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Walpole Board of Health Hazardous Waste Cleanup Regulations

SECTION 1 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 2 Purpose

These regulations are intended to protect the public health and safety relative to risks and potential risks posed by hazardous waste 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 the presence of such contamination; to describe assessment, containment, removal, or other response actions; and, if deemed appropriate by the Board, to conduct these response actions prior to new construction or expansion or alteration of existing structures, or upon appropriate terms. This regulation supplements federal and state hazardous waste contamination cleanup laws in order to have the Board informed of contaminated cleanup sites and to require appropriate cleanups and other actions when there are releases or threats of releases of hazardous wastes. 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.

This regulation is necessary for the Board to ensure protection of the public health and safety by; obtaining timely notice of hazardous waste releases and potential releases; establishing the nature and extent of releases; identifying the types and quantities of hazardous wastes present; evaluating the hazards posed to the public health and safety; compiling in a central location the information of these hazards; identifying the parties responsible; deciding what public or private actions are appropriate; preventing or minimizing releases that may cause or threaten danger to the present or future public health and safety; avoiding improper or inadequate cleanup, limiting exposure to persons and property; anticipating residential, commercial, or industrial uses of property or other activities which may increase exposure or make response actions more difficult; deciding what interim and permanent measures to assess, contain, and clean up waste are appropriate; verifying compliance with Board requirements; and coordinating with other local boards, agencies, and officials relative to releases and threats of releases.

SECTION 3 Definitions

"Hazardous waste" 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 quantity, 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 waste for the purpose of this regulation. Hazardous waste shall include oil, which shall mean insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, waste oils, crude or fuel oils, lube oil or sludge, fresh asphalt, and derivatives or mineral, animal, or vegetable oils.

"Operator" means 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.

"Owner" means 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 upon 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 site immediately prior to such abandonment.

"Person" means 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.

"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 source, byproduct, 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 instructions; any emissions from a point source of air pollution 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 in compliance with a permit under the Federal Clean Water Act, 33 United States Code 1251, et seq., and the Massachusetts Clean Water Act, General Laws, Chapter 21, Section 43, as these statutes may be amended.

"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 waste, including oil, has been released. The term shall not include any consumer product in consumer use.

"Threat of release" means a substantial likelihood of a release.

SECTION 4 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 waste, including oil, shall immediately notify the Board thereof. Said notice shall be in writing by hand delivery to the office of the Board, its current Agent, the current Chairman, or by Certified Mail, Return Receipt Requested. A copy of said notice shall be provided at the same time to the Fire Department.

Any owner or operator of a site, as soon as he has received from the Massachusetts Department of Environmental Quality Engineering (DEQE) any administrative or enforcement order of notice of responsibility under Massachusetts General Laws, Chapter 21E, compelling assessment, containment, or removal of hazardous waste, including oil, shall immediately notify the Board and Fire Department 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 a possible or confirmed disposal site on the quarterly list of such sites published by the DEQE 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. Once such notice has been given, it need not be repeated although such site is listed on subsequent quarterly DEQE lists.

SECTION 5 Board Requirement

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 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 report; copies of correspondence with the United States Environmental Protection Agency (EPA), DEQE, or other agency; copies of administrative orders, enforcement orders, violation notices, notices of non-compliance, or penalty assessment notices Issued by EPA, DEQE, or other agency; copies of permits issued by EPA, DEQE, or other agency; 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, regarding of land, or other land development activity prior to assessment, containment, or removal in accordance with the requirements of the Board; or (D) notify 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 it deems necessary, retain the services of consultants to assist it in carrying out the intent of these regulations. Said consultants shall be authorized to go on the premises in question and conduct all studies, tests, or surveys as directed by the Board.

The Board may require the Owner to engage the services of duly qualified 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 the intent of these regulations. Owner shall bear the costs of such work.

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 applicant for a variance, in writing, on the public record, that an equivalent or higher degree of protection of the public health and safety, than that required by this regulation, will be achieved. The applicant at his own expense shall notify all abutters by Certified Mail, Return Receipt Requested, at least ten 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 concussions 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

The Board and its agents may enter upon privately owned property for the purpose of implementing and enforcing the provisions of this regulation, 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

Violation of this regulation shall be punished in a criminal prosecution by a fine up to two hundred dollars, under Massachusetts General Laws, Chapter 111, Section 31, and by a fine up to one hundred dollars under Massachusetts General Laws, Chapter 111, Section 122. Each day or portion thereof that a violation continues shall be deemed a separate violation.

SECTION 10 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 11 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 12 Response Action Costs

At such times as the Board may retain the services of consultants, environmental engineers, environmental consultants, or other professionals to undertake assessment, containment, or removal action regarding the release or threat of release of oil or hazardous material at a site, or to assist the Board in planning, managing, directing, performing, overseeing, or monitoring

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a response action taken by an Owner or other responsible party, the Board shall be entitled to charge a fee for such services to the Owner or any other responsible party for the cost of such activities in accordance with General Laws Chapter 21E, Section 4.

SECTION 13 Effective Date

This regulation shall take effect upon publication in a newspaper published in this Town, on December 11, 1990.