

Town of Whitefield
Septage & Residuals Ordinance
Effective: March 17, 2001

I. Authority & Applicability:

- A. This Ordinance is adopted pursuant to 30-A MRSA sections 3001 and Section 4452 and 38 MRSA sections 1305 and 1310-U.
- B. The provisions of the Ordinance shall govern all land and structures within the Town of Whitefield.
- C. In Accordance with 38 MRSA 131 O-U, the Whitefield Planning Board shall file a copy of this Ordinance with the Maine Department of Environmental Protection (DEP) within 30 days of the Effective Date.

II. Findings and Purpose:

- A. Findings: The Town finds that septage and residuals may, if properly treated, tested, stored and applied, provide a safe and beneficial soil amendment for the Town's Agricultural and Forest lands. However, if improperly handled, utilization of septage and residuals poses a threat to public health, welfare, and the environment. While the State has adequate scientific capacity to regulate land spreading of residuals and septage, it has limited resources for incorporating meaningful public input into its review process and closely monitoring spreading operations across the state. Hence, while accepting the State's role in reviewing material safety standards, the authority for additional local review and oversight is essential to ensuring adequate protection of public health, welfare and the environment. Through this Ordinance, the Town will develop a working relationship with the Maine Department of Environmental Protection, and the people that are utilizing septage or residuals in Whitefield, in order to prevent impacts to public health, welfare, or the environment. The Town focuses the efforts of this Ordinance in preventing impacts, rather than documenting impacts once they have occurred.
- B. Purpose: The purpose of this Ordinance is to protect the health, safety, and welfare of Whitefield residents; and to protect the Town's natural resources, including surface and groundwater, while minimizing restrictions on the use of the Town's agricultural and forest lands. The Ordinance provides opportunity for local review, monitoring, and Enforcement of utilization activities.

III. Validity, Severability, Conflict with Other Ordinances, Amendments, and Effective Date:

- A. Severability: Should any provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other provision of this Ordinance.
- B. Conflict: Whenever the requirements of this Ordinance are inconsistent with the requirements of any other ordinance or law, the more restrictive requirements shall apply.

- C. Amendments: This Ordinance may be amended by a majority vote in a special or regular Town Meeting of Whitefield.
- D. Effective Date: This Ordinance takes effect upon its enactment by the Town.

IV. Applicability, Exemptions and Prohibitions

- A. Applicability: This Ordinance applies to utilization, land application, storage, processing, or other handling of residuals (including sewage sludge) or septage within the Town of Whitefield.

Note: Agricultural Wastes that are returned to the land as fertilizers are not regulated by DEP as solid wastes, are not included in the definition of "residual" and therefore are not subject to the requirements of this Ordinance. The Department of Agriculture regulates use of fertilizer under the Nutrient Management Law.

- B. Exemptions. The following activities and facilities are exempt from the requirements of this Ordinance:
 - 1. The storage, utilization and other handling of wood wastes and type1A residuals, when done in accordance with the requirements of the Department of Environmental Protection's solid waste management rules.
 - 2. The utilization of com posted residuals from a composting toilet that meets the Department of Human Services standards.
 - 3. Utilization of septage on a homeowners own land, when utilized in accordance with the provisions of 06-096 CMR Chapter 420, section 2.0(2).
- C. Prohibitions. The following activities and facilities are prohibited in the Town of Whitefield.
 - 1. After the effective date of this Ordinance, no person shall engage in, or expand any utilization activity, without first obtaining a permit, or permit amendment, for such activity.
 - 2. Septage Non-Utilization sites are prohibited in the Town of Whitefield. Note: A septage Non-Utilization site is a disposal site where the septage is not screened or treated for pathogens before being land applied.
 - 3. No person shall utilize, store, or process septage or residuals within the Town of Whitefield's shore land zone.
 - 4. No person shall utilize, store, or process septage or residuals within 500' of a residential well in existence at the time a new license application is found to be complete for processing by the Board.
 - 5. No person shall utilize, store, or process septage or residuals above a mapped significant Sand and Gravel aquifer.

V. Continuance of Existing Uses

- A. Any land spreading and storage of septage or residuals that has been licensed by the Maine Department of Environmental Protection prior to the adoption of this Ordinance may continue, subject to the following requirements:

The residual generator, or septage site operator, shall file for a license amendment and obtain Planning Board approval before expanding the capacity or enlarging any existing activity or facility.

The residual generator, or septage site operator, shall file for a new license within one year of the effective date of this Ordinance, or cease the activity in accordance with the Maine Department of Environmental Protection's closure requirements.

VI. Definitions

The definitions in this Ordinance are those set forth in the Maine Department of Environmental Protection (DEP) rules Chapter 400, *et. Seq.*, *The Solid Waste Management Rules*, and Chapter 420, *Sept age Management*. In addition, the following terms shall have the following meanings

- A. Expansion and/or Enlargement means an increase in the size or capacity of an operation including construction, new spreading areas, increase in the size of the operation or spreading area, change in the material being spread, or a reduction in the buffer area or setbacks for the *site*.
- B. Minor Revision means any change in activity that does not include an expansion and/or enlargement.

VII. Permit Requirements

- A. No person shall operate any of the activities subject to this Ordinance without first obtaining a permit from the planning Board. No landowners shall allow activities subject to this Ordinance on his/her property unless the Board has approved the activity.
- B. Applications shall be made on forms approved of by the planning Board, and include a non-refundable application fee, as follows:
1. The application fee for a new license is \$300 per site.
 2. The application fee for a renewal license is \$150 per site.
 3. The application fee for a permit modification is \$100 per site.
 4. In addition to the application fee, the fee for operating the site shall be \$10/ licensed, spreadable acre per year.
 5. In addition to the application fee, the fee for operating a processing site shall be \$50/ licensed waste-handling acre per year.
- C. Expiration.
1. New permits shall be issued for a period of 2 years.

2. Licensees must file renewal applications with the Town prior to the expiration date of the permit. If operators fail to submit an application for renewal in time, they must cease operations until a new permit has been issued.
 3. Renewal permits shall be issued for a period of up to 5 years. The Board will determine the length of time after considering the compliance history of the applicant.
- D. Permit Modifications: The applicant shall receive approval from the Planning Board for any proposed expansion, enlargement, or significant process change of any regulated activity before undertaking the change. The Board shall process permit modifications according to the procedures for a new permit.
- E. Submission Requirements. Applications for regulated activities must include the following
1. The appropriate permit fee
 2. The complete application submitted to the Department of Environmental Protection for the proposed activity, and the final Department's decision regarding the application.
 3. Construction drawings for any buildings and/or structures proposed for the activity.
 4. A list of the names and addresses of all property owners of record within one thousand feet (1000') of the parcel upon which the activity will take place.
 5. A scaled map(s) of the proposed site that clearly indicates: property lines, abutters, owners of property within 1,000' of the parcel upon which the site is located, setbacks and the feature that requires the setback, buffers and feature that requires the buffer, storage areas, the proximity of any significant sand and gravel aquifers, and if applicable, unspreadable areas.
 6. A management plan to protect ground and surface waters.
 7. Other information may be required by the Board to determine that the applicable licensing criteria of the Department of Environmental Protection and this Ordinance will be met. This may include background water tests of existing wells, hydrogeologic data. Testing shall only be required when there is evidence of a circumstance in the vicinity of a site that was not adequately addressed by the DEP in its review.
 8. A report from the Code Enforcement Officer indicating that the proposed site was inspected for compliance with the provisions of this Ordinance.
 9. Representative baseline soil test results for nutrients and sewage sludge metals from one or more fields where septage or residuals will be utilized.

10. Renewal and amendment applications must also include all data and reporting information submitted to DEP since the last license application was submitted to the Board and a description of any proposed changes to the permit.

VIII. Application Review Procedure.

- A. The application review procedure outlined below shall be followed for all new, renewal and amendment applications:
 1. The applicant shall obtain a copy of this Ordinance and an application form from the Planning Board
 2. The applicant shall schedule a site inspection with the Code Enforcement Officer (CEO). The CEO shall complete an inspection report and submit a copy to the applicant to include with the application.
 3. The applicant shall submit a complete and truthful application to the Planning Board and request that the Chair place the proposal on the Planning Board's agenda for consideration.
 4. The Planning Board shall review the application for completeness at a regularly scheduled meeting.
 5. Upon a finding of completeness, the Board shall schedule a hearing on the proposal within 31 days. The Board shall cause notice of the date, time and place of the hearing to be given to the applicant. The Board shall approve the language of the notice to be given by the applicant to the newspaper and property owners near the site.
 6. The applicant shall cause notice of the date, time and place of the hearing to be published in a newspaper of general circulation in Whitefield at least 2 times; the date of the first publication shall be at least 7 days prior to the hearing. The applicant shall also send this notice to all property owners of record within one thousand feet (1,000') of the parcel upon which the proposed site is located, by certified mail. Failure of any party to receive a notice shall not invalidate the hearing, provided that the applicant can show proof that the letters were mailed.
 7. At the hearing, the Board shall hear testimony from the applicant, area property owners, and other interested parties. The Code Enforcement Officer shall attend the hearing and provide information to the Board concerning the site inspection.
 8. Within 31 days of the hearing, the Planning Board shall begin a substantive review the proposed application for compliance with this Ordinance. The Board may schedule a site visit during this time period.
 9. Within 62 days of the hearing, the Board shall review and decide upon the application based upon the following review standards:
 - a) The proposed project has been approved by the DEP.

- b) The application is complete.
 - c) The applicant has complied with all hearing notification requirements.
 - d) The proposed activity conforms to all the applicable provisions of this Ordinance and applicable state law.
 - e) For a renewal permit, the applicant demonstrates that they are and have operated in substantial compliance with this Ordinance and with Department of Environmental Protection laws.
- 10. The planning Board may decide to approve the application, or approve the application with conditions in order to bring the proposal into compliance with this Ordinance, or deny the application.
 - 11. The planning Board shall issue a written decision and shall indicate the reasons for its decision by a finding of fact. The written decision shall be provided to the applicant and DEP within 30 days of the decision date.

IX. Appeals

Within 45 days of the written decision by the Board, an aggrieved party may appeal any final action by the Planning Board to the Board of Appeals. An aggrieved party may appeal the decision of the Board of Appeals to Superior Court Pursuant to Rule 80B of the Maine Rules of Civil Procedure within 45 days of the Appeals Board final decision.

X. Performance Standards

A. Notification Standards

- 1. The licensee shall notify the Code Enforcement Officer and Town office at least two (2) business days prior to any sludge, residuals or septage land spreading activity. The licensee may provide up to a 30-day schedule of anticipated spreading activities.

Note: Notification may be made by phone, fax, letter, voicemail message or any other mutually agreed upon method.

- 2. The licensee shall submit all test reports, annual reports and any other data required as per the Department of Environmental Protection license to the Planning Board. The Planning Board shall file this information with the original permit.
- 3. The licensee shall notify the Planning Board of any change or modification in the activity and, if any, request that the original permit be amended. Failure to notify the Planning Board of any alteration in the original permit shall constitute a violation of this Ordinance.

4. The licensee shall notify the Planning Board when it is permanently ceasing operation at the location. A temporary lapse in activity does not constitute a closing of the activity.

B. Inspection

1. The Code Enforcement Officer shall inspect the site during or within forty-eight (48) hours after spreading has occurred at least twice per spreading season. The Code Enforcement Officer shall maintain a record of each inspection.
2. The Code Enforcement Officer shall inspect the site for compliance with this Ordinance and shall notify the licensee, the Planning Board and the Department of Environmental Protection in writing of any violation along with the steps necessary to remedy the situation.
3. The Code Enforcement Officer shall respond to legitimate complaints concerning any activity regulated by this Ordinance and determine if there are any violations. A copy of all written complaints shall be provided to the licensee.
4. The licensee shall allow the Code Enforcement Officer, Selectmen, Health Officer, and Board to inspect the activity during reasonable business hours.

C. General Standards

1. All activities shall be performed in accordance with this Ordinance and applicable Department of Environmental Protection license and laws.
2. The licensee shall only spread septage or residuals between April 15 and November 15, inclusive, of each year.
3. The licensee shall not spread on frozen, snow covered or water saturated ground.
4. Landspreading of septage, residuals, and effluent from "dewatering facilities shall not exceed the agronomic need for nitrogen for the crops being grown
5. Whenever residuals or septage are planned to be tilled into or spread on the soil, this activity shall occur within 30-days of delivery of the material to the site. Field stacking of residuals- shall not be permitted for more than 30-days unless the material is in a permanent storage facility.
6. All activities shall conform to the setback and buffer requirements established by the Department of Environmental Protection.

D. Warnings and Public Access Restrictions

1. Public access shall be restricted at septage utilization sites in accordance with the Septage Management Rules of the Department of Environmental Protection, Chapter 420. At those sites where the Planning Board has

authorized a permit for the spreading of residuals, the licensee shall cause to be posted legible, visible, warning signs at all vehicles access points that potentially dangerous substances are or about to be spread in the permitted area.

2. Whenever the licensee abandons the site for the spreading or storage of sludge, septage or other residuals, a plan must be submitted within 60 days to the Planning Board for the removal of all appurtenances incidental to the spreading or storage of the residuals in order to restore the area as nearly as possible to its natural state. Failure to submit such a plan and to implement its agreed upon contents shall constitute a public nuisance.

XI. Soil Testing and Deed Restrictions

- A. **Soil Testing.** The applicant agrees to comply with and pay for testing of one or more fields where septage or residuals will be utilized. The applicant shall test the fields for nutrients and sewage sludge metals. The applicant shall conduct baseline testing, and testing after each year that septage or another residual is spread on the field.
- B. **Deed Restriction.** Within 30 days of a valid test result showing pollutants in site soil that are attributable to the spreading activity which exceed the standards in 06-096 CMR Chapter 419, Table 419.5 column B, the licensee shall cause to be filed with the Lincoln County Registry of Deeds the permit issued by the Planning Board, the license issued by the Department of Environmental Protection, and the analytical results of soil for the subject land.

XII. Monitoring and Enforcement

- A. The Code Enforcement Officer shall inspect permitted storage and/or spreading operations no less than once each year to monitor compliance with this Ordinance and Department of Environmental Protection permit requirements.
- B. If the Code Enforcement Officer finds any aspect of the operation to be outside of the permit conditions, the Code Enforcement Officer shall report such find to the Department of Environmental Protection. The Code Enforcement Officer shall monitor Department of Environmental Protection's response to the suspected violation and inform the Planning Board of all activity at its next meeting. It is the intent of this Ordinance to authorize the Town to take action if necessary, but not to duplicate or replace the authority and responsibility of the State to enforce its regulations.
- C. In the event that the Department of Environmental Protection is slow or unresponsive to the Town's complaint and the Code Enforcement Officer believes that the public health and safety is at risk, the Code Enforcement Officer shall notify the Planning Board and Health Officer, The Health Officer may temporarily suspend the permit, causing all storage and/or spreading to cease immediately. The Health Officer shall serve a written stop work order to the licensee both on site and by phone to the contact person on the application. The Health Officer shall also notify the Department of Environmental Protection, Planning Board, and Board of Selectmen of his/her action, causing the Chairman of the Board of Selectmen, if

necessary, to schedule an emergency Selectmen meeting within 7 days of the stop work order.

- D. The Board of Selectmen shall hold a hearing with the licensee within 7 days to consider the status of the permit. The permit holder shall be given an opportunity to respond to the allegations of non-compliance. The Board of Selectmen, based upon the evidence presented relevant to permit compliance, may without limitations, restore, modify, suspend or revoke the permit. The Town may pursue civil prosecution of any permit violations.
- E. By January 1 of each year, the Code Enforcement Officer shall file a report with the Planning Board with the results of all inspections of activities relating to this Ordinance in the Town of Whitefield for the previous calendar year. The report shall be sufficient for the Planning Board to determine whether the operations are in compliance with this Ordinance and Department of Environmental Protection license conditions.
- F. If at any time, as a result of any testing conducted by the Department of Environmental Protection, the Planning Board, Code Enforcement Officer or the licensee, pollutants attributable to spreading activities are found in quantities which may threaten environmental safety or human or animal health, the Planning Board may require additional testing at the licensee's expense and may modify the conditions of any permit. The licensee shall be granted an opportunity to present his/her point of view to the Planning Board before such action is taken. The licensee will be responsible for the cost of investigation and remediation if found to be the cause of the contamination.
- G. Regardless of any action taken by the State, the municipal officers or their authorized designee may exercise their authority under Title 30-A MRSA Section 4452.
- H. The Planning Board shall maintain a record of all inspections and complaints, notices of violation, resolutions of any violations and enforcement actions.
- I. In addition to and/or when the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, are hereby authorized to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of the Ordinance and/or permit in the name of the municipality. The Board of Selectmen is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and/or permit and recovering fines without Court action. Such agreement shall not allow a violation to continue unless there is clear and convincing evidence that the violation will result in a greater threat or hazard to public health and safety or will result in substantially greater environmental damage.
- J. Any person, including a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of the Ordinance or permit, shall be penalized in accordance with 30-A MRSA section 4452.

- A. Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with this Ordinance, or where there are special circumstances of a particular site or utilization activity, the Board may waive any provisions of this Ordinance, provided that such waiver will not have the effect of nullifying the purpose of the Ordinance, the Comprehensive Plan, or any other Whitefield Ordinances or regulations.

- B. In granting any waiver, the Planning Board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements that are waived.