

TOWN OF WAYLAND BOARD OF HEALTH

HAZARDOUS MATERIAL REGULATIONS

SECTION 1

PURPOSE

This regulation is intended to protect the public health and safety of the residents of the Town of Wayland relative to risks and potential risks posed by hazardous material contamination and threats of contamination of air, land, surface water, soil, groundwater, wetlands, drinking water, or other resources. For this purpose, the regulation requires any owner or operator of a contaminated site to disclose to the Board of Health (hereinafter referred to as the "Board") the presence of such contamination; and to describe assessment, containment, removal, or other response actions. If appropriate, these response actions may be required by the Board prior to new construction or expansion or alteration of existing structures, or upon other appropriate terms. In special cases, the Board may require other appropriate terms.

This regulation supplements federal and state hazardous material contamination cleanup laws and is promulgated to keep the Board informed of contaminated cleanup sites and to provide a basis to require appropriate cleanups and other actions when there are releases or threats of releases of hazardous materials. The Board may impose requirements independent of those imposed by federal or state law. These requirements may be the same as under federal or state law, or stricter, but they may not be less strict.

SECTION 2

DEFINITIONS

- 1) Board refers to the Wayland Board of Health.
- 2) Hazardous material means a waste material, product, substance, or combination thereof, in whatever form, which poses a present or potential threat to human health or safety, welfare, or the environment because of its quality, concentration, physical, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination, which has been released to the environment whether intentionally or otherwise. 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 material for this regulation. Hazardous material shall include oil, which shall mean insoluble or partially soluble oils of any kind or origin or in any form, including, without limitations, waste oils, crude or fuel oils, lube oil or sludge, fresh

asphalt, and derivatives or mineral, animal or vegetable oils. The term shall not include any consumer product in legal consumer and/or household use.

- 3) Operator means any person who is responsible for operation of a site. The term shall not include a person whom, 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.
- 4) Owner means any person who has effective control or legal ownership of a site. The terms 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 upon the most current list of ownership 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 site immediately prior to such abandonment. When there is joint and/or several ownership, the responsibility applies fully to all persons.
- 5) Person means any agency or political subdivision of the federal government or the Commonwealth, any state, public or private corporation or authority, any individual, trust, firm, joint stock company, partnership, association, or other entity, or any officer, employee, or agent of such person, and any group of persons meeting this definition criteria.
- 6) Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment. The term shall not include any emissions from the exhaust of an engine; release of such source, by-product, or special nuclear material from a nuclear incident if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission; the normal application of fertilizer; the application of pesticides consistent with their registrations, labeling, and instruction; any emissions from a point source of air pollution that is in compliance with a permit under the Federal Clean Air Act, 42 United States Code 7401 et seq., and the Massachusetts Clean Air Act, General Laws, Chapter 111, Sections 142A-142H; and any release from a point source of water pollution that is in compliance with a permit under the Massachusetts Clean Water Act, General Laws, Chapter 21, Section 43, as these statutes may be amended.
- 7) Site means 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 hazardous material, including oil, has been released.

8) Threat of release means substantial likelihood of a release.

SECTION 3

NOTICE TO BOARD

Any owner or operator of a site, as soon as he has knowledge of a release or threat of release of hazardous material, including oil, shall immediately notify the Board thereof by telephone with an immediate follow up of said notice in writing to the office of the Board, its current Agent or the current Chairman, by Certified Mail, Return Receipt Requested. A copy of said notice shall be provided at the same time to the Fire Chief.

Any owner or operator of a site, as soon as he has received from the Massachusetts Department of Environmental Protection (DEP) any administrative or enforcement order of notice of responsibility under Massachusetts General Laws, Chapter 21E, compelling assessment, containment, or removal of hazardous material, including oil, shall immediately notify the Board and Fire Chief in the same manner as set forth above.

Any owner or operator of a site, as soon as he has received knowledge that the site is listed as possible or confirmed disposal site on the quarterly list of such sites published by the DEP under Massachusetts General Laws, Chapter 21E, Section 3A(b), shall immediately notify the Board and Fire Department in the same manner as set forth above. Such notice need not be repeated although such site is listed on subsequent quarterly DEP lists.

SECTION 4

BOARD REQUIREMENTS

For any site for which notice to the Board is required by this regulation, before or after such notice is given, the Board may impose such requirements, as it deems appropriate to protect the public health, safety and welfare and the environment. Such requirements may include, but are not limited to:

(A) compelling submittal of real estate assessment reports; site investigation reports; feasibility studies; remedial action plans; technical reports; copies of correspondence with the United States Environmental Protection Agency (EPA), or other agencies; copies of administrative orders, enforcement orders, violation notices, notices of non-compliance, or penalty assessment notices issued by EPA, DEP, or other agencies; copies of permits issued by EPA, DEP, or other agencies; plans of the site; and any other document deemed appropriate by the Board for performance of its duties or implementation of its authority under this regulation;

(B) ordering any owner or operator to perform assessment, containment, or removal activities on or off the site;

(C) ordering any owner or operator to cease-and-desist any construction, alteration of existing structures, regrading of land, or other land development activity prior to assessment, containment, or removal in accordance with the requirements of the Board; or

(D) notifying any owner or operator of any violation of this regulation or any order issued thereunder and seeking compliance. Should a site be transferred to new ownership or operation, the Board may impose requirements on the new owner or

operator, who shall, with the previous owner or operator, be responsible for compliance with these regulations.

The Board may, when necessary, retain the services of consultants to assist it in carrying out the intent of these regulations.

The Board may require the owner to engage the services of duly qualified licensed site professionals, environmental engineers or environmental consultants, whose qualifications are satisfactory to it, to prepare and submit to the Board such proposals, recommendations and evaluations as the Board shall require to assist it in carrying out this regulation. The owner shall bear the costs of such work.

SECTION 5 **COLLECTION, TRANSPORTATION AND STORAGE**

Any collection, storage, transportation, disposal or use of hazardous materials shall be in accordance with the provisions of Massachusetts General Laws, Chapter 21C.

SECTION 6 **VARIANCES**

The Board may vary the application of any provision of this regulation, unless otherwise required by law, in any case where the Board deems it appropriate, upon a demonstration by the owner or operator for a variance, in writing on the public record at a scheduled Board of Health public hearing, that an equivalent or higher degree of protection of the public health and safety than that required by this regulation will be achieved.

The owner or operator at his own expense shall notify all abutters, and other affected parties, by Certified Mail, Return Receipt Requested, at least fourteen (14) calendar days before the Board meeting at which the variance request is to be considered. Said notice shall state the variance sought, the reasons therefor, and where copies of the variance may be obtained, without charge.

Any variance granted by the Board shall be in writing and shall include findings of fact and conclusions of law necessary to support the variance. Any denial of a variance by the Board shall be in writing and shall contain a brief statement of the reasons for the denial.

SECTION 7 **RIGHT OF ENTRY**

To the extent allowed by relevant state and federal statute, the Board and its agents may enter upon privately-owned property for the purpose of implementing and enforcing the provisions of this regulation, including the collection of soil, water and/or material samples, subject to the limitations imposed by the Constitutions of the United States and the Commonwealth of Massachusetts.

SECTION 8 **ENFORCEMENT**

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 9

PENALTY

Each initial violation of this regulation shall be punished in a criminal prosecution by a fine up to two hundred dollars (\$200) per each initial violation, pursuant to Massachusetts General Laws, Chapter 111, Section 31, and by a fine up to one hundred dollars (\$100) per day per violation, pursuant to Massachusetts General Laws, Chapter 111, Section 122. Each day or portion thereof that the violation continues shall be deemed a separate violation.

SECTION 10

RECONSIDERATION AND REVISITATION

The Board may permit formal reconsideration of its decision when there is new information, regulation, published technical changes on health risks of the hazardous material, or change in the handling or the containment procedure of the hazardous material. The reconsideration procedure will follow the same procedure as the original hearing and will take into account minutes and documents of the original hearing.

The Board also may revisit any decision on its own initiative on a vote of the Board that such revisit is justified.

SECTION 11

AUTHORITY

This regulation is adopted by the Board of Health under Massachusetts General Laws, Chapter 111, Section 31, which gives the Board authority to make reasonable health regulations, violations of which are punishable by fines. This regulation also is adopted under Massachusetts General Laws, Chapter 111, Section 122, which directs the Board to examine into all nuisances, sources of filth, and causes of sickness within the Town which may be injurious to the public health, to destroy, remove, or prevent them, and to make regulations for the public health and safety relative thereto, with violations to be punishable by fines.

SECTION 12

APPEALS

Actions of the Board under this regulation may be appealed to the courts of the Commonwealth in the nature of certiorari, pursuant to Massachusetts General Laws, Chapter 249, Section 4.

SECTION 13

SEVERABILITY

If any provision of this regulation is declared unlawful by a valid judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining provisions of this regulation.

SECTION 14**EFFECTIVE DATE**

This regulation shall take effect upon publication in a newspaper published in the Town on June 22, 2000. Public hearings were conducted on September 16, 1997 and April 25, 2000. This regulation was voted unanimously by the Board of Health on April 25, 2000. As required by General Laws, Chapter 111, Section 31, an attested copy has been filed with DEP.