

ORDINANCE NO. OR98-10-103

AN ORDINANCE SUPPLEMENTING THE CODIFIED ORDINANCES OF THE CITY OF HAMILTON, OHIO, BY ADDING THERETO NEW CHAPTER 940 RELATIVE TO ESTABLISHING STANDARDS FOR THE MANAGEMENT OF REGULATED SUBSTANCES UNDER A WELLHEAD PROTECTION PROGRAM.

WHEREAS, the City of Hamilton relies solely on the Great Miami Buried Valley Aquifer for meeting 100% of its residential, commercial, and industrial water needs; and

WHEREAS, specific land uses and activities may contribute to the degradation of groundwater quality; and

WHEREAS, the risk of contamination of groundwater in the City of Hamilton will be reduced by managing development, land use, and commercial activity within identified groundwater protection zones of the City of Hamilton; and

WHEREAS, the Ohio Environmental Protection Agency requires a Wellhead Protection Program for the protection of existing and future groundwater supplies; and

WHEREAS, protection of groundwater resources adds to the economic viability of the City of Hamilton, and the City of Hamilton wishes to balance the protection of groundwater with the promotion of economic interests of the City; and

WHEREAS, protection of the groundwater resource benefits present and future groundwater users in southwest Butler County and northern Hamilton County who receive water from one of seven public and private water suppliers in the Hamilton to New Baltimore area, thereby requiring cooperation among these water suppliers and their host communities; so

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Hamilton, Ohio:

Section 1: That the Codified Ordinances of the City of Hamilton, Ohio, are hereby supplemented by adding thereto new Chapter 940 to be and read as follows:

**Chapter 940
WELLHEAD PROTECTION PROGRAM**

Sec. 940.01 Purpose.

The purpose of this Chapter is to safeguard the public health, safety, and welfare of persons and property in the City of Hamilton by protecting designated groundwater supplies from degradation resulting from the improper storage, use, or discharge of Regulated Substances in and around existing and future wellfields and their recharge areas, and to promote the economic viability of the City of Hamilton by balancing the protection of groundwater with the promotion of the economy of the City.

Sec. 940.02 Definitions.

The following terms shall have the following meanings within the context of this Chapter:

“ABOVEGROUND STORAGE TANK (AST)”: any non-portable container and supporting structure, excluding all pipes connected thereto, which is used to store an accumulation of Regulated Substances and in which more than 90 percent of the final volume of the storage container is at or above the final ground elevation.

“BEST MANAGEMENT PRACTICES (BMP)”: This term, as it applies to Wellhead Protection, refers to schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the environment. BMPs also include treatment requirements, operating

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procedures, and practices to control runoff, spills, and leaks.

“CERCLA”: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq., Pub. L. 96-510, December 11, 1980), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499, October 17, 1986; 100 Stat. 1613). All references to CERCLA within this regulation are meant to indicate CERCLA, as amended by SARA.

“CITY”: the City of Hamilton and any of its designated agents.

“DRY WELL”: a type of drainage well used for the underground disposal of storm water runoff from paved areas, which include parking lots, streets, highways, residential subdivisions, and building rooftops; agricultural areas; and industrial areas.

“EPCRA”: the Emergency Planning and Community Right-To-Know Act of 1986, also known as the Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499, 42 U.S.C. 960).

“EXISTING FACILITY or EXISTING STORAGE UNIT”: This term, as it applies to Wellhead Protection, refers to any Facility or Regulated Substance storage unit in operation or for which construction commenced on or before the effective date of this Chapter. Construction of a Facility or Regulated Substance storage unit has commenced if:

- (a) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either
- (b) A continuous on-site, physical construction program has begun; or the owner or operator has entered into contractual obligations for physical construction of the Facility or Regulated Substance storage unit which cannot be canceled or modified without substantial loss.

“EXTREMELY HAZARDOUS SUBSTANCE”: any substance listed by the United States Environmental Protection Agency under 40 CFR Part 355 appendixes A and B; and any substance listed by the commission pursuant to divisions (B)(4) and (C)(5) of Section 3750.02 of the Ohio Revised Code.

“FACILITY”: This term, as it applies to Wellhead Protection, refers to all contiguous land and related structures, appurtenances, and improvements on land with the same Facility Operator. A Facility may consist of several operations. For these purposes, contiguous land shall include land separated by a public right-of-way so long as such land would otherwise be contiguous. The term Facility includes all principal and accessory uses, including residential uses.

“FACILITY OPERATOR”: This term, as it applies to Wellhead Protection, refers to the person or designee in possession or control of a Facility or Regulated Substance storage unit, regardless of whether such person is the owner, lessee, or other possessor. The term also includes contractors or site managers at construction sites who are responsible for the general management of Regulated Substances located on site.

“GREAT MIAMI BURIED VALLEY AQUIFER”: a regionally extensive groundwater aquifer system providing drinking water to communities throughout central and southwest Ohio. The Great Miami Buried Valley Aquifer is a designated Sole Source Aquifer under the federal Safe Drinking Water Act, signifying a protected status as a valued natural resource.

“GROUNDWATER”: all the water naturally occurring beneath the surface of the ground, excluding those waters in underground piping for water, wastewater, and/or storm water distribution/collection systems.

“HAMILTON TO NEW BALTIMORE GROUNDWATER CONSORTIUM”: a consortium of six public and industrial groundwater suppliers and users in the Hamilton to New Baltimore area of Butler and Hamilton Counties, Ohio. Members are: Champion International, City of Cincinnati, City of Fairfield, City of Hamilton, Southwest Regional

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Water District, Southwestern Ohio Water Company, and their successors.

"IMPERVIOUS SURFACE": any surface which prevents the adsorption of Regulated Substances into surrounding soils or other pervious surface areas, and which will not react with the Regulated Substance being stored in such a way that the surface will deteriorate and no longer be impervious.

"NEW FACILITY" OR "NEW STORAGE UNIT": This term, as it applies to Wellhead Protection, refers to any Facility or Regulated Substance storage unit beginning operation after the effective date of this ordinance.

"NON-CONFORMING FACILITY" or "NON-CONFORMING STORAGE UNIT": any existing Facility or Regulated Substance storage unit which, as of the effective date of this ordinance, would otherwise be prohibited within a designated TOT.

"OAC": Ohio Administrative Code.

"OHIO EPA": the Ohio Environmental Protection Agency.

"PERMANENT" : This term, as it applies to Wellhead Protection, refers to more than ninety (90) consecutive days.

"PESTICIDE": (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest as defined in Section 2(t) of the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 100-64, 100-464, to 100-526 and 100-532); and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The term shall include all fungicides, insecticides, nematocides, or other substances used for the control of pests.

"PRIMARY CONTAINMENT": the first level of containment, i.e., the inside portion of a container or storage device which comes into immediate contact on its inner surface with a Regulated Substance.

"PRINCIPAL": This term, as it applies to Wellhead Protection, refers to the primary, predominant, or foremost use or activity at a Facility.

"PROCESS": This term, as it applies to Wellhead Protection, refers to the incorporation of a Regulated Substance into a product. Includes making mixtures, repackaging, or using a Regulated Substance as a feedstock, raw material, or starting material for making another chemical.

"RCRA": the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580; 42 U.S.C. 6901 et seq.), as amended.

"REGULATED SUBSTANCES": those substances identified in Section 940.24 of this Chapter which are regulated under the Wellhead Protection Program.

"REGULATED SUBSTANCE STORAGE AREA": that area where Regulated Substances are stored. A Regulated Substance storage area can include single or multiple Regulated Substance storage units.

"REGULATED SUBSTANCE STORAGE UNIT": This term, as it applies to Wellhead Protection, refers to any underground storage tank, aboveground storage tank, drum, carboy, or other container used for the storage of one or more Regulated Substance(s), including silo, bag, tank wagon, box, glass, cylinder, tote bin, and truck body, rail car, or tanker when used for the permanent or temporary storage of Regulated Substances.

"RELEASE": This term, as it applies to Wellhead Protection, refers to the spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Regulated Substances upon or into any land or water. Release includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site sewage disposal system, dry-well, catch basin, or landfill. The term "release"

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when used and applied in this Chapter does not include the following:

- (a) Disposal, in accordance with all applicable legal requirements and in accordance with the requirements of RCRA regulations, of hazardous wastes in a Facility that has received and maintained all necessary legal approvals for that purpose;
- (b) Disposal or release of any substance in compliance with applicable legal requirements, including without limitation, the terms and provisions of a valid municipal, State, or Federal permit if such permits are required by applicable environmental laws;
- (c) Disposal, in accordance with all legal requirements, of any substance to a sanitary sewer system that has received and maintained all necessary legal approvals for that purpose;
- (d) Disposal, in accordance with all legal requirements, of "sanitary sewage" to subsurface sewage disposal systems as defined and permitted by state or county health departments;
- (e) Any discharge of a petroleum substance in a quantity less than twenty-five (25) gallons unless such petroleum discharge enters a dry well, storm sewer, or surface water body; or
- (f) Any discharge of hazardous materials listed in SARA Title III or CERCLA when the discharge is less than twenty-five (25) pounds within a twenty-four (24) hour period in the one (1) and five (5) year time-of-travel zone, or less than one hundred (100) pounds within a twenty-four (24) hour period in the ten (10) year time-of-travel zone; or
- (g) The application of agricultural chemicals, fertilizers, mineral acids, organic sulfur compounds, etc. as used in routine agricultural operations and applied under best management practices as indicated by soil tests, the Ohio State University Cooperative Extension Service, the Soil and Water Conservation District, and label directions approved by the United States Environmental Protection Agency or the Ohio Department of Agriculture.

"REPLACEMENT": This term, as it applies to Wellhead Protection, refers to the physical removal of a Regulated Substance storage unit for installation of a new Regulated Substance storage unit.

"RESTRICTED USE PESTICIDE": any pesticide or pesticide use classified by the administrator of the United States Environmental Protection Agency for use only by a certified applicator or by an individual working under the direct supervision of a certified applicator.

"SECONDARY CONTAINMENT": containment external to and separate from primary containment designed to contain a release from a primary containment unit. Secondary containment may include, but is not limited to, double walls, dikes, vaults, or impervious liners (both natural and synthetic).

"TEMPORARY": This term, as it applies to Wellhead Protection, refers to a period of ninety (90) consecutive days or less. Regulated Substances and the individual storage units containing such substances that are used on site as part of regular business operations are not to be considered temporary storage.

"TIME OF TRAVEL ZONE (TOT)": This term, as it applies to Wellhead Protection, refers to the advective travel time for water to flow through an aquifer and reach a well or wellfield.

"UNDERGROUND STORAGE TANK (UST)": This term, as it applies to Wellhead Protection, refers to one or any combination of tanks, including the underground pipes connected thereto, that are used to contain an accumulation of Regulated Substances the volume of which, including the volume of the underground pipes connected thereto, is 10% or more beneath the surface of the ground. For the purposes of this Chapter, the term does not include:

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- (a) Pipeline facilities, including gathering lines, regulated under the "Natural Gas Pipeline Safety Act of 1968", 82. Stat, 720, 49 U.S.C.A. 2001, as amended;
- (b) Surface impoundments, pits, ponds, or lagoons;
- (c) Storm or waste water collection systems;
- (d) Flow-through process tanks;
- (e) Septic tanks;
- (f) Storage tanks located in underground areas when the tanks are located on or above the surface of the floor and the integrity of the tank is periodically visually evaluated; or
- (g) Liquid traps or associated gathering lines directly related to oil or gas production or gathering operations.

"USE" or "OTHERWISE USE": This term, as it applies to Wellhead Protection, refers to handling, transferring, processing, packaging, treating, emitting, discharging, or disposal of Regulated Substances at a Facility.

"WELLFIELD": a tract of land that contains one or a number of wells (wellheads) for use in public water supplies.

"WELLHEAD": an individual well for supplying water.

"WELLHEAD PROTECTION AREA (WHPA)": the surface and subsurface areas supplying water to wells or wellfields through which contaminants are likely to move and reach such wells or wellfields. The Wellhead Protection Area includes the one (1), five (5), and ten (10) year time-of-travel zones.

"WELLHEAD PROTECTION PROGRAM (WHPP)": a program established by Section 1428 of the Safe Drinking Water Act of 1986 (Public Law 93-523) designed to minimize the potential for contamination of groundwater being used as a source of public drinking water.

Sec. 940.03 General Applicability

Sec. 940.03.1 General Applicability. Unless specified otherwise, all provisions of this Chapter apply to any Facility Operator of any real property or business in the City of Hamilton when storing or otherwise using Regulated Substances as defined in Section 940.06 of this Chapter, or conducting any activity regulated under Section 940.19 herein, and located within a Wellhead Protection Area as established in Section 1103.52 of the Zoning Ordinance No. 7503 of the City of Hamilton Codified Ordinances. It is the responsibility of the Facility Operator to determine the applicability of this Chapter to his or her property and/or business, and to comply with all requirements established in this rule as applicable to the Facility. Failure to do so shall not excuse any violations of this Chapter.

Sec. 940.03.2 Limited Exemptions. The following are exempt from the provisions set forth herein except for compliance with Sections 940.07 through 940.12 of this Chapter:

- (a) Indoor storage/use of Regulated Substance(s) in an area capable of fully containing a total release of the Regulated Substance(s) within the facility or draining the release to a wastewater treatment system capable of treating the released substance(s). Septic tank systems do not qualify as a wastewater treatment system under this exemption;

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- (b) Sale/storage of Regulated Substances packaged as consumer products in original containers when the aggregate quantity on site meets or exceeds those thresholds established in Section 940.24.3 of this Chapter;
- (c) Current hazardous waste storage areas at RCRA permitted facilities;
- (d) Radioactive materials regulated by the U.S. Nuclear Regulatory Commission;
- (e) Aboveground storage tanks in the five (5) year TOT used exclusively for the storage of Grade 1 or Grade 2 heating fuels and diesel fuel; and
- (f) Oil/water separator underground storage tanks.

Sec. 940.03.3

Full Exemptions. The following uses of Regulated Substances are exempt from the provisions set forth herein.

- (a) Laboratory activities;
- (b) Chemical storage tanks containing pressurized gases such as chlorine, propane, hydrogen, and nitrogen;
- (c) Household use of Regulated Substances packaged for consumer use in original pre-packaged containers;
- (d) Excavation or removal of earth materials;
- (e) Office and maintenance/janitorial use of Regulated Substances packaged as consumer products. This exemption does not apply to hydrocarbon or halogenated hydrocarbon solvents;
- (f) Oils and fluids within electrical utility transformers/switches;
- (g) Materials present as a solid inside of a manufactured item;
- (h) Transport of Regulated Substances in trucks, trailers, tankers, or rail cars to facilities through the Wellhead Protection Area, provided the Regulated Substances are fueling the transporting vehicle, or the transporting vehicle is in continuous transit, making a delivery, or is stopped for a period of time not to exceed twenty-four (24) hours;
- (i) Aboveground and underground storage tanks in the ten (10) year TOT used exclusively for the storage of Grade 1 or Grade 2 heating fuel and diesel fuel;
- (j) Sale/storage of Regulated Substances packaged as consumer products in original containers when the aggregate quantity on site is less than those thresholds established in Section 940.24.3 of this Chapter; and
- (k) The application of wastewater biosolids provided all application is done in accordance with an approved Ohio Environmental Protection Agency Sludge Management Plan.

Sec. 940.04

Compliance with Existing Federal, State, and Local Regulations.

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Facility Operators subject to regulation under this Chapter must comply fully with all existing applicable federal, state, and local regulations in addition to any of the requirements established in this Chapter.

Sec. 940.05 Continuation of Existing, Non-Conforming Facilities

Continued operation, replacement, alteration, conversion, and repair of a non-conforming land use, building, or Regulated Substance storage unit in the Wellhead Protection Area must be done in accordance with local non-conforming use regulations.

Sec. 940.06 Regulated Substances

940.06.1 Defined. Regulated Substances shall be those substances listed in Section 940.24.1 herein when storage or use at a facility at any time of the year meets or exceeds those thresholds specified in Section 940.24.2. A Facility Operator may, at their choice, calculate the quantity of Regulated Substances stored or used on site as follows:

- (a) Maximum Amount at Any One Time. The Facility Operator may report the quantity of Regulated Substances stored or otherwise used on site as the maximum amount found on site at any one time during the course of a year. Where there are seasonal fluctuations in Regulated Substance use, the amount should be based on storage or use of Regulated Substances during peak times of the year; or
- (b) Monthly Daily Average. The Facility Operator may calculate the daily average of Regulated Substance storage or use on site over the course of a month. The Facility Operator must calculate this average using the anticipated quantity of Regulated Substances storage or use during peak months at the facility.

A substance listed in Section 940.24.1 may be partially or fully exempt from regulation under this Chapter if use or storage of the Regulated Substance is exempted under Sections 940.03.2 or 940.03.3 of this Chapter, or if the Facility Operator can provide proper documentation to the Director of Public Utilities or Designee that a Regulated Substance does not present a threat to groundwater due to the nature of the substance. Information from the substance manufacturer or other qualified, verifiable source indicating that the substance does not present a threat to groundwater shall be considered proper documentation.

940.06.2 Additions/Deletions to the Regulated Substance List. The Director of Public Utilities or Designee reserves the right to designate additional substances or remove substances from the list of Regulated Substances in Section 940.24.1 as necessary for the protection of the groundwater resource. Public notice of changes to the Regulated Substance list shall be provided by the Director of Public Utilities or Designee in accordance with public notice requirements for the City of Hamilton but shall include no less than:

- (a) Notification of the intent to remove or add a Regulated Substance to the list via mail to all registered Facility Operators no later than thirty (30) days prior to action by the Director of Public Utilities or Designee;
- (b) Notification through publication of the change for one (1) day in at least one (1) paper with general circulation in the community; and
- (c) Notification via first-class mail to all registered Facility Operators no later than thirty (30) days after removal or addition of Regulated Substances to the list by the Director of Public Utilities or Designee.

Sec. 940.07 Facility Registration

Sec. 940.07.1 Registration. Facility registration is required once every two (2) years for any facility where on site storage or use of Regulated Substances meets or exceeds those quantities established in Section 940.24.2 of this Chapter, or for any activity identified as a regulated activity under Section 940.19 of this Chapter. A Facility Operator may register the facility or, at the request of the Facility Operator, the Director of Public Utilities or Designee may register the facility. The Public Utilities Director or Designee shall conduct any facility registration in the following manner:

- (a) The Public Utilities Director or Designee shall provide written notice of the intent to register the facility no less than fourteen (14) days prior to the registration date;
- (b) The registration shall be conducted at reasonable times during normal business hours. To help ensure accuracy of the registration and safety of the persons involved, the Facility Operator or designee must accompany the Director of Public Utilities or Designee during the registration;
- (c) The registration will not unreasonably interfere with facility operations; and
- (d) The scope of the registration will be limited to gathering information necessary to complete the registration required by this Section.

All facility registrations must be completed and, where applicable, submitted to the Director of Public Utilities or Designee within one hundred eighty (180) days of the date a property becomes subject to regulation under this Chapter, and by July 1 of every second year thereafter. A Facility Operator choosing to have their facility registered by the Director of Public Utilities or Designee must contact the Director of Public Utilities or Designee no less than ninety (90) days before a registration is due to ensure completion of the registration by the required due date.

940.07.2 Registration Requirements. Facility registration will include, but is not necessarily limited to, information on the following:

- (a) Name, address, and phone number of the registered Facility;
- (b) Facility Operator name and number;
- (c) Emergency contact, address, and phone;
- (d) Primary and, where applicable, secondary business activities at the Facility, including Standard Industrial Classification codes (if known) and a brief description of how Regulated Substances are used at the Facility;
- (e) The types, quantity, and location of Regulated Substances stored or otherwise used on-site. Where the Regulated Substance is identified by a common trade name or a mixture, the primary chemical component(s) must be identified;
- (f) The manner of Regulated Substance storage (i.e., ASTs, fifty-five (55) gallon drums, totes, etc.). AST registration will include information on current tank status, contents, volume, construction, and age;
- (g) A general description of any secondary containment or other spill containment and/or

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spill prevention measures used at the Facility for Regulated Substance storage units or storage areas;

- (h) A general description of Regulated Substance waste disposal methods. Where applicable, the Facility's hazardous waste generator identification number must be provided;
- (i) Where applicable, location of any groundwater monitoring equipment on the Facility's property;
- (j) Where applicable, the location of any dry wells on the Facility property; and
- (k) Where applicable, the type of septic system used on site and type of waste treated.

Any person identified as the emergency contact for a Facility under part (c) must have authority to provide additional information about the Facility and materials stored or otherwise used on site when requested and to authorize the use of response personnel, including hazardous materials contractors, in the event of a release at the Facility. The Facility Operator must notify the Director of Public Utilities or Designee of any change in contact person, phone number, and/or address of the emergency contact person no later than two (2) weeks after any change.

940.07.3 Operator Signature. The Facility Operator must sign the completed facility registration. The Facility Operator's signature shall serve as acknowledgment of the accuracy of the registration and compliance with the following, where applicable:

- (a) Storage Unit Inspections - compliant with Section 940.13.2; and
- (b) Development and implementation of a Spill Control Plan - compliant with Section 940.17, et seq.

Any Facility Operator whose Facility is registered by the Director of Public Utilities or Designee must submit a copy of the signed registration to the Director of Public Utilities or Designee no later than two (2) weeks after the registration date.

940.07.4 Use of Existing Registration Information. Any Facility Operator required to register a Facility or Regulated Substance storage unit under another federal, state, or local program may submit a copy of that registration to the Director of Public Utilities or Designee to expedite the registration process. Any existing registration information should be presented to the Director of Public Utilities or Designee prior to or at the time of facility registration.

940.07.5 New Facility Registration. Any Facility subject to regulation under this Chapter that begins operation or commences conduct governed by this Chapter after the effective date of this Chapter must be registered in accordance with Section 940.07.1 no later than one hundred eighty (180) days after beginning operation.

940.07.6 Registration of Previously Exempt Facilities. Any previously exempt Facility that becomes subject to the requirements of this Chapter due to changes at the Facility must be registered in accordance with Section 940.07.1 no later than one hundred eighty (180) days after becoming subject to regulation under the Chapter. A previously exempt Facility becomes subject to regulation under this Chapter when:

- (a) A new AST or UST system subject to regulation under this Chapter is installed at the Facility;

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- (b) There is a permanent change in the type and/or volume of Regulated Substances stored or otherwise used at the Facility that results in the storage or use of Regulated Substances in quantities meeting or exceeding the thresholds established in Chapter 940.24; and/or
- (c) There is a change in the delineated TOTs as specified in Section 1180.10 of Zoning Ordinance Number 7503.

940.07.7 Amending Existing Facility Registrations. A Facility Operator must amend an existing Facility registration, or may request that the Director of Public Utilities or Designee amend the registration, no later than sixty (60) days after any:

- (a) Change in ownership or management of the Facility;
- (b) Installation, return to service, or removal of an AST or UST system subject to regulation under this Chapter;
- (c) Permanent on-site storage or use of a previously unregistered Regulated Substance in quantities meeting or exceeding the thresholds established in Chapter 940.24; and/or
- (d) Change in the delineated TOTs as specified in Section 1180.10 of Zoning Ordinance Number 7503.

And no later than ninety (90) days after:

- (e) Permanent cessation of regulated operations or storage of Regulated Substances as specified in Section 940.09.

A Facility Operator choosing to have their facility registration amended by the Director of Public Utilities or Designee must contact the Director of Public Utilities or Designee no less than thirty (30) days before a registration is due to ensure completion of the registration within the allowed sixty (60) day time frame when meeting parts (a) - (d). The Facility Operator is responsible for amending a registration under the part (e).

940.07.8 Registration of Multiple Facilities. Any person owning and/or operating more than one facility subject to regulation under this Chapter must register each regulated facility separately in accordance with the provisions of this Chapter.

Sec. 940.08 Temporary Storage of Regulated Substances

940.08.1 Application. This Section applies to the temporary storage of Regulated Substances at new and existing non-residential facilities in the Wellhead Protection Area when the Regulated Substances:

- (a) Are stored or otherwise used in quantities meeting or exceeding the quantity thresholds established in Section 940.24.2; and
- (b) Do not meet any of the exemption criteria specified in Section 940.15.1.

940.08.2 Conditions. Temporary storage subject to regulation under this Chapter must meet the following conditions when aboveground:

- (a) The Regulated Substance storage unit(s) must meet the general container requirements specified in Section 940.13.2 through 940.13.4 of this Chapter; and

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- (b) When possible, the temporary storage unit(s) should be located in a non-hazardous area (i.e., where the unit(s) are not generally exposed to routine vehicular traffic, flammables, or other hazards).

Any Regulated Substance release meeting or exceeding the release notification criteria in Section 940.10.1 must be reported and remediated in accordance with Section 940.10, et seq. herein.

940.08.3 Temporary Storage Extensions. Temporary storage of Regulated Substances beyond ninety (90) days is permitted provided compliance with the following requirements.

- (a) The Facility Operator must notify the Director of Public Utilities or Designee of the need to continue temporary storage of the Regulated Substance(s) prior to expiration of the temporary storage period. The Facility Operator shall submit notification to the Director of Public Utilities or Designee on a prescribed form supplied by the Director of Public Utilities or Designee at the request of the Facility Operator. The notification shall specify:
 - (i) Facility name, address, and telephone;
 - (ii) Facility Operator name and twenty-four (24) hour emergency contact. Designation of an emergency contact must be done in accordance with Section 940.07.2;
 - (iii) Regulated Substance(s) temporarily being stored at the Facility;
 - (iv) The manner in which the Regulated Substances are stored; and
 - (v) The anticipated date when temporary storage will cease.
- (b) The Regulated Substance continues to be stored in compliance with Section 940.08.2 when aboveground.

Sec. 940.09 Facility Closure

Sec. 940.09.1 Facility Closure. This Section applies to any non-residential Facility subject to regulation under this Chapter that becomes unoccupied or where operations are permanently discontinued for a period greater than ninety (90) consecutive days any time after the effective date of this Chapter. Facility Operators subject to compliance with any federal, state, or local facility closure program addressing the storage or handling of Regulated Substances at a closing facility are exempt from the requirements in this Section except for compliance with Section 940.09.3.

Sec. 940.09.2 Removal of All Regulated Substances. Except in the case of seasonal discontinuation of operation, the Facility Operator must remove all Regulated Substances other than those used exclusively for heating, cooling, and providing electrical lighting for the premises from the property no later than ninety (90) days after the date the property initially became unoccupied or operation was permanently discontinued.

Sec. 940.09.3 Closure Notice. Any Facility Operator permanently discontinuing operation of a Facility subject to regulation under this Chapter must submit an amended Facility registration to the Director of Public Utilities or Designee in accordance with Section 940.07.7. The amended Facility registration shall include the date on which operations will or have ceased; the current operator's new phone number and address; and the fate of Regulated Substances stored or

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otherwise used on site. Any Facility Operator required to submit a closure notification under any federal, state, or local closure program may copy the Director of Public Utilities or Designee on that notification in lieu of submitting an amended Facility registration.

Sec. 940.09.4 Facility Security. Upon permanent closure of a facility, the Facility Operator must take reasonable steps to secure all Regulated Substance storage units or Regulated Substance storage areas against vandalism. Compliance with Sections 940.13.2 through 940.13.4 and maintenance of all security measures implemented in accordance with this Section are required until all Regulated Substances are removed from the site.

Sec. 940.10 Regulated Substance Releases

Sec. 940.10.1 Release Notification Required. Any release of a Regulated Substance within a Wellhead Protection Area must, if such release:

- (a) originates from an underground storage tank; or
- (b) contacts a pervious ground surface; and
- (c) is not immediately and completely remediated within twenty-four (24) hours; or
- (d) enters a surface water body; or
- (e) enters a dry well or storm sewer

be reported to the Director of Public Utilities or Designee or on-duty drinking water treatment plant operator within twenty-four (24) hours of discovery by the Facility Operator or any other party responsible for the storage unit from which the release occurred. Such notification in no way alleviates other federal, state, or local reporting obligations imposed by law.

Sec. 940.10.2 Notification Contents. Initial notice shall include, at a minimum, information related to the following:

- (a) Location of the release (Facility name, address, and phone);
- (b) Facility/responsible party's name, address, and phone (if different from (a));
- (c) Emergency contact and phone;
- (d) Description of the nature of the incident, including date, time, location, and cause of the incident; type, concentration, and volume of substance(s) released.

Sec. 940.10.3 Regulated Substance Release Report. Within seven (7) days of a reported release, the responsible party must submit to the Director of Public Utilities or Designee a Regulated Substance Release Report providing any additional detail on the nature and management of the release, including control and corrective actions taken, fate of the released material, and, where applicable, the name of the contractor responsible for removal of released substances. Information submitted in the Regulated Substance Release Report shall be used by the Director of Public Utilities or Designee to determine if and where any additional follow-up work needs to be completed to assess the potential pollution impact of the release.

Sec. 940.10.4 Remediation of Release. Upon discovery of a release, the Facility Operator or other responsible

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party must take appropriate reasonable actions to mitigate the potential impact of the release on groundwater and remediate the release. Remediation must be conducted in a timely manner and in accordance with applicable law. Wastes generated during remediation of a Regulated Substance release must be handled in accordance with Sections 940.13.2 through 940.13.4 when the quantity of regulated wastes generated meet or exceed the quantity thresholds established in Section 940.24.2, in addition to all applicable legal requirements. Storage of these materials for a period of greater than ninety (90) days must be reported to the Director of Public Utilities or Designee by the Facility Operator in accordance with Section 940.08.3.

Sec. 940.10.5 Submission of Additional Information. The responsible party must copy the Director of Public Utilities or Designee on all correspondence submitted to federal, state, or local agencies related to site assessment and site remediation. The Director of Public Utilities or Designee may request, if deemed necessary, that:

- (a) The Fire Department provide a copy of the department's Ohio Fire Incident Reporting System report to the Director of Public Utilities or Designee;
- (b) The Ohio EPA provide a copy of the agency's Emergency Response Section Incident Report to the Director of Public Utilities or Designee; and/or
- (c) The Facility Operator develop and implement procedures to minimize the likelihood of reoccurrence of such a release. The Facility Operator must submit procedures developed under this provision to the Director of Public Utilities or Designee no later than sixty (60) days after being required, and implemented no later than one hundred eighty (180) days after approval by the Director of Public Utilities or Designee.

Sec. 940.10.6 Liability. The City is authorized to order the cleanup or abatement, or take such other actions as may be necessary to cause cleanup or abatement, of any hazardous material release to soils, surface water, and/or groundwater in or near a WHPA which may present a threat to groundwater quality or violate Ohio's water quality standards. The entity or person responsible for the release shall be liable for any reasonable expense, loss, or damages attributable to the release incurred by the City in response to such an incident, in addition to any fines imposed under Ohio and Federal law, and these codified Chapters.

Sec. 940.11 Records Retention

The Facility Operator must retain all records, reports, or other documentation related to the requirements of this Chapter on site for a minimum of five (5) years from the original date of the record, report, or document.

Sec. 940.12 Inspection

The Director of Public Utilities or Designee shall inspect all facilities subject to regulation under this Chapter no less than once every two (2) years for compliance with the provisions of this Chapter. Any inspection shall be conducted under the conditions listed in Section 940.07.1 (a) through (d).

Sec. 940.13 General Regulated Substance Storage Provisions: Above Ground Storage

Sec. 940.13.1 Applicability. This Section applies to the above ground storage of Regulated Substances in the Wellhead Protection Area in quantities meeting or exceeding those specified in Section 940.24.2.

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Sec. 940.13.2 General Container and Regulated Substance Handling Requirements At Non-Residential Facilities. All containers subject to regulation under this Chapter used for the storage or use of Regulated Substances at new and existing non-residential facilities must be:

- (a) Product-tight and free of any defects which may result in a release of the contained Regulated Substance;
- (b) Made of or lined with materials which will not react with and are otherwise compatible with the Regulated Substance stored;
- (c) Individually and clearly labeled with the contents of the container. If a Regulated Substance is being stored on site under the temporary storage provisions (Section 940.08), the Regulated Substance storage unit must also be labeled with the date on which temporary storage began.
- (d) Stored on or above an impervious surface at all times that is free of any gaps, cracks, or other effects of deterioration that would allow for the penetration of Regulated Substances stored on that surface into surrounding soils, or, if stored on a pervious surface, stored with secondary containment in the form of a dike, containment pallet, or other containment unit capable of containing a release from the Regulated Substance storage unit. Existing ASTs are exempt from this requirement; and
- (e) Visually inspected weekly by the Facility Operator for any evidence of leaks, improper storage, or potential hazards that may result in a release of materials being stored in or transferred into the storage unit. Aisle space between containers must be adequate to allow for inspections. Where applicable, any leak detection or early warning system associated with an AST also must be inspected on a weekly basis. The Facility Operator must maintain a record of inspections and the findings of those inspections, and made available on request by the Director of Public Utilities or Designee. Any weekly inspection log maintained by a Facility Operator under another federal, state, or local program shall satisfy the requirements of this part provided the inspection includes those Regulated Substance storage units regulated under this Chapter.

Any Facility Operator installing an impervious surface or providing secondary containment under part (d) of this Section must do so no later than one hundred eighty (180) days after becoming subject to regulation under part (d). Continued storage of Regulated Substances on a pervious surface beyond this one hundred eighty (180) day period is permitted only if granted a temporary variance.

Sec. 940.13.3 Defective Storage Units. A Facility Operator must remove defective storage units from service immediately and repair or replace the defective units if needed. Defective storage units permanently taken out of service must be decontaminated and disposed of in accordance with applicable federal, state, and local waste management standards.

Sec. 940.13.4 Storage in Trucks, Trailers, Tankers, or Rail Cars. Any truck, trailer, tanker, or rail car used for the storage of Regulated Substances within the Wellhead Protection Area must:

- (a) Be structurally stable and free of any defects that may result in a release of the Regulated Substances stored in the truck, trailer, tanker, or rail car;
- (b) Be clearly labeled with the contents;

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- (c) Be visually inspected weekly by the Facility Operator for any evidence of leaks, improper storage, or potential hazards that may result in a release of materials being stored in or transferred into or out of the storage unit; and
- (d) Have all doors, valves, or other openings through which a release could occur locked or otherwise secured when not in use so as to prevent a release of the Regulated Substance through the opening(s).

Sec. 940.13.5 Spill Control Plan. Permanent storage or use of Regulated Substances subject to regulation under this Chapter at new and existing facilities in a storage unit where a release from the storage unit would reach a pervious soil surface, dry well, storm sewer, or surface water body requires the development of a Spill Control Plan in accordance with Section 940.17. A Facility Operator is exempt from this requirement if the storage unit or storage/usage area is secondarily contained.

Sec. 940.13.6 Residential Regulated Substance Storage Units. All containers subject to regulation under this Chapter used for the storage or use of Regulated Substances at new and existing residential facilities must be:

- (a) In compliance with parts (a), (b), (c), and (d) in Section 940.13.2;
- (b) Visually inspected by the Facility Operator on a monthly basis. Where applicable, any leak detection or early warning system associated with an AST also must be inspected at that time; and, where applicable,
- (c) Provided with a Spill Control Plan in accordance with Section 940.17.5.

Sec. 940.14 Aboveground Storage Tank (AST) Installation

Sec. 940.14.1 Installation of New ASTs. This Section applies to the installation of ASTs at new or existing facilities after the effective date of this Chapter when the capacity of the AST meets or exceeds the quantity thresholds established in Section 940.24.2. All new ASTs must be registered in accordance with Section 940.07 and meet the general handling requirements specified in Section 940.13.2 in addition to the following as required:

- (a) Bottom Clearance. All ASTs must have ground clearance of no less than two (2) inches from the outermost wall of the AST to allow for visual inspection of the underside of the AST. This requirement may be waived if the size of the AST prevents raising the tank as required or the AST is a concrete vaulted tank.
- (b) Secondary Containment. All ASTs meeting or exceeding the thresholds established for secondary containment in Section 940.15.2 herein must be installed with secondary containment meeting or exceeding those requirements specified in Sections 940.15.3 through 940.15.5
- (c) Barriers. Any AST meeting or exceeding the thresholds established for secondary containment in Section 940.15.2 and which is installed in an area where the AST is open to vehicle damage must be protected against impact with physical barriers meeting the approval of the Director of Public Utilities or Designee. Any impervious dike utilized as secondary containment meets the requirements for a physical barrier.

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- (d) Replacement of Existing ASTs. Replacement of an existing AST after the effective date of this Chapter with any new or used AST is considered installation of a new system and therefore subject to any federal, state, and local regulations for the installation of new ASTs in addition to the provisions of this Chapter, unless specified otherwise.

Sec. 940.15 Secondary Containment Requirements

Sec. 940.15.1 Exemptions. The following are exempt from secondary containment requirements set forth in this Chapter:

- (a) Storage of Regulated Substance(s) indoors in an area capable of fully containing within the Facility a total release of the Regulated Substance(s) for which the exemption is being claimed, or draining the release to a wastewater treatment system capable of treating the released substance(s).
NOTE: Septic tank systems do not qualify as a wastewater treatment system under this exemption;
- (b) Storage of Regulated Substances as consumer products packaged in original containers;
- (c) Storage of Regulated Substances in storage units/areas with secondary containment comparable to or exceeding that required in Sections 940.15.3 through 940.15.5 herein; and
- (d) ASTs located in the 10 year TOT.

Sec. 940.15.2 Secondary Containment Requirements for ASTs. Unless exempted under Section 940.15.1, secondary containment is required as follows for ASTs installed after the effective date of this Chapter:

- (a) All ASTs installed in the one (1) year TOT with a capacity exceeding fifty-five (55) gallons; and
- (b) All ASTs installed in the five (5) year TOT with a capacity of five hundred (500) gallons or more when storing petroleum or petroleum-based products, or two hundred and fifty (250) gallons or more when storing all other Regulated Substances.

Sec. 940.15.3 Construction. Secondary containment systems must be constructed of or lined with materials compatible with the Regulated Substance stored. Secondary containment must be of sufficient thickness, density, and composition so as not to be structurally weakened from contact with the Regulated Substance or precipitation, and must be free of cracks, joints, gaps, or other imperfections which would allow leakage through the containment.

Sec. 940.15.4 Double Walls and Diking. An AST must have at least one of the following at the choice of the Facility Operator:

- (a) Double Walls: designed as a containment area and providing the Facility Operator with manual or electronic interstitial space monitoring capabilities. Laminated, coated, or clad materials shall be considered single-walled and shall not be construed to fulfill the requirement for double walling; or
- (b) Diking: capable of containing one hundred and ten percent (110%) of the total

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volume of the tank. If the storage area contains multiple ASTs, the secondary containment must be large enough to contain one hundred and fifty percent (150%) of the volume of the largest AST placed in it, or ten percent (10%) of the aggregate internal volume of all ASTs in the storage area, whichever is greater.

Sec. 940.15.5 Precipitation.

- (a) If an AST using a dike as a secondary containment system is exposed to and subject to accumulation of precipitation within the dike, the dike must be designed and operated as follows:
 - (i) The base of the dike must be sloped to a collection point or sump to allow for controlled removal of accumulated storm water or spilled regulated materials; and
 - (ii) If the dike is penetrated by a drainage pipe, the pipe must have a lockable valve. This valve shall be kept closed and locked under normal conditions until a determination is made by the Facility Operator that the discharge of storm water is acceptable pursuant to part (b) of this Section.
- (b) Storm water accumulated within secondary containment that is known or suspected to contain a release from the primary containment unit must be handled in accordance with applicable federal, state, or local laws. No potentially contaminated stormwater may be discharged to a sanitary sewer without approval of the Director of Public Utilities or Designee. The Director of Public Utilities or Designee may require analysis of the stormwater before allowing discharge to the sanitary sewer if the released substance could present a treatment problem at the wastewater treatment plant. The Facility Operator must take all reasonable steps to neutralize the stormwater before discharging the stormwater to any septic system, dry well, sewer, soil, or surface water body.

Sec. 940.16 **Temporary Placement Out of Service of ASTs**

Sec. 940.16.1 Temporary Placement Out of Service

- (a) Removal from Service. Any Facility Operator intending to place an AST system out of service for less than one (1) year must remove the system from service in accordance with Chapter 1301:7-7-28, Section FM-2807.2.1 of the State Fire Code in addition to any other applicable federal, state, or local regulations. Any AST meeting any of the secondary containment exemption criteria in Section 940.15.1, or any heating fuel AST taken out of use for seasonal conditions, is exempt from this requirement.
- (b) Returning the Tank to Service. Unless required otherwise under another applicable federal, state, or local regulation, any AST placed out of service for more than ninety (90) consecutive days but less than one (1) year which is to be brought back into service must be brought back into service by the Facility Operator in accordance with Chapter 1301:7-7-28, Section FM-2807.2.1 of the State Fire Code. Any AST meeting any of the secondary containment exemption criteria in Section 940.15.1 is exempt from this requirement.

Sec. 940.17 **Spill Control Plans**

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Sec. 940.17.1 Non-residential Facilities. Facility Operators required to develop a Spill Control Plan (SCP) must complete the plan no later than one hundred eighty (180) days after becoming subject to this requirement. The Public Utilities Director or Designee may provide, at the request of the Facility Operator, a template of the SCP to facilitate development of the SCP. The SCP does not require the signature of a professional engineer. The SCP must be stored on site and made available on request to the fire department or other inspection authority.

Any SCP developed in compliance with other federal, state, or local regulatory programs may satisfy the requirements of this provision provided that SCP contains all information specified in Section 940.17.2. Any deficient information must be amended into the existing SCP to be considered compliant with this Section. If a pre-existing SCP is being used to satisfy this requirement, only compliance with Sections 940.17.3 and 940.17.4 is required. Where applicable, one (1) copy of the SCP must be kept in the Facility's repository box (lock box).

Sec. 940.17.2 Content of the Spill Control Plan. The SCP must specify all of the following:

- (a) Facility name, address, and phone;
- (b) Facility Operator name and phone;
- (c) Emergency contact and phone. Designation of an emergency contact must be done in accordance with Section 940.07.2;
- (d) A brief description of the type of business conducted at the Facility;
- (e) The location of the Regulated Substance storage area(s) for which the SCP is being developed;
- (f) The type(s) and normally anticipated quantity of Regulated Substance(s) stored in the Regulated Substance storage area(s) for which the plan is being developed;
- (g) Potential hazards (including activities) to the Regulated Substance(s) stored in the area;
- (h) All openings/routes through which a release from the storage area(s) would potentially flow into the Facility's property and within five hundred (500) feet beyond the property line, including floor drains, doorways, storm sewers, dry wells, streams, and other openings/routes;
- (i) Emergency response procedures to be followed in the event of a release, including specific points of contact for releases, evacuation procedures, and emergency notification procedures for appropriate federal, state, and local agencies; and
- (j) Emergency equipment available to the Facility Operator and location of equipment.

Sec. 940.17.3 Employee Training. A Facility Operator must train all employees annually on the release procedures outlined in the SCP. The Facility Operator must maintain a log of employee training and make the log available to the Director of Public Utilities or Designee upon request. Copies of the SCP must be readily available for employee use in work areas in or near Regulated Substance storage areas.

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Sec. 940.17.4 Updating the SCP. A Facility Operator must review and amended the SCP as necessary every two (2) years and when any of the following occur:

- (a) There is a change in ownership or management at the Facility;
- (b) An out-of-service AST system lacking secondary containment comparable to that required in Section 940.15 is returned to service; and/or
- (c) Changes, structural or otherwise, are made at the Facility that will affect the anticipated flow direction of any release from the storage area or unit (ex: regrading of property, paving, building additions).

Sec. 940.17.5 Residential Spill Control. Any residence with a Regulated Substance storage unit required to have a Spill Control Plan shall receive information from the Public Utilities Director or Designee on how to respond to a release from the storage unit as those units are registered. This information shall be provided in an easy to follow format. The owner of the Regulated Substance storage unit must keep any information related to spill control readily available in the event of a release.

Sec. 940.18 Underground Storage Tanks

Sec. 940.18.1 Applicability. This Chapter applies to any person currently owning and/or operating or intending to own and/or operate any underground storage tank (UST) with a capacity exceeding fifty-five (55) gallons when located within the one (1) or five (5) year time-of-travel zone (TOT), or with a capacity meeting or exceeding five hundred (500) gallons or more when located within the ten (10) year TOT.

Sec. 940.18.2 Exemptions. The following USTs are exempt from regulation under this Section:

- (a) USTs in the ten (10) year TOT used exclusively for the storage of Grade 1 or Grade 2 heating fuels and diesel fuel; and
- (b) USTs containing de minimis quantities of a Regulated Substance.

A de minimis quantity is one (1) inch or less. Any claim that a UST contains de minimis quantities when storing more than one (1) inch of Regulated Substance shall be determined by the Director of Public Utilities or Designee on a case-by-case basis. A Facility Operator must submit verification to the Director of Public Utilities or Designee that the UST contains a de minimis quantity of a Regulated Substance when making any de minimis claim.

Sec. 940.18.3 Registration of UST Systems

- (a) Registration. All UST systems subject to regulation under this Chapter must be registered in accordance with Section 940.07.1 of this Chapter. Any Facility Operator required to annually register a UST system with the State Fire Marshal under OAC 1301:7-9-04 may provide a copy of that registration to the Director of Public Utilities or Designee to satisfy this registration requirement.
- (b) Information. UST registration shall include, but is not limited to, information on the following:
 - (i) Facility name, address, and phone;
 - (ii) Facility Operator, address, and phone;

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- (iii) Number, size, construction, date of installation, and location of USTs;
 - (iv) Regulated Substances stored in the UST; and
 - (v) Brief description of the type of monitoring equipment used for tanks.
- (c) New UST Registration. Any new UST system subject to regulation under this Chapter that is installed at a facility beginning operation after the effective date of this Chapter must be registered in accordance with Section 940.07.1 no later than one hundred eighty (180) days after beginning operation.
- (d) Registration of Previously Exempt Facilities. Any previously exempt Facility that becomes subject to regulation under this Chapter due to:
 - (i) Installation of an UST subject to regulation under this Chapter;
 - (ii) Return to service of any temporarily abandoned UST or UST containing de minimis quantities of Regulated Substances; and/or
 - (iii) Changes in the delineated Wellhead Protection Area as specified in Section 1180.10 of Zoning Ordinance Number 7503

must be registered in accordance with Section 940.07.1 no later than one hundred eighty (180) days after becoming subject to regulation under this Chapter.

- (e) Amending Registrations. A Facility Operator must amend, or at the request of the Facility Operator, the Director of Public Utilities or Designee must amend an existing UST registration no later than sixty (60) days after any:
 - (i) Replacement of an existing UST system;
 - (ii) Change in ownership or management of the Facility;
 - (iii) Return to service of any temporarily abandoned UST or UST containing de minimis quantities of Regulated Substances;
 - (iv) Permanent abandonment and/or removal of a UST; and/or
 - (v) Change in the delineated Wellhead Protection Area as specified in Section 1180.10 of Zoning Ordinance Number 7503.

A Facility Operator choosing to have their facility registration amended by the Director of Public Utilities or Designee must contact the Director of Public Utilities or Designee no less than thirty (30) days before a registration is due to ensure completion of the registration within the allowed sixty (60) day time frame.

- (f) Registration of Multiple Facilities. Any person owning and/or operating more than one Facility subject to regulation under this Chapter must register each regulated Facility separately in accordance with the provisions of this Chapter.

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- (a) BUSTR Sensitive Area USTs. All USTs subject to regulation under the BUSTR Sensitive Area regulations (OAC 1301:7-9-10) must be installed in accordance with those requirements when installed in the Wellhead Protection Area.
- (b) Heating Fuel USTs; Diesel Fuel USTs. Heating fuel and diesel fuel USTs subject to regulation under this Chapter must be vaulted in accordance with Section 940.18.4(d) herein.
- (c) Other USTs. UST systems installed for permanent storage, use, or handling of Regulated Substances other than vehicles fuels, vehicle lubricants, and fuel for building and/or process heating must be vaulted in accordance with Section 940.18.4(d) herein.
- (d) Vaulted USTs. Vaults must meet the criteria specified in OAC 1301:7-9-10(C)(2)(a) and (c). The Facility Operator must inspect the vaulted UST at least once every thirty (30) days for visible signs of leaks, cracks, or other structural defects that may result in the release of the substance into the vault or surrounding soils.

Sec.940.18.5 Upgrading/Replacement of UST Systems. For the purpose of this Chapter, replacement of an existing UST shall be considered installation of a new system and required to comply with any applicable federal, state, and local regulations for the installation of new USTs in addition to the provisions of this Chapter, unless specified otherwise.

Sec. 940.18.6 Temporary Placement Out-of-Service, Temporary Closure, Abandonment, Removal, and Change in Service of UST Systems

- (a) Compliance. Facility Operators must comply with all applicable federal, state, and local regulations for the temporary placement out of service, closure, abandonment, removal, or change in service of any UST system in addition to any requirements set forth in this regulation.
- (b) Abandonment of UST Systems. No UST system located in the Wellhead Protection Area may be abandoned in place unless approved by a certified fire safety inspector or the State Fire Marshal. The Facility Operator must copy the Director of Public Utilities or Designee on any closure assessment and other information related to the closure and abandonment in place of the UST system as the information is submitted to the Bureau of Underground Storage Tank Regulations, the State Fire Marshal, or Ohio EPA.

Sec. 940.18.7 Tank Tightness Testing

- (a) Exemptions. The following USTs are exempt from the tank tightness testing provisions required by this Chapter: 1) USTS regulated under and operated in compliance with the BUSTR Sensitive Area Requirements (OAC Chapter 1301:7-9-10), 2) USTS vaulted in accordance with Section 940.18.4(d) thereof; and 3) USTs with a capacity of less than five hundred (500) gallons used exclusively for holding diesel fuel and heating fuel oil grades no. 1 and 2 .
- (b) Tightness Testing. Any UST not exempt under Section 940.18.7(a) hereof must be tested for tightness as follows:
 - (i) Prior to the conveyance of real property by sale or otherwise on which an UST is located, the grantor shall have each UST located thereon tested for tightness in accordance with OAC Chapter 1301:7-9-07(E)(3) and (F)(2), provided no such UST shall be subject to testing more than three (3) times in the same ten (10) year period.

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- (ii) Where a conveyance of real property on which an UST is located has not occurred within any consecutive ten (10) year period, commencing from the effective date of this Chapter, the owner shall cause each UST located thereon to be tested for tightness in accordance with OAC Chapter 1301:7-9-07(E)(3) and (F)(2) within such period.

Testing results shall be submitted to the Director of Public Utilities or Designee no later than thirty (30) days after completion of the test. A tightness test is not required if the UST will be removed in conjunction with sale of the property or where a test has been completed for a UST within one (1) year prior to sale or transfer of ownership of a property.

- (c) Failure of a Tank Tightness Test. If a UST fails a tank tightness test, the Facility Operator must determine if a release has occurred. If a release is confirmed, the release must be reported and remediated in accordance with Section 940.10, et seq., herein.

Sec. 940.19 Management of Other Potential Pollution Sources

Sec. 940.19.1 Land Application of Pesticides and Fertilizers

- (a) Applicability. This Section applies to the application of restricted use pesticides as identified by the United States Environmental Protection Agency at existing and new commercial, recreational, and agricultural facilities in the one (1) and five (5) year TOT.
- (b) Registration of Restricted Use Pesticides. Facility Operators applying restricted use pesticides within the one (1) and five (5) year TOT in any quantity must register the application of those restricted use pesticides with the Director of Public Utilities or Designee within one hundred eighty (180) days of the effective date of this Chapter and by March 1 of every second year thereafter. Any Facility Operator required to maintain records of restricted use pesticide application under any other federal, state, or local program may submit a copy of those records to the Director of Public Utilities or Designee to satisfy this registration requirement. A Facility Operator may request that the registration be completed by the Director of Public Utilities or Designee. A Facility Operator choosing to have their facility registered by the Director of Public Utilities or Designee must contact the Director of Public Utilities or Designee no less than ninety (90) days before a registration is due to ensure completion of the registration by the required due date.
- (c) Registration Information. Registration will include, but is not necessarily limited to, general information on the facility and the application of restricted use pesticides at the facility.
- (d) Registration of Previously Exempt Facilities. Any previously exempt Facility that becomes subject to regulation under this Section due to:
 - (i) Changes in the types of pesticides applied at a Facility from non-restricted to restricted use pesticides; and/or
 - (ii) Changes in the delineated Wellhead Protection Area as specified in Section 1180.10 of Zoning Ordinance Number 7503

must be registered in accordance with Section 940.19.1(b).

Sec. 940.19.2 Road Salt Storage

- (a) New Facilities. All road salt stored at new facilities in the one (1) year TOT must be stored

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under covered shelter on an impervious surface. This requirement does not apply to salt prepackaged for consumer use.

- (b) Registration. Any Facility in the one (1) year TOT storing road salt outdoors in quantities meeting or exceeding one thousand (1,000) pounds must be registered in accordance with Section 940.07.

Sec. 940.19.3 On-Lot Sewage Systems

- (a) Registration. Any on-lot sewage system in the Wellhead Protection Area used for the disposal of process waters other than sanitary wastes must be registered in accordance with Section 940.07. Any Facility Operator required to register such disposal to any other federal, state, or local authority may submit a copy of that registration to the Director of Public Utilities or Designee to satisfy the registration requirements in this Section. The Director of Public Utilities or Designee reserves the right to ask for additional information when required.
- (b) Cessation of On-Site Disposal. Any Facility Operator permanently ceasing disposal of process wastes on site through an on-lot sewage system must submit an amended facility registration no later than sixty (60) days of ending disposal in accordance with Section 940.07.7 herein.

Sec. 940.19.4 Commercial Junk Yards

- (a) All commercial junk yards in the Wellhead Protection Area must be registered in accordance with Section 940.07, et seq., and must comply with the following as applicable: Section 940.09, et seq. (Facility Closure); and Section 940.10 et seq. (Release Notification), and Section 940.13.2 (General Container and Regulated Substance Handling Requirements).
- (b) Fluid Management. Scrap vehicles or other units brought into a commercial junk yard located within the Wellhead Protection Area must have all fluids removed in accordance with current federal, state, and local regulations before on-site crushing and/or storage of the vehicle or unit. All Regulated Substances removed from a vehicle or other unit must be handled and stored in accordance with current federal, state, and local regulations in addition to the provisions of this Chapter as required.

Sec. 940.19.5 Dry Wells

- (a) Registration of New Dry Wells. The Director of Public Utilities or Designee must be notified of the installation of any new dry well within the Wellhead Protection Area no later than sixty (60) days after installation of the new dry well. Notification shall be provided on a standard form supplied by the Director of Public Utilities or Designee at the request of the registrant. The registration shall include information related, but not limited, to the location and design of the new dry well(s). One registration form may be submitted for the installation of multiple dry wells with the same design at a site.
- (b) Use of Existing Registration Information. Any municipality or Facility Operator required to register or report a dry well or dry well system to any other federal, state, or local authority may submit a copy of that registration or report to the Director of Public Utilities or Designee to satisfy the registration requirements of this Section. The Director of Public Utilities or Designee reserves the right to request additional information if required.
- (c) Inspection and Maintenance Schedule. Any municipality using dry wells for storm water management in the one (1) and five (5) year TOT must develop and implement a schedule for the regular inspection and maintenance of those dry wells.

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Sec. 940.19.6 Landfills

- (a) Registration. All commercial landfills in the Wellhead Protection Area must be registered in accordance with Section 940.07 et seq.. Any releases meeting criteria specified in Section 940.10.1 et seq., or any release to groundwater detected through a groundwater monitoring network associated with the site must be reported to Director of Public Utilities or Designee in accordance with Section 940.10 et seq.. The public utilities director or designee shall make all reasonable effort to register former unlicensed landfills in addition to commercial landfills

Sec. 940.19.7 Wells

- (a) Applicability. This Section applies to any existing or new well in a WHPA used for the production of groundwater that does not require plan approval by the Ohio EPA. This includes any well used for producing water not intended for human consumption.
- (b) Installation and Maintenance. Any well subject to regulation under this Section installed after the effective date of this Chapter must be installed in accordance with Chapter 3745-9-05 of the Ohio Administrative Code. All new wells must be registered by the well owner with the Director of Public Utilities or Designee no later than fifteen (15) days prior to installation of the well. All new wells must be installed by a State-recognized well driller. All wells must be maintained in accordance with Chapter 3745-9-09(A)-(C) of the Ohio Administration Code.
- (c) Abandonment of Wells. All wells which are not maintained for production, standby, or observation purposes are to be permanently abandoned by completely filling the well with grout so as to prevent contaminants from entering groundwater through the well. Grout can be neat cement, inert natural materials, concrete, heavy drilling mud, heavy bentonite water slurry, inert polymer material, or other materials designed for sealing a well that are impervious to and capable of preventing movement of water. All materials except neat cement and concrete when used as grout shall be of sufficient viscosity to require a time of at least seventy seconds to discharge one quart of the material through an API marsh funnel viscometer. The Facility Operator must notify the Director of Public Utilities or Designee of the no later than 15 days prior to abandonment of the well.

Sec. 940.20 Violation, Penalty, and Administrative Remedies

Sec. 940.20.1 Violations. Any Facility Operator who knowingly submits false or inaccurate information to the Director of Public Utilities or Designee, or who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Chapter is considered in violation of this Chapter and subject to penalty as set forth herein.

Sec. 940.20.2 Penalties. Any violation of this Chapter is considered a minor misdemeanor subject to fines not to exceed \$100.00 per day per offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Sec. 940.20.3 Administrative Remedies. In addition to prosecution of a violation as a minor misdemeanor, the Director of Public Utilities, upon discovery of violation of any provision of this Chapter, may pursue with reasonable notice any legally available administrative remedies or enforcement actions including, but not limited to, the following:

- (a) Ordering cessation of any use or activity that may create hazards or have deleterious effects on the water supply or facilities;
- (b) Discontinuing utility service to any Facility operating in violation of this

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Chapter;

- (c) Ordering remedial actions;
- (d) Requiring pollution control and abatement; and
- (e) Requiring development of compliance schedules to implement corrective action.

When considering the exercise of any of the above powers or actions, the Director of Public Utilities may take into consideration any evidence presented by the entity regarding cost effectiveness and the economic impact imposed by the requirements or actions.

Sec. 940.21 Variance and Appeals under the Wellhead Protection Program.

940.21.1 Appeal. Any person aggrieved by any order issued by the Director of Public Utilities or Designee under the provisions of this Chapter may appeal such decision to the City Manager in accordance with established filing procedures.

940.21.2 Wellhead Protection Appeals Advisory Board Established. The member communities of the Hamilton to New Baltimore Groundwater Consortium will establish a Wellhead Protection Appeals Advisory Board (WHPAAB) for the technical review of any variance or appeals request submitted under the Wellhead Protection Program. The WHPAAB shall consist of representatives from communities in the Hamilton to New Baltimore area as selected by City Council or other designated authority for that community. The WHPAAB shall operate in accordance with the bylaws developed by and for the group.

940.21.3 WHPAAB Review. Before action on any variance or appeal under this Chapter by the City Manager, the WHPAAB shall review any variance or appeal request to ensure that the request, if granted, will not present a contamination threat to groundwater. The WHPAAB shall provide a recommendation on the variance or appeal request to the City Manager. In doing so, they may include with the recommendation any such alternatives or modifications to the request as necessary to minimize the potential for groundwater contamination. The WHPAAB shall have thirty (30) days from receiving a variance or appeals request to make a recommendation to the City Manager. This thirty (30) days period shall be inclusive within, not in addition to, the allowed time frame for review by the City Manager.

Sec. 940.22 Severability

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

Sec. 940.23 Confidentiality

Information contained in any documentation collected by or submitted to the Director of Public Utilities or Designee under the provisions of this Chapter that is designated as confidential by a Facility Operator shall be considered confidential only to the extent allowable under Ohio Public Records Law and other applicable federal and state laws.

Sec. 940.24 Regulated Substances List

Sec. 940.24.1 Regulated Substance List. The substances to be regulated (Regulated Substances) are those chemicals, mixtures, and other substances, or components thereof, that are known or suspected carcinogens, toxic or highly toxic agents, corrosives, or which otherwise have been

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determined to be a health hazard or require monitoring as a primary or secondary contaminant under the Safe Drinking Water Act of 1986 (Public Law 93-523), as amended. These substances shall be regulated when the concentration of Regulated Substances stored or otherwise used on site meets or exceeds those quantities specified in Section 940.24.2 of this Chapter. Regulated Substances include:

- (a) Petroleum or petroleum-based products, including fuels, fuel additives, lubricating oils, motor oils, hydraulic fluids, and other similar petroleum-based products;
- (b) Antifreeze, transmission fluids, brake fluids, and coolants;
- (c) Solvents (raw or spent), including cleaning solvents, degreasing solvents, stripping compounds, dry cleaning solvents, painting solvents, and/or hydrocarbon or halogenated hydrocarbon solvents;
- (d) Inks, printing and photocopying chemicals, and waste rags used for solvent-based cleaning;
- (e) Organic pigments;
- (f) Liquid storage batteries;
- (g) Non-aerosol, non-latex based paints, primers, thinners, dyes, stains, wood preservatives, varnishing and cleaning compounds, paint sludges, and paint filters;
- (h) Corrosion and rust prevention solutions;
- (i) Industrial and commercial cleaning supplies, including drain cleaners;
- (j) Sanitizers, disinfectants, bactericides, and algacides;
- (k) Pesticides, herbicides, and fertilizers;
- (l) Acids and bases with a pH less than or equal to 2 or greater than or equal to 12.5;
- (m) Aqueous metals;
- (n) Road salt (only when stored in the 1 year TOT); or
- (o) Or any other material containing one percent (1%) or more by weight of a hazardous raw or waste product that is regulated: as an Extremely Hazardous Substance under Section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (OAC Chapter 3750-20); as a Hazardous Substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (OAC Chapter 3750-30); or as a Toxic Chemical regulated under Section 313 of EPCRA (OAC 3745-100).

A substance listed above may be exempted from regulation under this Chapter if the Regulated Substance does not present a threat to groundwater due to the nature of the substance, and the Facility Operator claiming this exemption for a specific Regulated Substance shows the

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Director of Public Utilities or Designee proper documentation from the chemical manufacturer or other qualified, verifiable source that the Regulated Substance does not present a threat to groundwater.

940.24.2 Baseline Quantity Thresholds. Substances listed in Section 940.24.1 shall be considered regulated when, at any time of the year, the concentration of Regulated Substances Stored or used at a facility meets or exceeds the lesser of the following quantities:

- (a) When located within the one (1) and five (5) year TOT, in amounts exceeding fifty-five (55) gallons aggregate for liquid materials or four hundred forty (440) pounds aggregate for dry weights;
- (b) When located within the ten (10) year TOT, in amounts meeting or exceeding one thousand (1,000) gallons aggregate for liquid materials or eight thousand (8,000) pounds aggregate for dry weights when stored aboveground, or five hundred (500) gallons aggregate for liquid materials when stored in an underground storage tank.

940.24.3 Regulated Substances for Consumer Purchase. Storage of Regulated Substances packaged as consumer products in original containers for consumer purchase shall be regulated under this Chapter only when storage meets or exceeds five (500) hundred gallons aggregate for liquid materials or four thousand (4,000) pounds aggregate for dry weights, whichever is less, in the one (1) and five (5) year TOT, or one thousand (1,000) gallons aggregate for liquid materials or eight thousand (8,000) pounds aggregate for dry weights, whichever is less, in the ten (10) year TOT.

Section II: This ordinance shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: October 14, 1998

Effective Date: November 13, 1998

ATTEST: Linda S. Kuntz
City Clerk

Thomas E. Nye

Mayor

CERTIFICATE

I, Linda A. Landi, City Clerk of the City of Hamilton, State of Ohio, hereby certify that the foregoing Ordinance No. OR98-10-103 was duly published as provided by Section 113.01 of the Codified Ordinances of the City of Hamilton, Ohio, by posting ten days after passage, a copy thereof in each fire station within the City for a period of ten days.
POSTED: 10/22/98

Linda A. Landi, City Clerk
CITY OF HAMILTON, OHIO