

Town of Shelburne

Ordinance Regulating the Storage, Handling and Distribution of Hazardous Substances

THE SELECTBOARD OF THE TOWN OF SHELburnE HEREBY ORDAINS:

§ 1.0 Preamble.

WHEREAS, the Town of Shelburne, pursuant to its police powers, has an interest in protecting the health, safety and welfare of its citizens from the inherent risks associated with the storage, handling and distribution of hazardous substances, which may be ignitable, corrosive, reactive and/or toxic.

WHEREAS, the Town of Shelburne is enacting this Ordinance to regulate the storage, handling and distribution of hazardous substances near or adjacent to the town center, schools and natural resources, to protect the public from releases of hazardous materials and/or substances to the environment that may cause fire, explosions or impacts to the public health and sensitive environmental receptors.

§ 2.0 Authority.

The Town of Shelburne adopts the following civil Ordinance concerning the storage, handling and distribution of hazardous substances pursuant to its authority granted in 24 V.S.A. c. 59 § 2291, and 24A V.S.A. c. 147 §§ 1.3, 1.4(2) 1.4(3), 1.4(4), 1.4(7), 1.4(8).

§ 3.0 Purpose.

Hazardous substances, when stored in sufficient quantities, present great, inherent risk to the public health, safety and welfare of the residents of the Town of Shelburne as well as the Town's natural resources. The purpose of this Ordinance is to create limits to the storage, handling and distribution of defined quantities of hazardous substances which exhibit the characteristics of ignitability, corrosivity, reactivity and/or toxicity. This Ordinance provides protection to the residents of the Town of Shelburne from environmental releases which may result in contamination, fire or explosions from improperly stored or managed hazardous substances, and serves to protect the Town's natural resources, including but not limited to groundwater and surface water such as the LaPlatte River, its tributaries and associated wetland, and Lake Champlain.

§ 4.0 Applicability.

This Ordinance shall apply to all parties who store, handle, manufacture, distribute or use the hazardous substances identified in this Ordinance within the Town of Shelburne.

§ 5.0 Definitions.

The following definitions shall apply to this Ordinance:

DISCHARGE or RELEASE: The spilling, leaking, emptying, escaping, leaching, dumping, disposing or release of a hazardous substance into the environment, particularly in a manner that may result in transfer of the material to the ground surface, surficial soils, groundwater, and surface water such as lakes, streams, tributaries or wetlands, within the Town of Shelburne.

The following shall not constitute a discharge or release:

(1) A leak or spill of petroleum into secondary containment, including soil that is used as part of secondary containment;

(2) Emissions from the engine of a motor vehicle, boat, locomotive, vessel, heavy construction equipment, aircraft exhaust, furnace or other internal combustion engine in operation.

(3) The application of road salt for the anti-icing and de-icing of roads, driveways, parking lots, sidewalks, walkways, trails, docks, and vehicles. For these purposes, this exception shall allow for the use of Sodium Chloride, Calcium Chloride, Magnesium Chloride, and Potassium Chloride, as well as for the use of other agents commonly used for anti-icing and de-icing purposes.

ENTITY: Any corporation, limited liability company, partnership, limited liability partnership, joint venture, association, trust, firm, company, or any other type of business entity or organization.

FACILITY:

(1) Any building, structure, installation, equipment, pipe or pipeline, pit, pond, lagoon, storage container, rail car, motor vehicle, watercraft or aircraft; or

(2) Any site or area where a hazardous substance is present on site, has been deposited, is stored, disposed of, placed or otherwise is located.

PRE-EXISTING FUEL FILLING STATION: A facility that sells to a consumer, dispenses, or uses on-site fuel or lubricants for automobiles or other motorized equipment or vessels which was in existence in the Town of Shelburne prior to the passage of this Ordinance. A pre-existing fuel filling station is permitted to include a private fueling terminal used for on-site fueling of vehicles, vessels, or equipment if it was in existence prior to the passage of this Ordinance. All pre-existing fuel filling stations shall register with the Town of Shelburne, Town Manager's office within 60 days of the effective date of this Ordinance.

HAZARDOUS SUBSTANCE:

(1) Any substance, material, liquid, compound, solution or mixture of a substance containing any item listed in Section 102, Table 302.4 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA);

(2) Any item listed in Table 1 below in a quantity exceeding the limits therein provided; or

(3) Any substance as defined by 10 V.S.A. § 6602(16)(A) or any substitute statute.

Hazardous substances do not include solid waste as defined in 10 V.S.A. § 6602(2).

HEATING OIL: Petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grade of fuel oil; other residual fuel oils (including Navy Special Fuel Oil, Bunker C, Kerosene, diesel, and clarified oil); and other forms of petroleum when used as substitutes for one of these fuel oils, including waste oil if otherwise properly permitted by the State of Vermont. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

PERSON: An individual human being.

REPORTABLE QUANTITY: The minimum amount of a hazardous substance that must be reported to 911, the Town Health Officer, the Fire Department and the State of Vermont, Department of Environmental Conservation Spills Program, in addition to any other state or federal agencies as required by state or federal law, as detailed below in Section 7.0 in the event of a discharge or release. The reportable quantity for a particular hazardous substance per this Ordinance shall be the following:

(1) Any quantity equal to or greater than 2 U.S. gallons;

(2) Any hazardous substance that is less than 2 U.S. gallons that poses a potential or actual threat to human health and the environment; and

(3) The corresponding reportable quantity under CERCLA in an amount designated in Table 302.4 under column RQ. 40 CFR § 302.4.

SCHOOL: An educational institution; a place or building used for teaching, instruction and learning, to include but not limited to the Shelburne Community School, the Lake Champlain Waldorf School, the Renaissance School, and Endeavour Middle School; and any state licensed daycare center or pre-school within the Town of Shelburne.

STORAGE: A hazardous material or substance is deemed to be stored when it is located on a site or in a facility for more than seventy-two (72) hours.

STORAGE LIMITS: The quantity of a hazardous substance as defined above, in excess of which it is not permitted, pursuant to Section 6.0(A) and Table 1 below, to be stored within 250 meters of a school or waterway.

WATERWAY: All surface waters, such as but not limited to rivers, streams, creeks, brooks, reservoirs, marshes, ponds, lakes, and springs, artificial or natural that are contained within or flow through the Town of Shelburne or border any portion of the Town of Shelburne.

§ 6.0 Prohibited Acts.

(A) No person or entity shall permit any hazardous substance identified in Table 1 of this Ordinance to be stored within Two Hundred Fifty Meters (250) of any school or waterway when it exceeds the storage limits set forth in Table 1.

(B) No person or entity in possession of a hazardous substance shall dump, discharge, deposit, release or dispose of any hazardous substance within the Town of Shelburne.

(C) Paragraph A above shall not apply to any heating oil as defined herein, propane or natural gas, if held in a storage tank on a residential, institutional, governmental or commercial property strictly for the home, business or property owner's residential or commercial heating, cooking, appliance operation¹, food or beverage production, construction, power, production or back-up generation needs.

The prohibition in Paragraph A above shall not apply to any pre-existing fuel filling stations within the Town of Shelburne that were in operation at the time of the passage of this Ordinance. Pre-existing fuel filling stations shall register with the Town Manager's Office within sixty (60) days of the effective date of this ordinance.

(D) The contents of a fuel tank of a rail car, motor vehicle, watercraft or aircraft where that tank is used for actively operating or propelling the railcar, motor vehicle, watercraft or aircraft shall not be included when calculating the maximum aggregate totals for hazardous substances contained in Table 1.

§ 7.0 Release or Discharge Reporting.

In the event of the discharge or release of a hazardous material or substance that exceeds its reportable quantity within the Town of Shelburne, the person(s) and/or entity(ies) present and/or in possession of such substance at the time of the discharge or release, shall immediately report the discharge or release to 911, the Town of Shelburne Fire Department, and the Town Health Officer, in addition to reporting to the State of Vermont, Department of Environmental Conservation Spills Program or any other state or federal agencies pursuant to any applicable state or federal law.

¹ Appliances include equipment such as dryers or stoves.

Reporting to 911, the Town of Shelburne Health Officer and the Fire Department is not required if the discharge or release is a petroleum based fuel (for example, including but not limited to hydraulic oil, diesel fuel, unleaded fuel, heating oil and motor oil) and the discharge or release meets all of the following criteria:

- (a) It is known to be less than two U.S. gallons in total volume and does not pose a potential or actual threat to human health and the environment;
- (b) It is contained and under the control of the releaser or discharger;
- (c) It has not reached and will not reach a waterway; and
- (d) It is cleaned up within two hours after discovery.

§ 8.0 Response Actions.

In response to a discharge or release of a hazardous substance from a facility, the facility operator must immediately perform the following initial response actions:

- (a) Assess whether on-site resources can safely contain the release from reaching the environment;
- (b) Take immediate action to prevent any further release of the hazardous substance; and
- (c) Report the discharge or release to 911, the Town of Shelburne Fire Department, and the Town Health Officer, in addition to reporting to the State of Vermont, Department of Environmental Conservation Spills Program or any other state or federal agencies pursuant to any applicable state or federal law.

These requirements shall be complied with only through a qualified on-site or third-party professional.

§ 9.0 Enforcement.

In conjunction with the Town Health Officer, the Town of Shelburne Selectboard shall designate an official to enforce this Ordinance. Either the designated official or the Health Officer may at all reasonable times request access to any facility, whether completed or under construction, or to any property for the purpose of making an inspection or investigation to enforce any of the provisions of this Ordinance.

If a violation exists, or a release has occurred, the designated Town Official and/or the Town Health Officer shall immediately investigate the site where the violation or release has occurred. The Town Health Officer may issue either an Emergency Health Order pursuant to 18 V.S.A. § 127 or a notice of an intent to seek a Health Order pursuant to 18 V.S.A. § 126. The Selectboard may issue a Health Order pursuant to the procedures set forth in 18 V.S.A. § 126, and the local Board of Health

may seek civil enforcement pursuant to 18 V.S.A. § 130, which includes all remedies available therein, including but not limited to requesting fines, compensation for destroyed property or investigative expenditures, possible removal, and remediation and/or monitoring of the environmental impacts of the violation or release.

A Health Order shall include the following:

- (a) A description of how the violation or release shall be abated;
- (b) The period of time in which the party must satisfy the requirements of the Order;
- (c) A statement that if the violation or release is not abated by the time period set forth in the Order, the local Board of Health may proceed to address the violation or release through an appropriate manner, either by removal, remediation, monitoring or an alternate means, the costs for which the party and/or entity either violating this Ordinance or responsible for the release shall be liable;
- (d) A statement of the penalties assessed in connection with the violation or release; and
- (e) A statement of appeal rights.

The person or entity to whom an Emergency Health Order is issued is entitled to a hearing within five (5) business days of the issuance of the order. 18 V.S.A. § 127(c). Hearings for an Emergency Health Order issued by the Vermont Commissioner of Health (Commissioner) shall be heard by the Commissioner and hearings for an Emergency Health Order issued by the Town Health Officer shall be heard by the Selectboard.

The Commissioner or the local Board of Health may also seek enforcement of Title 18 before the Chittenden County Superior Court pursuant to 18 V.S.A. § 130.

The Town Official may in the alternative issue a citation pursuant to 24 V.S.A. § 1974a for any violation of this Ordinance, which describes the violation and identifies the party or entity committing the violation and assigns a fine or penalty pursuant to Section 10.0 below.

The Town may also seek injunctive relief pursuant to 24 V.S.A. § 1974a(b) and (c) in order to compel compliance with this Ordinance when there exists a threat to the public health, safety and welfare of the citizens of the Town of Shelburne. The Town may also pursue any other relief it is entitled to under local, state and federal law and may be reimbursed for any fees expended to ensure compliance with this law.

§ 10.0 Fines and Penalties.

Any person receiving a citation from the Town for a civil violation of this Ordinance may be fined Eight Hundred Dollars (\$800.00) per day pursuant to 24 V.S.A. § 1974a. Each day of the violation shall constitute a separate offense as per 24 V.S.A. § 1974a(a).

In the event the local Board of Health brings an action in the Superior Court for a violation of a public health hazard or a public health risk to enforce the provisions of Title 18 of the Vermont Statutes or an Order of the Health Officer issued pursuant to this Ordinance, the violator may be subject to civil penalties not to exceed Ten Thousand Dollars (\$10,000.00) per violation. 18 V.S.A. § 130. Each day shall be a continuing and separate violation.

Said penalty may be in addition to any costs and fees incurred by the Town, should the Town need to conduct the removal, remediation or monitoring of the site itself. The Town may also obtain injunction, reimbursement and remedial relief as enumerated more fully in 18 V.S.A. § 130(b).

§ 11.0 Appeals.

Appeals from an Order of the Selectboard or the local Board of Health pursuant to this Ordinance and Title 18 shall be made to the State Board of Health within 30 days of the issuance of the order.

Pursuant to 24 V.S.A. § 1974a(b), civil violations issued pursuant to this Ordinance of Eight Hundred Dollars (\$800.00) may be appealed to the Judicial Bureau. Enforcement of violations pursuant to 24 V.S.A. § 1974a in excess of Eight Hundred Dollars (\$800.00), actions for injunctions or appeals for civil penalties in excess of Eight Hundred Dollars (\$800.00), shall be brought in the Criminal Division of the Superior Court.

§ 12.0 Limitations.

The reporting, containment and mitigation requirements of this Ordinance shall not supersede or supplant those requirements of any other applicable rules, regulations or laws, including state or federal laws concerning hazardous substances.

§ 13.0 Severability.

If any action, subsection, sentence, clause or portion of this Ordinance shall be deemed invalid or unenforceable, the remaining portions of the Ordinance are severable and shall remain in full force and effect.

§ 14.0 Cancellation of Previous Ordinance.

This Ordinance cancels and supersedes the ordinance entitled "Ordinance Regulating the Storage, Handling and Distribution of Hazardous Substances" adopted on August 8, 2017.

§ 15.0 Effective Date.

This Ordinance shall take effect immediately.

Adopted this 24th day of OCTOBER, 2017.

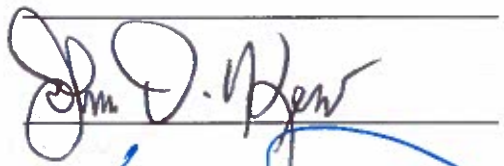
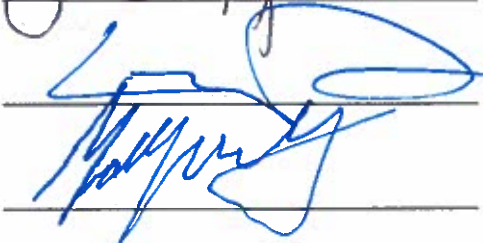



Table 1: Storage Limitations

CAS No.	Substance	Storage Limits
7647-14-5	Sodium Chloride	550 tons or 7,000 gallons
10043-52-4	Calcium Chloride	
7786-30-3	Magnesium Chloride	
7447-40-7	Potassium Chloride	
Varies by Manufacturer	Hydraulic Oil	2,000 gallons
68334-30-5 68476-34-6	Diesel Fuel	2,000 gallons
86290-81-5	Unleaded Fuel	2,000 gallons
68476-30-2 8008-20-6	Heating Oil ¹	2,000 gallons
74-98-6	Propane	2,000 gallons
Varies by Manufacturer	Motor Oil	2,000 gallons
7664-41-7	Ammonia	34,500 gallons; 263,000 pounds; 130,597 liters; or 119,265 kg
7782-50-5	Chlorine	34,500 gallons; 263,000 pounds; 130,597 liters; or 119,265 kg
7664-39-3	Hydrogen Fluoride	34,500 gallons; 263,000 pounds; 130,597 liters; or 119,265 kg
8006-14-2	Natural Gas	2,000 gallons
8002-05-9	Petroleum Crude Oil	2,000 gallons

¹ This category includes, but is not limited to, those heating oils with the CAS numbers in the first column. See the definitions section for more information. This category also includes heating oil blends.

