

2.0 Regulations for the Storage and Disposal of Hazardous Materials

[Regulation Adopted February 28, 2023]

2.1 Purpose

To protect public health, safety, and the environment through the establishment of emergency plans and procedures for the safe management, handling, and disposal of hazardous materials (as defined herein).

2.2 Applicability

These regulations shall be applicable to the following:

- A. Any Institution storing, processing, generating or using hazardous materials in a cumulative quantity of 100 kilograms or 220 pounds or more and/or storing, processing, generating or using any Extremely Hazardous Substance above its threshold planning quantity listed in the Environmental Protection Agency Title 40, Chapter I, Subchapter J, Part 355, Appendix A and B (List of Extremely Hazardous Substances and Their Threshold Planning Quantities) If materials are stored in liquid form (liters or gallons), then the Institution must determine if the 100 kilograms or 220 pounds is met through appropriate conversions of either a specific material and/or compressed gas; and/or,
- B. Any property Property Owner where an Institution is storing, processing, generating or using toxic or hazardous materials as described in Section 3(A) of these regulations; and/or,
- C. Any Institution who is planning the demolition of a commercial or residential building or the renovation of a commercial building.

2.3 Definitions

Container: Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous material.

Chemical: Any element, chemical compound or mixture of elements and/or compounds.

Clinical Laboratory: Healthcare facilities providing a range of laboratory procedures which aid physicians in carrying out the diagnosis, treatment, and management of patients.

Extremely Hazardous Substance: A substance listed in Appendices A and B the Environmental Protection Agency Title 40, Chapter I, Subchapter J, Part 355, Appendix A and B.

Fuel oil: Oil of grades 1, 2, 4, 5 and 6 in accordance with M.G.L. C.94, S.249H and 202 CMR.

Hazardous Materials: Any substance, including but not limited to, any material, in whatever form, which because of its quantity, concentration, chemical, corrosive, fire, reactive, toxic, infectious, and radioactive characteristics either separately or in combination with any substance or substances, constitutes a potential threat to human health, safety, welfare or to the environment, when improperly stored, handled, treated, transported, disposed of, used or otherwise managed. This definition includes any substance which is designated by its manufacturer, distributor or importer as possessing any health or physical hazard(s) pursuant to 29 C.F.R. § 1910.1200 as well as any substance which is determined to be a hazardous waste according to 310 CMR 30.100.

Hospital: An establishment that provides a range of different services for patients of various age groups and with varying disease conditions.

Incompatible Materials: Those substances which, if mixed, will create hazards greater than those posed by the individual substances alone, such as fire, explosion, or generation of toxic fumes.

Institution: An individual person or a group of persons, and/or a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization and any other group acting as a unit responsible for compliance with the requirements set forth in this regulation.

Primary health care center: An office or establishment that provides services which are usually the first point of contact with a health professional. They include services provided by general practitioners, dentists, community nurses, pharmacists and midwives, among others.

Property Owner: Every person or Institution who alone or severally with others: (1) has legal title to any property or building in the Town; or (2) has care, charge or control of any property or building in the Town including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or (3) is a mortgagee in possession of any such property; or (4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property. Each such person and/or Institution is bound to comply with Section 5B of these regulations.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any toxic or hazardous material into the environment.

Retail Establishment: Establishment that sells goods to the public in relatively small quantities for end-use or consumption rather than for resale.

Safety Data Sheet (SDS): A document required by the Occupational Safety and Health Administration (OSHA) Communication Hazard Communication Standard used to communicate the hazards of hazardous chemical products. The document must be in a uniform format and include section numbers, headings, and associated information specified by OSHA.

Spill Control Plan: Document setting an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous materials which could threaten public health, safety, welfare, or the environment.

Underground Storage Tank: A tank and any underground piping connected to the tank that has at least 10 percent of its combined volume underground.

2.4 General Requirements

- A. The Board of Health, by a majority vote, may require the collection of soil and/or groundwater samples at any location where hazardous materials or hazardous waste have been or are stored and used, or at any property where environmental contamination may exist. Soil and/or groundwater samples shall be collected and analyzed at the expense of the Property Owner.
- B. Any Property Owner whose property will be the location of an Institution that is proposing to store, process, generate or use hazardous materials as described in Article III, Section 2.2 of these regulations must notify the Board of Health in writing no less than 30 days prior to

occupancy that an Institution located or planning to locate at their property may be required to adhere to these regulations. Written notification shall be submitted on a form provided by the Board of Health.

2.5 Permit Requirements

- A. All Institutions undertaking the demolition of a commercial or residential building, or the renovation of a commercial building must first obtain a permit from the Board of Health prior to demolition or renovation.
- B. All Institutions proposing to store, process, generate or use hazardous materials in amounts greater as described in Article III, Section 2.2 of these regulations must obtain a permit from the Board of Health. Permits shall be issued and renewed by an Agent of the Board of Health for a period of one year. The Director of Public Health and/or the Board of Health, or its Chair, may require, for any reason, an Institution appear before the Board of Health for permit renewal. Permit renewal applications must be submitted by April 15 each year. Permits are valid for one year from May 1 to April 30.
 - a. Transition Rules: Any Institution subject to these regulations hereunder at the time of passage of these regulations, shall be required to apply for and receive a permit on or before 6 months from the passage hereof and then annually in accordance with the permit procedures set forth herein.
- C. The applicant must demonstrate that the issuance of a permit shall not be detrimental in any way to the public welfare and would not endanger the health or safety of the municipality, and that all applicable requirements of this regulation have been satisfied. The Board of Health or its Agent may impose conditions, safeguards and other limitations on a permit consistent with the public health, safety and welfare.
- D. The Board of Health may impose conditions on a permit which it may find necessary or prudent for the protection of public health, safety, and general welfare. If, under its discretion, the Board of Health determines that a permit cannot be conditioned in a manner which will protect public health, safety and general welfare then the Board of Health shall deny a permit.
- E. All Institutions which are subject to these regulations must submit a completed application form obtained from the Board of Health accompanied by a nonrefundable, non-prorated, permit application fee as indicated in Article I, Section 4.0 and any required documentation as outlined in the application form.
- F. Releases reportable under the Massachusetts Contingency Plan (310 C.M.R §40.0000) must also be reported to the Board of Health within the same time frame.
- G. Institutions as defined in Article III, Section 2.2 of these regulations must provide easily accessible information on workplace hazards and safety controls to all employees, and to the Board of Health and/or its Agent upon request, including, but not limited to:
 - a. A Spill Control Plan that is readily available for inspection by the Board of Health and posted in an area accessible to all employees that includes the name and telephone number of the Emergency Coordinator and a Cleanup Contractor; telephone numbers of the Burlington Fire Department, MA Department of

Environmental Protection Emergency Response, and the Board of Health; and a floor plan showing locations of fire extinguishers, spill control kits, fire alarms, and evacuation routes.

- b. Safety Data Sheets that are readily available for inspection by the Board of Health and provided to all employees.
- H. It shall be a condition of any permit issued under this regulation that the permit holder shall comply with all applicable federal, state and local laws, regulations and other requirements.

2.6 Exemptions

- A. Retail Establishments including, but not limited to, pharmacies, hardware stores, department stores, and restaurants.
- B. Fuel oil, propane, and liquefied petroleum gas (LPG) tanks installed solely for the purpose of heating a building and/or providing hot water.
- C. Fuel oil, propane, and LPG tanks and batteries installed solely for the purpose of the operation of equipment, such as generators, torches, and consumptive use boilers.
- D. Use of domestic cleaners for residential and business maintenance when kept in original manufacturer's containers and used as directed/intended by such manufacturer.
- E. Primary healthcare centers and clinical laboratories.
- F. Refrigerants other than ammonia or LPG.
- G. Biological waste regulated by the MA Department of Public Health.
- H. Swimming pools regulated under the MA Department of Public Health under 105 CMR 435.000.

2.7 Storage Requirements

- A. All Hazardous Materials including, but not limited to, compressed gases shall be stored according to practices and procedures which prevent the contamination of air, groundwater, and surface water and which will minimize the possibility of accidental release and harm to human health and safety.
- B. Hazardous Materials will be stored in product tight containers on an impervious, chemical resistant surface compatible with the material being stored.
- C. Outdoor storage areas shall be enclosed with a permanent dike of impermeable construction and roofed, or other equally secure secondary containment.
- D. Any enclosed area containing free liquids shall have the capacity to contain either 10% of the total possible contained volume of the containers or 110% of the volume of the largest container of free liquid, whichever is greater. Drainage shall be separately collected for safe disposal.
- E. Secondary containment for inside storage areas of free liquids shall be provided when a release could follow a potential pathway and enter the environment (i.e. doorway, drain).

- F. Incompatible materials shall be separated.
- G. Containers holding Hazardous Materials must be labeled in a legible and prominent manner and be in accordance with all local, state and federal regulations.
- H. Underground storage tanks must be in compliance with M.G.L. 310 CMR 80.00.

2.8 Confidentiality of Information

- A. Information submitted to the Board of Health is subject to public records laws, M.G.L. c. 66, sec. 10. Upon receipt of any request for public records under these laws, the Burlington Records Access Officer may consult with the Board of Health and will make a determination as to whether the requested information is exempt from disclosure for safety and security or other enumerated purposes under M.G. L. c. 4, § 7(26) and whether to withhold any documents, or portions thereof, that are covered by an exemption.

Any Institution seeking to qualify any particular document or submission as confidential shall:

- a. Submit said information as "Confidential Information"; and
 - b. Provide the applicable statutory citation warranting the exclusion of such information from disclosure under the Commonwealth of Massachusetts' Public Records Law (M.G.L. ch.66).
- B. Notwithstanding this designation by the Institution, any documents that are referred to during a public meeting may be subject to public review. The exchange of information pertaining to compliance with the permit may take place in an executive session, if the information shared in a public meeting would pose a security threat or compromise proprietary information.

2.9 Penalties

Whoever violates any provision of this regulation may be subject to penalties as follows:

- A. If a designated Agent of the Board of Health determines that a party has violated this regulation, such Agent may issue a written order ("Order") to the permit holder and its designated Agent to correct the offending deficiencies within a reasonable specified time.
- B. Violation of any provision of this regulation may subject the violator to a fine of \$50.00 per day in accordance with M.G.L. c. 40, § 21D and Article I (4) of the Town's General Bylaws. Each day of violation shall constitute a separate and distinct offense.
- C. The Board of Health shall be empowered to enforce this regulation, through a civil or criminal action, in any court of competent jurisdiction pursuant to the authority granted in M.G.L. c. 111 § 31. Each day or portion thereof shall constitute a separate offense; and/or
- D. In addition to or in lieu of a fine, an Institution or property Property Owner which violates any provisions of this regulation or for which any activity covered under this regulation poses an immediate threat to the public health or environment may be closed by the Board of Health, subject to any applicable requirements of M.G.L c. 111 and/or Article III, Section 2.10 of these regulations.

- E. The Board of Health may suspend or revoke a permit if it determines that the Institution has failed to comply with this regulation, or other applicable permit conditions. Suspension or revocation shall follow written notice and a hearing in accordance with the time frame set forth in Article III, Section 2.10 of these regulations.
- F. In the event the Board of Health or its Agent determines there is an imminent threat to public health and safety it may suspend a permit immediately without prior notice. Any Institution thereafter may invoke the hearing process in Article III, Section 2.10 of these regulations to appeal said suspension.

2.10 Hearing

Any Institution or Person that has received an Order issued pursuant to Article III, Section 2.9 of these regulations may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) business days after issuance of the Order. After said hearing, the Board of Health may affirm, modify or rescind said Order or take any other action it deems warranted and appropriate.

2.11 Variances

Upon written application and public hearing, the Board of Health may in its sole, uncontestable discretion vary the application of any provision of this regulation with respect to any particular case when it determines that the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of this regulation or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board of Health that a sufficiently equivalent level of protection can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board of Health deems appropriate.

2.12 Conflict

This regulation is intended to be interpreted and applied in the broadest manner allowed by law in accordance with the Board of Health's authority under M.G.L. c. 111, § 31 to protect the health, safety and welfare of the community. To the extent, any provision herein is also the subject of and/or regulated by a similar or overlapping federal or state requirement, the more restrictive applicable provision shall apply.