to approximate the age of the tank. Such information includes but is not limited to the year the building or house was construction and how long the owner has owned the building. If the tank is likely to be more than 15 years old (or 20 years old for residential tanks) based on the judgment of the Health Department the owner or operator will be required to perform tightness testing.
- (4) Owners and operators must provide the Health Department with a written or electronic copy of the tightness test results within five (5) business days of completion of the test.
- (5) Where the Health Department has probable cause to believe that an underground tank may be leaking the Department may order the owner or operator to test for tightness within ten (10) business days at the owner or operators sole expense.
- (6) All Underground Storage Tanks that fail a tightness test that cannot be reconciled by the consultant or engineer performing the test must be removed as soon as possible, but under no circumstances more than thirty (30) days after the failed test. Owners and operators of tanks that fail a tightness test must comply with the requirements of the Massachusetts Contingency Plan (310 CMR 40.0000) and the Tanks and Containers regulations of the Massachusetts Board of Fire Prevention Regulations (527 CMR).

- (7) In addition to meeting the requirements of the Massachusetts Contingency Plan and the Massachusetts Board of Fire Prevention Regulations, all owners or operators that remove Underground Storage Tanks must notify the Health Department via telephone or electronic correspondence at least 24 hours before the tank will be removed. If the removal is conducted immediately after a failed tightness test or other indication that it is leaking, the Health Department shall be notified verbally at the same time that the Fire Chief is notified and via telephone or electronic correspondence. After the tank is removed, the owner or operator must provide to the Health Department a written or electronic copy of the receipt of disposal signed by the representative of the Approved Tank Yard or salvage yard (Form FP 291) within seventy-two (72) hours of the tank removal.
- (8) The Health Department reserves the right to conduct a site visit during tank removals.
- (9) No residential Underground Storage Tanks may be repaired in the Town. Any tank determined to be in need of repair must be removed and replaced by an aboveground (i.e. cellar) tank.
- (10) New residential Underground Storage Tanks for fuel oil storage are prohibited.
- (11) All owners and operators storing flammable or combustible material in Underground Storage Tanks must obtain a permit from the Fire Chief in addition to the Health Department permit. No. 2 fuel oil is not a combustible material.
- (12) Underground Storage Tanks must be constructed of materials suitable for the material stored in them. If the material to be stored in a tank is changed from what is noted on the permit application, the owner or operator must notify the Health Department and the Fire Chief, if applicable in the case of flammable or combustible materials. The owner or operator must provide documentation from the tank manufacturer that the tank is compatible with the proposed storage.
- (13) Underground tanks that store propane or liquefied petroleum gas (LPG) are exempt from this regulation.

SECTION 8 - SPECIAL CONDITIONS

- (1) New Underground Storage Tanks may not be installed in a groundwater protection area, within 100 feet of a private drinking water well, in a WRPD I or II area as indicated in the Town of Westford Zoning Bylaw, or in a flood zone.

- (2) The holder of a permit under this regulation shall notify the Health Department in writing within ten (10) business days whenever the activities authorized under the permit cease on a permanent basis.

SECTION 9 - VARIANCES

- (1) All requests for variances must be made in writing and must include all required documentation. The applicant, at his/her own expense, must notify all abutters by certified mail at least ten (10) days before the hearing at which the variance request will be considered. The notification must state the variance sought and the reasons therefor. The Board of Health shall notify the Fire Chief, Conservation Commission, Building Inspector and request their comments in writing within 14 days of receipt of the request. The Board of Health shall hold a hearing on the variance request within 45 days of receipt. Any variance granted by the Board of Health shall be in writing as shall be any denial of a variance request, along with a brief statement of the reason for granting or denying the variance.
- (2) All requests for variances must include technical justification for the variance including the opinion of a Registered Professional Engineer licensed in Massachusetts and qualified to provide the documentation required.

SECTION 10 - FEES

- (1) The Board of Health will publish a fee schedule associated with permits and inspections under Chapter 61.
- (2) Fees are due on the same date as the permit application. Failure to pay a fee is a violation and subject to the penalties established within this regulation.

SECTION 11 - ENFORCEMENT

- (1) Any person who violates any provision of this bylaw shall be punished by a fine of not more than \$300 for each offense as allowed under MGL ch. 40 §21. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one violation exists, each violation shall constitute a separate offense. Upon the request of the Board of Health or the Fire Chief, the Board of Selectmen shall take such legal action as is necessary to enforce this regulation.
- (2) The Board of Health, the Health Department and/or, the Fire Chief may, upon reasonable notice to the occupant of the premises enter any premises for the purpose of investigating, sampling, or inspecting any record, condition,

equipment, practice, or property relating to activities subject to this regulation and for purposes of enforcing this regulation.

- (3) The Board of Health may suspend or revoke any permit issued pursuant to this regulation for any violation of this regulation. Such revocation or suspension may take place after a hearing held by the Board of Health of which the permit holder is given seven (7) days written notice. Such notice shall be deemed given upon sending a letter via certified mail, return receipt requested, to the address listed on the permit application.
- (4) This regulation may be enforced by the Health Department, Fire Chief, and/or Police Department. Whoever violates any provision of this regulation may be penalized by a non-criminal disposition process as provided in M.G.L. ch. 40, §21D and the Town's non-criminal disposition Bylaw. If non-criminal disposition is elected, then any person who violates any provision of this regulation shall be subject to a fine of not more than \$300 per offense.
- (5) The Health Department and/or Fire Chief may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy shall not preclude enforcement through any other lawful means.

SECTION 12 – SEVERABILITY

Each provision of this regulation shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

SECTION 13 – OTHER APPLICABLE LAWS

Nothing in this regulation is intended to conflict with or supersede any state or federal law or regulation regarding storage or hazardous materials, hazardous wastes and special wastes and management of releases of these materials to the environment.

SECTION 14 – EFFECTIVE DATE

This regulation shall be effective as of April 1, 2015.