

## **OWTS RULE 28: HOLDING TANK POLICY FOR OWTS REPAIR APPLICATIONS SERVING SEASONAL OR INTERMITTENT USES**

Effective Date: January 13, 2010

Policy #: OWR-OWTS-01-2010

Program Applicability: Office of Water Resources Onsite Wastewater Treatment Systems (OWTS) Program, DEM Office of Compliance and Inspection (OCI)

Supersedes: N/A

Approved By: Russell J. Chateaufneuf, P.E, Chief, Groundwater and Wetlands Protection

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### **Purpose:**

The Department has developed this policy to clarify conditions under which the Department may approve use of a holding tank for a Repair Application pursuant to Rule 28 of the *Rules Establishing Minimum Standards Relating to the Location, Design, Construction, and Maintenance of Onsite Wastewater Treatment Systems* (OWTS Rules) (see page 4).

### **Background:**

Increasing numbers of repair applicants have proposed the installation of holding tanks as an alternative to conventional OWTS or Alternative/Experimental OWTS systems. Under the OWTS Rules, holding tanks are prohibited for Applications for New Building Construction and Applications for Alteration to a Structure. Holding tanks may be approved for an Application for Repair in accordance with Rule 28. Generally, it has been the Department's policy that management of onsite wastewater disposal through use of "store, pump, and haul" methods is not appropriate in most instances. However, under some environmental or operating conditions, and where failure of an existing septic system or cesspool must be addressed, a holding tank may be deemed an allowable repair alternative provided it is designed, installed and operated with extraordinary care and diligence. One example of the appropriate use of holding tanks is contained in the Department's Repair Guidance in Critical Erosion Areas document (available on DEM's website at:

<http://www.dem.ri.gov/programs/benviron/water/permits/isds/pdfs/coastrpr.pdf>). Holding tanks may also be appropriate for some limited seasonal or substantially intermittent uses where the quantity of wastewater generated is relatively small. Accordingly, the Department issues the

following policy for applicants seeking to replace a cesspool or failed septic system with a holding tank.

**Applicability:**

This policy applies statewide to Applications for Repair proposing the installation of a holding tank in accordance with OWTS Rule 28. A holding tank may be sized to either accept the total wastewater flow or only the blackwater portion. If the holding tank is sized to only accept blackwater, a separate graywater system must be installed. In accordance with OWTS Rule 21.3, the graywater system shall be designed for sixty percent (60%) of the total design flow.

In the Salt Pond and Narrow River Critical Resource Areas, the use of a holding tank in accordance with this policy satisfies the nitrogen reducing technology requirements of Rule 39.2. Any associated graywater system does not need to incorporate nitrogen reducing technology provided that all the blackwater is directed to the holding tank.

**Conditions and Limitations:**

The applicant shall be responsible for compliance with all aspects of the OWTS Rules and this policy. Holding tanks may be approved in accordance with OWTS Rule 28 if the following conditions are met:

1. The application is to replace a cesspool or a repair an OWTS that has failed under the definitions in Rule 7.
2. The applicant shall record an environmental land usage restriction (ELUR) in the municipal land evidence records that shall specify, at minimum, the following:
  - A.) Occupancy shall be limited to no more than 120 days in any calendar year.
  - B.) For residential uses:
    - i) The structure(s) may not be used as a rental property;
    - ii) Total design flow is restricted to a maximum of five bedrooms or 600 gallons per day; and
    - iii) No increase in flow will be allowed.
  - C.) For non-residential uses:
    - i) Total design flow is restricted to a maximum of 600 gallons per day;
    - ii) Restricted to uses producing residential-strength wastewater; and
    - iii) No increase in flow will be allowed.
3. Holding tanks shall be compliant with OWTS Rule 28 and the following additional conditions:
  - A.) The minimum holding tank size shall be 2000 gallons and the maximum holding tank size shall be 3000 gallons.
  - B.) The holding tank shall be equipped with telemetry equipment to automatically notify the owner, the contracted permitted septage transporter, and the Town (if required by the Town), when 60% of the holding tank's capacity is reached.

4. Holding tank access lids shall be mechanically fastened and tamper resistant.
5. Application Process: In addition to the requirements in OWTS Rules 17 and 18 for Applications for Repair, the applicant must provide to DEM a copy of the ELUR (to be recorded in the municipal land evidence records within ten (10) days of approval of the permit), a copy of an executed contract with a permitted septage transporter to pump the tank when necessary, and documentation from a DEM permitted wastewater treatment facility that said facility will accept the septage from the applicant's holding tank for, at minimum, the length of the contract with the permitted septage transporter. The minimum contract period shall be for two years from the date of permit approval. The applicant must also submit a copy of the ELUR after it has been recorded. DEM will not issue a Certificate of Conformance until a copy of the recorded ELUR has been received.
6. Inspections: The owner must have the holding tank inspected at least once per year by a Class I, II or III OWTS Licensed Designer. The Licensed Designer must also be a URI-Registered Onsite Wastewater System Inspector. The tank shall be pumped completely as part of the annual inspection. The inspector shall certify in writing, at minimum, the integrity of the tank, alarm and telemetry functioning, and that the system has not been bypassed or otherwise tampered with in a manner that potentially compromises the integrity of the collection and storage function of the system. Inspection results shall be submitted by the Licensed Designer to DEM's Office of Water Resources and to the Town (if required by the Town).
7. The owner must take action within 14 days to repair any deficiencies identified during the annual inspection or during any other routine service activity.
8. The owner shall notify DEM if the number of pumpouts exceeds 12 in any calendar year. Notice shall include the dates and volume pumped during each service visit.
9. The owner shall maintain records of pumpouts from the holding tank for the most recent four years. The Department may, at any time, require reporting of pumpout activity of any holding tank.
10. The owner is required to hold a valid pumping contract for the holding tank with a permitted septage transporter at all times. The owner must provide DEM a copy of a new pumping contract upon termination of the previous contract. A renewed contract meeting the stated requirements is not considered a new contract and, as such, does not need to be submitted to the Department.

### **Future suitability under changed conditions**

If in the future the owner proposes any building construction or renovations meeting the criteria below, the existing holding tank will be determined to be unsuitable and an OWTS utilizing soil dispersal must be installed. "Building construction or renovation" shall be defined as any addition, replacement, demolition and reconstruction, or modification of a structure on the subject property which:

1. Results in any increase in wastewater flow into the OWTS, which for residential structures is equivalent to the addition of one or more bedrooms;
2. Involves demolition or replastering or replacement of interior wallboard, interior walls, ceilings, flooring, windows, plumbing fixtures, electrical fixtures, electrical wiring or

- kitchen cabinetry, which in total affects over 50% or more of the living area of the existing structure;
3. Involves adding an additional floor level or portion of floor level of living space to the structure; or
  4. Increases the footprint of the living space of the structure.

**Reference - OWTS Rule 28 Text:**

(OWTS Rules December 17, 2009)

28.1 Use

28.1.1 Holding tanks for wastewater are prohibited for Applications for New Building Construction and Applications for Alteration to a Structure.

28.1.2 A holding tank may be allowed only to repair or replace a failed OWTS.

28.1.3 Holding tanks will not be allowed if a public sewer system is available for connection. When a sewer system becomes available, any person owning a holding tank shall connect to the sewer system within thirty (30) days and the holding tank shall be abandoned in accordance with Rule 52.

28.1.4 Holding tanks are allowed at marine pumpout facilities provided that direct connection to an existing sewer system or OWTS is not possible and such tanks are constructed, installed and operated in accordance with appropriate Department Guidelines and Regulations.

28.2 Construction- Each holding tank shall:

28.2.1 Have a minimum capacity of five hundred percent (500%) of the daily design flow or portion thereof that the holding tank will serve;

28.2.2 Be watertight and meet the construction and material standards required for septic tanks in Rule 26.2;

28.2.3 Be equipped with an audio-visual alarm set to activate when the tank reaches sixty percent (60%) of its capacity;

28.2.4 Have a minimum twenty (20) inch inside diameter opening that meets the requirements for septic tank access openings in Rules 26.7.1, 26.7.2(B), 26.7.3 and 26.7.4; and

28.2.5 Be vented such that the vent is at an elevation higher than the elevation of the highest fixture served.

28.3 Installation- Holding tank installation shall be as required for septic tanks in Rule 26.9.

28.4 Depth of Cover- The minimum cover over the invert of the inlet shall be one and one-half (1½) feet.

28.5 Pumping- Prior to approval of the installation of a holding tank the applicant shall provide to the Department a copy of a contract with a permitted septage transporter to regularly pump the tank.

28.6 Performance Testing- All holding tanks shall be tested on site for leakage in the manner specified for septic tanks in Rule 26.11.1 or 26.11.2.

28.7 Existing Holding Tanks- Holding tanks in place as of the effective date of this Rule that have access openings to finished grade shall be in compliance with Rule 26.7.2(B) within five (5) years of the effective date of this Rule.

## ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction (“Restriction”) is made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **[property owner]**, and its successors and/or assigns (hereinafter, the “Grantor”).

### WITNESSETH:

WHEREAS, the Grantor \_\_\_\_\_ (name) is the owner in fee simple of certain real property identified as **[specify plat, lot(s), address and Town or City]** Rhode Island (the “Property”), more particularly described in Exhibit A (Legal Description) which is attached hereto and made a part hereof;

WHEREAS, the Department of Environmental Management (“Department”) pursuant to the Rules Establishing Minimum Standards Relating to Location, Design, Construction, and Maintenance of Onsite Wastewater Treatment Systems (“OWTS Rules”) issued an OWTS Permit on \_\_\_\_\_, 20\_\_ approving the use of a wastewater holding tank to replace the cesspool or failed septic system on the Property;

WHEREAS, the Grantor and the Department believe that this Restriction will effectively protect public health and the environment; and

WHEREAS, the Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against the Grantor and the Grantor’s successors and assigns in perpetuity pursuant to Rhode Island General Laws Section 34-39-1 *et seq.* NOW, THEREFORE, Grantor agrees as follows:

**A. Restrictions Applicable to the Property** In accordance with the OWTS Permit Number \_\_\_\_\_ (The “OTWS Permit), the use, occupancy and activity of and at the Property is restricted as follows:

- i There shall be no occupancy of any and all structures and/or dwellings connected to the holding tank for more than one hundred and twenty (120) days in any calendar year;
- ii The Property shall be restricted to a maximum of five (5) bedrooms or six hundred (600) gallons of wastewater per day;
- iii The use of the Property shall be restricted to the uses set forth in the OWTS Permit. No expansion of use is allowed.
- iv If the OWTS Permit is for residential use, then the Property shall not be used for rental purposes and shall be occupied solely by the Grantor and the Grantor’s successors;
- v If the OWTS Permit is for non-residential use, then any and all uses of the Property shall produce only residential-strength wastewater; and
- vi The use of the Property and the installation, operation and maintenance of the wastewater holding tank shall comply with all of the conditions and requirements in the OWTS Permit, the OWTS Rules and the Department’s Holding Tank Policy.

**B. Enforceability:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within fourteen (14) days of such determination.

**C. Binding Effect:** All of the terms, covenants, and conditions of this Restriction shall run with the land and shall be binding on the Grantor, its successors and assigns, and each owner and any other party entitled to control, possession or use of the property during such period of ownership or possession.

**D. Noncompliance:** In the event of any violation of the terms of this Restriction, which remains uncured more than ninety (90) days after written notice of violation to the Grantor from the Department, all Department approvals, permits and agreements relating to the Property may be voided at the sole discretion of the Department. A violation of this Restriction could potentially pose a significant threat to public health and the environment and may result in an enforcement action with penalties assessed.

**E. Terms Used Herein:** The definitions of terms used herein shall be the same as the definitions contained in the OWTS Rules.

IN WITNESS WHEREOF, the Grantor has hereunto set (his/her) hand and seal on the day and year set forth above.

[Name of person(s), company, LLC or LLP]

By: \_\_\_\_\_  
Grantor (signature)

\_\_\_\_\_  
Grantor (typed name)

STATE OF RHODE ISLAND

COUNTY OF \_\_\_\_\_

In (CITY/TOWN) \_\_\_\_\_, in said County and State, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me known and known by me to be the party executing the foregoing instrument and (he/she) acknowledged said instrument by (him/her) executed to be (his/her) free act and deed.

Notary Public: \_\_\_\_\_

My Comm. Expires: \_\_\_\_\_