



TOWN OF YARMOUTH

SOUTH YARMOUTH

MASSACHUSETTS 02664

BOARD OF HEALTH

BOARD OF HEALTH REGULATION

HANDLING AND STORAGE OF TOXIC OR HAZARDOUS MATERIALS

Section 1. AUTHORITY

This regulation is promulgated by the Board of Health of the Town of Yarmouth, Massachusetts pursuant to authority established under the provisions of Chapter 111, Section 31, Massachusetts General Laws.

Section 2. PURPOSE

- A. The purpose of this Board of Health Regulation is to safeguard the public health, safety and welfare by protecting the ground and surface waters of the Town of Yarmouth from direct or potential contamination by toxic or hazardous materials, which contamination there from could result from the improper storage, handling or use of such materials;
- B. The groundwater underlying this town is the sole source of its existing and future drinking water supply; further, the groundwater aquifer is integrally connected with, and flows into, the surface waters, lakes, streams and coastal estuaries which constitute significant recreational and economic resources of the town used for bathing and other water-related recreation, shellfishing and fishing;
- C. Accidental spills or discharges of petroleum products or other toxic or hazardous materials have repeatedly threatened the quality of such groundwater supplies and related water resources on Cape Cod and in other Massachusetts towns, posing potential public health and safety hazards and threatening economic losses to the affected communities;
- D. Unless preventive measures are adopted to prohibit discharge of toxic or hazardous materials and to control their storage within the town, further spills and discharges of such materials will predictably occur, and with greater frequency and degree of hazard by reason of increasing construction, commercial and industrial development, population, and vehicular traffic in the Town of Yarmouth and on Cape Cod;
- E. The foregoing conclusions are confirmed by findings set forth in the Environmental Impact Statement and Water Quality Management Plan for Cape Cod (September 1978), prepared by the Cape Cod Planning and Economic Development Commission, pursuant to Section 208 of the Federal Clean Waters Act; by the report entitled Chemical Contamination (September 1979), prepared by the Special Legislative Commission on Water Supply, Commonwealth of Massachusetts, and by the report, Chemical Quality of Ground Water, Cape Cod Massachusetts (1979), prepared by the U.S. Geological Survey.

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Section 3. APPLICABILITY

The provisions of this regulation shall be applicable to every person who stores, handles, uses or discharges toxic or hazardous materials in quantities greater than those associated with normal household use in the Town of Yarmouth.

Section 4. REGISTRATION

Except as exempted below, every person, who stores, handles or uses toxic or hazardous materials in the Town of Yarmouth, shall register annually with the Yarmouth Board of Health as to the types of materials stored, handled or used, quantities, location and the method of storage. In accordance with the Massachusetts "Right to Know" Law, Chapter 111F, Massachusetts General Laws, Material Safety Data Sheets (M.S.D.S.) for all materials stored, handled, or used shall be forwarded with the annual registration form and application for licensure to the Health Department. There are no minimum quantities that exempt a business from registration.

Exemption: Registration and inventory requirements shall not apply to fuel oil stored in conformance with the Massachusetts Fire Prevention Regulations and regulations of the Yarmouth Board of Health for the purpose of heating buildings located on the site or at temporary construction sites.

Section 5. FEE

The Board of Health will annually license all applicable persons, as determined by this regulation. Upon receipt of the annual fee and completion of the registration form and annual application form, the Board of Health will issue said license. The annual fee for said license will be determined by the Board of Health.

Section 6. LICENSE

No person shall store, handle or use toxic or hazardous materials in quantities totalling at any time more than 10 gallons liquid measure or 5 pounds dry weight unless he is the holder of a license issued by the Board of Health, which may grant, and may suspend, modify or revoke such license. Said license shall become effective on July 1 and expire on June 30, but may be renewed annually upon application and payment of annual fee, without notice or hearing.

It shall be the responsibility of the person, to apply annually for such license.

Registration and licensure shall be required within sixty (60) days of enactment of this regulation.

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Section 7. DEFINITIONS

A. Toxic or Hazardous Materials

1. Material including but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed.
2. Any waste, material, product, or substance deemed hazardous under the Massachusetts Hazardous Waste Management Act, General Laws, Chapter 21C, the Massachusetts Superfund Act, General Laws, Chapter 21E, the Resource Conservation and Recovery Act (RCRA), 42 United States Code 6901 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), known as "Superfund", 42 United States Code 9601 et seq., as these statutes may be amended, shall be deemed a hazardous waste for the purpose of this regulation.
3. Toxic or hazardous materials include but are not limited to organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, solvents, and thinners.
4. The sole authority with regard to determining whether or not a substance is considered a toxic or hazardous material shall rest with the Board of Health.
5. Wastes generated by the following activities are presumed to be toxic or hazardous materials unless and except to the extent that any person engaging in such an activity can demonstrate to the contrary and to the satisfaction of the Yarmouth Board of Health:

Airplane, boat and land vehicle
sales, rental, service and repair

Motor and machinery service
sales, rental and repair

Chemical and bacteriological
laboratory operation

Painting, wood preserving and
furniture stripping

Cabinet making and
woodworking

Pesticide and herbicide
application

Electronic manufacturing and
repairing facilities

Photographic and X-Ray
Processing

Metal manufacturing, plating,
grinding, finishing and
polishing

Printing and publishing

Dry Cleaning

Leather tanning and finishing

Chemical and petroleum
manufacturing

Stone, clay and glass manufacturing

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B. Operator

Any person who is responsible for operation of a site. The term shall not include a person, who, without participating in the management of a site, holds indicia of ownership primarily to protect his security interest in said site. In the case of an abandoned site, the term operator means any person who operated such site immediately prior to such abandonment.

C. Owner

Any person who has effective control or legal ownership of a site. The term shall not include a person who, without participating in the management of a site, holds indicia of ownership primarily to protect his security interest in said site. For the purpose of this regulation, the Board shall be entitled to rely on the most current list of owners in the records of the Town Board of Assessors as providing sufficient evidence of ownership under this regulation. In the case of an abandoned site, the term owner means any person who owned such a site immediately prior to such abandonment.

D. Person

Any agency or political subdivision of the Federal Government or the Commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee, or agent of such person, and any group of persons.

E. Site

Any real estate, personal property, facility, activity, building, structure, installation, equipment, pipe or pipeline including any pipe into a storm drain, sewer or publicly-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, tank, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or any other place or area to, from, or at which toxic or hazardous materials have been discharged.

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SECTION 8. DISCHARGE

Any spilling, leaking, pumping, pouring, emitting, emptying, injecting, escaping, leaching, dumping or disposing of toxic or hazardous material upon or into any land, air, surfacewater or groundwater of the Town of Yarmouth, and including leakage of such materials from failed or discarded containers or storage systems, and disposal of such materials into any on-site sewage disposal system, drywell, catch basin or unapproved landfill. The term "discharge" as used and applied in this regulation does not include the following:

- A. Proper disposal of any material in a sanitary or industrial landfill that has received and maintained all necessary legal approvals for that purpose;
- B. Application of fertilizers and pesticides applied in accordance with manufacturer label recommendations and with regulations of the Massachusetts Pesticide Control Board;
- C. Application of road salts in conformance with the Snow and Ice Control Program of the Massachusetts Department of Public Works, and standards as may be determined by the Yarmouth Highway Surveyor; and,
- D. Disposal of sanitary sewage to approved subsurface sewage disposal system(s) as defined and allowed by Title 5 of the Massachusetts Sanitary Code, and Town of Yarmouth amendments to Title 5.

Section 9. PROHIBITIONS

- A. The discharge of toxic or hazardous materials upon the ground, into the air, into the Town of Yarmouth landfill, or into surface or groundwaters to include wetlands and marshes, within the town is prohibited.
- B. The outdoor storage of toxic or hazardous materials is prohibited, except in product-tight containers which are protected from the elements, leakage, accidental damage and vandalism, and which are stored in accordance with all applicable storage controls as set forth herein. For the purpose of this section only, road salts and fertilizer(s) shall be considered toxic or hazardous materials. Prior approval by the Health Department will be required for all outdoor storage areas and material.

Section 10. HANDLING AND STORAGE CONTROLS

- A. Toxic or hazardous materials shall be handled, stored or used in a careful and reasonable manner and in such a way so as to prevent any such materials from being discharged upon the ground, into the air, or into surface or ground waters, to include wetlands and marshes, in the Town of Yarmouth.

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- B. The Board of Health may require an inventory of all hazardous material(s) used or stored to be maintained on the premises and be reconciled with purchase, use, sales and disposal records on a monthly basis in order to establish any product loss. In accordance with the Massachusetts "Right to Know" Law, Chapter 111F, Massachusetts General Laws, Material Safety Data Sheets (M.S.D.S.) for all materials used or stored shall be maintained on the premises and made available for employee edification. Maintenance and reconciliation of inventories and M.S.D.S. shall be available upon request of agents of the Yarmouth Board of Health.
- C. All containers of toxic or hazardous materials and waste containing toxic or hazardous materials shall be stored in an impervious bermed area. The dimensions of said impervious bermed area shall be designed to contain 150% of the volume of all materials to be stored.

After review by the Board of Health, bermed areas may not be required for those materials stored in display areas and available for public sale.

- D. Containers of toxic or hazardous materials shall be stored in such a manner so as to facilitate visual inspection of each container, properly labelled and on an impervious chemical resistant surface compatible with the material being stored.
- E. Wastes containing toxic or hazardous materials shall be contained in product-tight containers, properly labelled, and, as appropriate, shall be removed and disposed of in accordance with the Massachusetts Hazardous Waste Management Act, Chapter 704 of the Acts of 1979, or applicable State laws.

Section 11. USE OF ADDITIONAL MATERIALS/SUBSTANCES

Any use of additional toxic or hazardous materials not submitted on the registration form will require prior notification and approval by the Board of Health as to the types of materials stored, handled or used, quantities, location and method of storage, with copies of all such Material Safety Data Sheets for each additional product to be used.

Section 12. REPORT OF DISCHARGES

- A. Any owner or operator of a site, as soon as he has knowledge of a discharge of toxic or hazardous materials believed to be in excess of one (1) gallon liquid measure shall immediately notify the Yarmouth Board of Health and Yarmouth Fire Department of such discharge.
- B. Any owner or operator of a site, as soon as he has knowledge of any unpermitted or unregulated discharge of toxic or hazardous materials to the air, shall immediately notify the Yarmouth Board of Health and Yarmouth Fire Department of such discharge.

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Section 13. ENFORCEMENT

- A. The provisions of this regulation shall be enforced by the Board of Health. The agent of the Board of Health may enter upon any premises at any reasonable time to inspect for compliance. Upon request of an agent of the Board of Health, the owner/operator, lessee or lessor of any premises at which toxic or hazardous materials are used or stored shall furnish with reasonable promptness:
- (1) All information required to enforce and monitor compliance with this regulation including a complete list of all chemicals, pesticides, fuels and other toxic or hazardous materials used or stored on the premises;
 - (2) A description of measures taken to protect storage containers from corrosion, vandalism and spillage; and,
 - (3) The means of disposal of all toxic or hazardous wastes produced on the site.
- B. A sample of wastewater disposed to on-site septic systems, drywells or sewage treatment systems may be required by the agent of the Board of Health.
- C. All records pertaining to storage, removal and disposal of toxic or hazardous materials shall be retained by the owner or operator for no less than three years, and shall be made available for review upon request of the agent(s) of the Board of Health.
- D. The Hazardous Waste Inspector of the Town of Yarmouth shall condition issuance of construction or occupancy permits upon conformity with the requirements of this regulation with respect to any toxic or hazardous materials to be stored, handled or used in the course of such construction or occupancy.
- E. The Board may issue administrative orders, enforcement orders, violation notices, requests for compliance, and other documents and correspondence to enforce the provisions of this regulation. The Board may pursue criminal prosecution or civil litigation or both in the courts of the Commonwealth of Massachusetts to enforce the provisions of this regulation.

Section 14. PENALTY

Penalty for failure to comply with any provision of this regulation shall be governed by Massachusetts General Laws, chap. 111, sec. 31. Each day of violation shall constitute a separate offense.

Further, the Board of Health, after notice to and after a public hearing thereon, may suspend, revoke or modify any license issued hereunder for cause shown.

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Section 15. SEVERABILITY

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

Section 16. VARIANCE

A. Variance from this regulation may be granted by the Board of Health only if the applicant can demonstrate to the satisfaction of the Board that:

- 1) Enforcement thereof would do manifest injustice; and
- 2) The storage or handling of toxic or hazardous materials will not endanger the environment or public health; and
- 3) An equivalent or higher degree of protection of the public health and safety, than that required by this regulation, will be achieved.

B. If applying for a variance, the applicant shall be required to submit a detailed written report including, but not limited to the following items/data:

- 1) Written description of the operation.
- 2) List of all hazardous materials to be used/stored.
- 3) List of all hazardous waste and quantities generated.
- 4) Method of disposal of all hazardous waste.
- 5) Material Safety Data Sheets (M.S.D.S.) for all products used or stored.
- 6) A floor plan showing:
 - a) floor drains, number and location
 - b) ventilation
 - c) chemical storage area (bermed area) 150% capacity required
- 7) Site plan showing:
 - a) distance to nearest public and private drinking water supply
 - b) distance to nearest wetland, pond, stream or water body.
- 8) Emergency spill containment plan.

C. A variance review fee, may be assessed by the Board of Health, to retain the service(s) of an independent environmental consultant selected by the Board of Health to conduct a review of the submitted variance. The fee will be determined by the Board, based on the complexity of the planned project and the time required to adequately review all plans, reports etc., along with the expected impact to ground and surface waters. The applicant will pay the fee at the time of the variance request. Any unused portion of the fee shall be refunded to the applicant after the review.

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This regulation is to take effect on the date of publication of this notice in a local newspaper.

Not Present
Barrie Cliff, Chairman

Robert Tilley M.D.
Robert Tilley, M.D. Vice Chairman

Mark Richardson
Mark Richardson, Clerk

Charles Van Riper
Charles Van Riper

Virginia Robinson R.N.
Virginia Robinson, R.N.

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Date: May 2, 1990

Certification #: P-139 466 992

EH:kam
3/23/90