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[1] Regulations updated and adopted on 10.31.19, footnotes in document show prior edits.

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SECTION I: SEPTIC SYSTEMS

Authority: In accordance with Massachusetts General Laws, Chapter III, Section 31, the Eastham Board of Health has adopted the following regulation to supplement the provisions of 310 CMR 15.00: The State Environmental Code. The Board believes that such a regulation for the Town of Eastham is necessary to protect the public health and the environment.

A. Findings and purposes[2]

Construction in the Town of Eastham prior to the 1950's, at a time when much of the town was developed as a seasonal community, followed by extensive development over the next three decades, yielded individual on-site wells for water supply and individual on-site sewage disposal systems (i.e., cesspools) for wastewater disposal. In 1978 the Massachusetts Department of Environmental Protection (DEP) promulgated the first Title 5 regulation creating higher standards for on-site systems, and in 1995 additional requirements resulted in further improvements. Effluent from these on-site systems conveys nitrogen, phosphorus and contaminants such as pathogenic bacteria, viruses, pharmaceuticals and chemicals found in household products to our groundwater.

It is recognized that the unique soil and hydrological conditions of most Eastham land parcels make it challenging for sanitary and environmentally safe wastewater disposal. The predominantly sandy soil throughout Eastham allows wastewater to migrate rapidly from individual sewage disposal systems to nearby surface waters, well sites, and estuaries leading into our marine waters.

Excessive nitrogen in wastewater has been identified as the major factor in declining health of the marine water. Excess phosphorus and nitrogen in wastewater are major contributing factors in the declining health of freshwater ponds and our estuaries. Where on-site septic systems are present increasing levels of nitrogen entering groundwater can impact potable water supplies. Excessive nitrogen can also produce nutrient loading of surface waters that can result in algae blooms that choke aquatic life. In addition, the contaminants in the effluent can lead to closures of shell fishing areas, prohibition of recreational water activities, and have a harmful effect on the ecosystem.

Nitrogen compounds found in septic system effluent can cause contamination of drinking water, as documented in Water Resources of Outer Cape Cod 1998 Final Report of the Lower Cape Water Management Task Force. Consuming excessive nitrate-nitrogen may have serious health consequences. There is strong evidence that nitrate-nitrogen can convert to nitrosamines - known cancer-causing agents. Elevated nitrate-nitrogen concentrations suggest that other forms of contamination may be present in effluent posing additional threats to potable water.

Although Eastham is currently developing a Municipal Water System, the system will not be available town wide until 2022, and even then many homes in Eastham may still be relying on private wells for drinking water. The cumulative impact of septic system effluent from numerous adjacent individual on-site sewage disposal systems will continue to be a risk for contamination of potable water where wells are still in use, and of ground and surface waters throughout Eastham.

[2] Adopted May 26, 2005
Effective July 1, 2005
Updated 10.31.19
Effective 11.1.19

Cesspools provide minimal mitigation of nitrogen, phosphorus, and contaminants entering the groundwater. Title V systems provide greater mitigation of nitrogen and phosphorus flow in the effluent and may provide some reduction in contaminants, but the flow must be limited to limit the nitrogen, phosphorus and contaminants entering our groundwater and water bodies. There is increasing pressure to build new or renovate and expand old homes to accommodate expanding use, increasing the discharge of wastewater effluent, and intensifying the threat to public and environmental health. Some of our surface waters are highly impaired even with our current requirement that, in most cases, each bedroom requires a minimum of 10,000 sq. ft. of property using a standard Title 5 septic system. Increased flow beyond this standard would be detrimental to our environment and increase health risks.

With the prevalence of ponds, streams, and other surface water bodies, as well as continued reliance on ground water for public and private drinking water, the discharge of wastewater continues to be a primary concern throughout Eastham.

In order to alleviate the further contamination of ground and surface water resources, and to address threats to the public health and environment that result from increased wastewater discharge, the Board of Health of the Town of Eastham has determined that protective measures must be taken. This regulation represents the minimum steps necessary to protect the public health and the environment from the adverse effects of the discharge of nitrate-nitrogen and other contaminants from individual on-site sewage disposal systems into the town's ground and surface waters. The Town of Eastham is working to implement responsible plans for the protection of the waters of Eastham in line with the Cape Cod 208 cape wide water quality plan update.

B. Definitions

1. Bedroom[3]

A room or portion of a dwelling providing privacy consisting of all of the following:

a. Floor space of no less than 70 sq. ft.
b. a ceiling height of no less than 7'0"
c. for new construction, a ceiling height of no less than 7' 3"
d. an electrical service and ventilation, and
e. at least one operable window and a door or other similar device that provides for a means of escape and access for rescue in the event of an emergency as stated in State Building Code.

Those rooms or portions of dwellings satisfying the foregoing criteria shall be considered "bedrooms" regardless of whether they are referred to or designated as a:

- Bedroom
- Finished attic where privacy is provided
- A finished basement room may be a bedroom if privacy and building code conforming egress is provided.
- A Loft Area no less than 70 square feet where privacy is provided
- Den

[3] Revised May 28, 2009
Effective June 25, 2009
Updated 10.31.19
Effective 11.1.19

- Study
- Sewing Room
- Enclosed Heated Porch where privacy is provided
- Family Room where privacy is provided
- Rooms with finished cased openings less than 48 inches wide (except pass thru rooms)
- Rooms with exterior doors may be bedrooms
- Rooms over free standing garages that have heat or a bathroom or both that provides privacy
- Rooms over attached garages with direct access to the house that provides privacy

The following rooms or areas shall not be considered as a "bedroom":

- Bathroom
- Kitchen
- Dining Room
- Hall
- Unfinished Basement or Attic
- Open Deck
- Garage
- Unheated Porch or Storage Area
- Living Room
- Unheated Storage Areas Over Garages
- If it is necessary to walk through a room to access another room, then the walk through room is NOT a bedroom because privacy is not provided.

2. New Septic System[4]

A new septic system is one which is designed to serve a newly constructed building or one which is designed to handle an increase in sewage flow as required by changes in the building's use or changes in habitable space.

3. Repair to a Septic System

A repair to a failed system is the replacement of a component or components to provide a working system of the same sewage flow.

4. Wetland/Wetland Resource Area

a. A coastal wetland shall mean any coastal bank, coastal beach, coastal dune, salt marsh, swamp, flat or other lowland subject to tidal action, as defined by the Massachusetts Wetlands Protection Act, M.G.L. c.131, § 40 and regulations promulgated pursuant thereto at 310 CMR 10.00: Wetland Protection and/or the Eastham Conservation Commission.

[4] Definitions 2, 3, 4 - Voted December 20, 1999
Effective January 1, 2000
Amended May 27, 2004
Effective May 28, 2004
Updated 10.31.19
Effective 11.1.19

b. A fresh water wetland shall mean any bank, marsh, swamp, certified vernal pool, flat or other lowland around a body of fresh water; lake, pond, river, or stream subject to submersion due to rise and fall of the level of water in the fresh water body, as defined by the Massachusetts Wetlands Protection Act, M.G.L. c.131, § 40 and regulations promulgated pursuant thereto at 310 CMR 10.00: Wetland Protection and/or the Eastham Conservation Commission.

5. Environmentally Sensitive Lot[5]

a. Any lot with a wetland/wetland resource area as identified above, any land area (whether developed or not) that borders on and is within one hundred feet (100') of marshland, tidal flats, coastal dunes, barrier beaches, coastal banks, coastal beaches, surface water or certified vernal pool;

b. Any lot containing a maximum groundwater elevation (adjusted) which is six feet (6') or less below the natural ground surface elevation in the area of installation;

c. Any lot of less than 20,000 square feet in size, developed or undeveloped, that is directly abutted by three or more developed or undeveloped properties of less than 20,000 square feet in size.

6. Buildable Upland

Buildable Upland shall be defined as land which is an area which is not swamp, pond, bog, dry bog, fresh or salt marsh, areas of exposed groundwater, stream and/or an area which is not subject to flooding from high tides.

7. Multi-Unit Housing[6]

Condominiums, cottage colonies, apartments, apartments incidental to commercial space, and congregate, cluster, or attached housing where the land is communally owned but the individual units are either owned or rented and where the total Title 5 sewage flow for the lot(s) is less than ten thousand (10,000) gallons per day.

8. Residential Subdivisions:

Subdivisions where lots are created and intended for the construction of single-family homes or commercial dwellings.

9. Nitrogen Reducing Technology:

Nitrogen reducing Technology is the same as alternative systems as defined in 310 CMR 15.282(4) which are designed specifically to reduce, convert or remove nitrogenous compounds.

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[5] Adopted July 20, 2001
Effective July 27, 2001
Amended May 26, 2005
Effective July 1, 2005
Updated 10.31.19
Effective 11.1.19
Amended March 5, 2020
Effective March 6, 2020

[6] Definition 7,8,9 adopted May 26, 2005
Effective July 1, 2005
Updated 10.31.19
Effective 11.1.19

C. Septic System Construction Permit Process[7]

1. Permit Conditions

Disposal Works Construction Permits are valid for three (3) years from the date of issuance, except in cases where a variance from the requirements of Title V, pursuant to 310 CMR 15.410 through 15.415, is granted. In those cases, the permit is valid for only one (1) year from the date of Board of Health approval unless otherwise specified. All variances, local upgrade approvals, etc. granted by the Eastham Board of Health are valid for the length of time for which the permit is valid, or for one year unless otherwise specified by the Board of Health at the time of approval. No extensions shall be granted without re-application to the Eastham Board of Health. No more than one extension shall be granted. Re-application shall be made by a request in writing to the Eastham Board of Health at least six (6) weeks prior to the expiration of the permit.

2. Permitting Steps

The following process must be followed:

a. Contact a Professional Engineer and/or Sanitarian to request a Soils Evaluations and percolation test. Your engineer/sanitarian will arrange a date and time for the tests to be observed by the Health Department.

b. Submit a completed application for Disposal Works Construction Permit and the application fee. The application must contain the name of the installer licensed in the Town of Eastham, and MUST BE SIGNED by the Installer. The following documents must be submitted with the Application for Disposal Works Construction Permit:

i. two (2) sets of the site and sewage plans
ii. floor plan of the building
iii. hoisting license for installer (if applicable)
iv. Conservation Commission approval (if applicable)

c. If the septic design plan calls for a new well or municipal water system connection, approval for the septic permit will not be granted until:

i. the new well is installed and certification is submitted, including routine and volatile organic compounds analysis of the well by a state approved laboratory or:
ii. an existing municipal water system connection is verified and water lines are shown on the septic design plan or:
iii. a new municipal water system connection, the water connection application must be approved. A Certificate of Compliance will not be issued for the Septic Permit until the Water Connection application is closed.

[7] Revised/Adopted July 20, 2001
Effective date July 27, 2001
Amended/Effective April 29, 2004
Revised May 26, 2005
Effective July 1, 2005
Updated 10.31.19
Effective 11.1.19

d. The submitted plans must show, at a minimum:

i. The lot to be served
ii. Location and dimensions of the system (including reserve area)
iii. Design calculations
iv. Existing and proposed contours
v. Location and log of deep observation holes
vi. Location and results of percolation tests.
vii. Location of any streams, surface and subsurface drains, and wetlands within 100 feet of the sewage disposal system.
viii. Known sources of water supply within 200 feet of the sewage disposal system.
ix. Location of any proposed well to serve the lot.
x. Location of water lines on the property.
xi. Maximum ground water elevation in the area of the sewage disposal system.
xii. A profile of the system.
xiii. Bench mark
xiv. Slope calculations and requirements
xv. Variances from Title 5 and/or Board of Health requirements
xvi. The plan must be prepared by a Professional Engineer, or other professional authorized by law to prepare such plans.
xvii. All plans and as-builts should be provided to scale.
xviii. Plan must be no larger than 11" x 17". If necessary 11”x17” not to scale plan may be submitted in conjunction with a larger plan to scale.
xix. All plastic and concrete septic tanks shall be required to have watertight risers with covers over inlet and outlet ports to within six inches of finished grade. Manholes brought to final grade shall be secured to prevent unauthorized access.
xx. All plastic and concrete distribution boxes shall be required to have watertight risers with covers over inlet and outlet ports to within six inches of finish grade. Manholes brought to final grade shall be secured to prevent unauthorized access.

e. Upon approval of the application for Disposal Works Construction Permit, the Health Agent shall sign and date two (2) copies of the engineered site and sewage plan, and the Disposal Works Construction Permit.

f. Upon completion of the construction and prior to back-filling, the installer will notify the Health Agent that the system is ready for inspection. The Health Agent will inspect the system prior to back-filling. After approval by Health Department the system can be back-filled.

g. The Engineer/Sanitarian will provide an “AS-BUILT” plan to the Board of Health. Plan must be stamped by a Land Surveyor. An “as built plan” will be required to have the seal of a registered land surveyor, or other professional authorized by law to prepare such plans showing the location of the foundation, septic system, and well relative to lot lines, wetlands, water courses, and other buildings and structures on the lot.

As-Built plans submitted for the above purpose shall NOT contain any disclaimers.[8]

[8] As-Built requirement originally published January 31, 1989

h. Following receipt and review of the As-Built plan and any documentation required as a condition of approval, the Health Agent will date and sign the Certificate Of Compliance.

3. General Construction Requirements[9]

a. Building Materials

i. Clay, Terra Cotta, and other such materials shall not be used. At time of transfer or increase in flow any portion of the existing system that utilized these materials must be replaced. All system components shall conform to requirements in 310 CMR 15.211.

b. Minimum Setback Distances

i. Unless otherwise specified by the Board of Health, septic tank disposal fields, or other sewage disposal methods hereafter constructed shall be so located that distance of not less than one hundred (100) feet shall intervene between any potable well or spring and any septic tank disposal field. A distance of not less than twenty-five (25) feet shall intervene between any non-potable well and any septic tank disposal field.

ii. No soil absorption system shall be located within one hundred (100) feet of any water body, water course, either permanent or intermittent, any vegetated wetland, fresh or salt, as determined by predominance of vegetational species; the top of any coastal bank; the landward toe of any primary dune or the spring high water mark on any salt water body or estuary; or the annual flood level of any fresh water body.

iii. No septic tank shall be located within fifty (50) feet of any water body, water course, either permanent or intermittent, any vegetated wetland, fresh or salt, as determined by predominance of vegetational species; the top of any coastal bank; the landward toe of any primary dune or the spring high water mark on any salt water body or estuary; or the annual flood level of any fresh water body.

4. New Construction/Increase in Flow

a. Building Permit Review[10]

No person shall apply for or obtain a building permit, foundation permit or occupancy permit allowing an increase to the habitable area or number of bedrooms of a residential dwelling or an increase to the area or occupancy of any non-residential building, until the Board of Health or its agent has determined that the existing sewage disposal system is adequate for the proposed increase or change in use. Prior to applying for any of the foregoing permits to increase the habitable area or number of bedrooms of a residential dwelling or to increase the area of occupancy or change the use of a non-residential building, the owner or its representative shall file with the Board of Health a site

[9] Adopted September 30, 1991
Effective October 8, 1991
Revised May 26, 2005
Effective May 1, 2005
Updated 10.31.19
Effective 11.1.19
[10] Amended May 27, 2004

and sewage plan prepared by a Registered Professional Engineer or Sanitarian. Said plan shall indicate whether a sewage disposal system that complies with the requirements of Title V of the State Environmental Code, 310 CMR 15.000, and the Board's septic system regulations and well regulations, currently exists on file or can be installed on the property to accommodate the existing dwelling or building and the proposed increase or change in use.

b. Existing System Capacity

The size of any existing system shall not be considered in determining the number of bedrooms currently allowed for the existing or new dwelling. If needed, the number of bedrooms existing can be verified by the Health Department in a site visit. The maximum number of bedrooms allowed shall be determined by the number of bedrooms in the existing house, if there is one, or the size of the lot as per 310 CMR 15.214 Nitrogen Loading, whichever is greater.[11] Whether the property is served by municipal water or not, new construction or increase in flow shall be limited to 440 GPD per 40,000 sq. ft. or ratio thereof as stated in Subsection E: Nitrogen Loading Limitations (3) or as otherwise provided in this regulation.[12]

D. Inspection of System

1. Criteria for Inspection

The sewage disposal system shall be inspected by a licensed inspector approved by the Massachusetts DEP whenever a property containing such a system is transferred by sale, exchange, gift, or bequest to a new ownership, unless inspected previously within two years under the terms of this regulation and results approved by the Health Agent. This regulation shall not be effective at the conveyance or devise of the property to the surviving spouse. Any other transfer of ownership will trigger the requirement that a septic inspection be performed.

A copy of the report of such inspection is to be furnished to the Health Department by the prospective new owner prior to the closing. The Health Department shall evaluate all such reports and determine whether or not it requires an upgrade of said disposal system to meet Title 5 and Board of Health regulations to the maximum feasible compliance.

a. Mandatory Inspection Requirements

i. Septic inspections must include uncovering an inspection port for the soil absorption system to evaluate distance to ground water or ponding.

ii. The septic inspector is required to complete the soil absorption system section of the state inspection form and include size of components (tank, soil absorption system), amount of stone and consistency with the existing plan.

[11] Voted December 20, 1999
Effective January 1, 2000
Amended May 27, 2004
Effective May 28, 2004
[12] 440 GPD/40,000sq ft or ratio of;
amended and effective April 20, 2017

iii. All system components shall be required to install risers to within 6 inches of final grade if not already onsite including the septic tank inlet and outlet, d-box and the soil absorption system (fields are exempt).

b. Criteria for Health Department Review

A system that passes inspection shall be deemed to have met the standards of Title 5 that were in place when the system was permitted considering all of the following:

i. vertical separation between the bottom of the leaching facility and adjusted observed groundwater meets the minimum of 4 feet for existing 1978 code systems and 5 feet for 1995 code systems,
ii. location of abutting wells and septic systems of abutting properties,
iii. distance to wetlands,
iv. compliance with Title 5 when installed,
v. evidence of overflow or filling,
vi. pumping records
vii. Engineered plan on file

2. Failure of a Septic System[13]

In addition to general provisions of 310 CMR 15.303, a septic system will be considered failed when:

a. Any component does not function as intended according to criteria set forth in these regulations for each type of system in 310 CMR 15.303, or leading to the system failing to protect the public health.

b. The system caused effluent to be discharged to the surface of the ground, stream or other water course, or

i. A tank or cesspool is pumped to remove septic more than twice in any twelve month period, except that grease traps may be pumped in accordance with Title V, 310 CMR 15.05 (13). Laundromats, athletic clubs, food service or other establishments, determined to be high water users by the Board of Health, and that are pumped frequently, shall be reviewed on a case-by-case basis.
ii. As a result of an inspection as per 310 CMR 15.000 Subsection 15.301 (1) Inspection at time of transfer, if inspection reveals that the sewage disposal system consists of a cesspool, the system shall be deemed substandard by the Board of Health and must be upgraded to comply with 310 CMR 15.404, the State Environmental Code, Title V, Minimum Requirements for the Subsurface Disposal of Sewage, as applicable.
iii. Properties served by cesspool systems will be considered to have failed, and upgrade of that system will be required whenever a septic system inspection is required. The septic system will be required to be upgraded to Title V conformance whenever a building permit is issued concerning increase to the shadow or footprint or volume of the dwelling or any redesign.

[13] Amended May 27, 2004
Updated 10.31.19
Effective 11.1.19

iv. If the minimum standard of a pre-existing Title 5 plan is not met, the system will be considered to be failed

E. Nitrogen Loading Limitations

1. Buildable upland

In order to calculate the land area available for recharge, the Board of Health shall only consider "buildable upland" as defined by these regulations in order to calculate nitrogen loading limitations for new construction or increase in flow.

2. 10,000 sq. ft/bedroom

No disposal system construction permit serving new construction or increase in flow shall be issued by the Board of Health or its Agent unless the proposed system is designed to receive or shall receive four hundred forty (440) gallons per day or less per forty thousand square feet (40,000) of lot area or ratio thereof except as otherwise provided as stated in Section C.4.b of this regulation.

3. Applicability Nitrogen Reducing Septic Systems[14]

a. The following shall require the use of nitrogen reduction technology such that the effluent does not exceed 19 ppm nitrate-nitrogen on residential properties or 25 mg/l for commercial properties:

i. New commercial structures with a Title 5 design sewage flow for existing use of under ten thousand (10,000) gallons per day that exceed 440 gpd/40,000 sq. ft..
ii. Existing commercial development with a total Title 5 sewage flow of under ten thousand (10,000) gallons per day where an addition or a change in use is proposed that will increase the sewage flow over the existing commercial treatment flow but still less than ten thousand (10,000) gallons per day, or existing commercial developments with flows in excess of 440 gpd/40,000 sq. ft. where the existing system has failed.
iii. New residential or commercial development, or multi-unit housing resulting in three (3) or more dwelling units, including but not limited to hotels, motels, cluster developments, planned developments, residential subdivision, nursing homes, cottage colonies and hospitals.
iv. any lot determined to be an environmentally sensitive lot or when the following variances are present:

a) Less than 100 feet separation distance exists between a drinking water supply well and a soil absorption system
b) Soil absorption system is located less than 100 feet from a salt marsh or any marine surface water, or fresh surface water body
c) Distance to adjusted high groundwater is less than 5 feet.

[14] Adopted May 26, 2005
Effective July 1, 2005
Updated 10.31.19
Effective 11.1.19
Updated 3.5.20
Effective 3.6.20

b. Innovative Alternative Septic Systems that comply with the terms and conditions in 310 CMR 15.271 and 310 CMR 15.281 through 310 CMR 15.288 may be permitted by the Board of Health to allow an increase in the calculated allowable nutrient loading per acre on lots served by private wells or municipal water supply.
c. Whenever an alternative or pressure dosed system is permitted by the Board of Health, the licensed certified operator must submit operation, maintenance and testing results via internet (when available) to Barnstable County Department of Health and Environment Data Base or report directly to Eastham Board of Health if data base is not available.

F. Septage Disposal Regulations[15]

1. Disposal of Sewage

a. Every place of human habitation shall have available a sanitary method for the disposal of all human waste which shall meet with the approval of this Board of Health, its agents or inspectors.

b. Final disposal of effluent shall be by means of one or other of the following methods:

i. Connection with a public sewage system where same is required by a regulation of this Board (General Laws, Chapter 83, Section 11).
ii. A septic tank constructed in such a manner as hereinafter provided or as described in 310 CMR 15.226
iii. Such other methods as shall be approved by this Board.

2. Permit Required

No septic tank or other means of sewage disposal shall be constructed or installed in this Town until a permit has been obtained from the Board of Health.

3. Transportation and Disposal

All holders of permits granted by the Board of Health, under Chapter III, Section 31A of the General Laws as amended for the removal and transport of contents of cesspools, septic tanks or leach pits shall provide themselves with a water tight tank truck or vehicle to be used for this purpose. Final disposal of contents of tank trucks or other vehicles shall be at an approved facility and in such a manner as provided by Board of Health.

G. Appeal

Any person aggrieved by the final decision of the Board of Health may seek relief therefrom within thirty (30) days in any court of competent jurisdiction, as provided by the laws of the Commonwealth.

H. Penalties

[15] Adopted September 30, 1991
Effective October 8, 1991
Revised May 26, 2005
Effective May 1, 2005
Updated 10.31.19
Effective 11.1.19

1. Violation of Regulations

Any person who shall violate any provision of 310 CMR 11.00 and this regulation for which penalty is not otherwise provided in any of the General Laws or in any other provision of this regulation or Title 1 of the State Environmental Code shall, upon conviction, be fined not less than ten (10) nor more than five hundred (500) dollars.

2. Noncompliance with Order

Any person who shall fail to comply with any order issued pursuant to the provisions of 310 CMR 11.00 and this regulation shall be fined not less than ten (10) nor more than five hundred (500) dollars for each offense. Each day's failure to comply with an order shall constitute a separate offense.

I. Variance[16]

A. The Board of Health may vary the application of any provisions of 310 CMR 15.000 and Eastham Board of Health Regulations Section I: Septic Regulations with respect to any particular case except those listed in 310 CMR 15.415. Variances shall be granted only when, in the opinion of the Board of Health:

1. The person requesting a variance has established that enforcement of the provision of 310 CMR 15.000 and the Eastham Board of Health Regulations from which a variance is sought would be manifestly unjust, considering all the relevant facts and circumstances of the individual case; and

2. The person requesting a variance has established that a level of environmental protection that is at least equivalent to that provided under 310 CMR 15.000 and the Eastham Board of Health Regulations can be achieved without strict application of the provision of 310 CMR 15.000 and the Eastham Board of Health Regulations from which a variance is sought.

B. With regard to variances for new construction, enforcement of the provision from which a variance is sought must be shown to deprive the applicant of substantially all beneficial use of the subject property in order to be manifestly unjust.

[16] Minor word changes Updated 3.5.20
Effective 3.6.20

SECTION II: DRINKING WATER[17]

A. Private Well Regulations

The Eastham Board of Health voted to adopt the following regulation, under the authority of Massachusetts General Laws, Chapter 111, Section 31, to better protect the public health of the inhabitants of the Town of Eastham.

1. Definitions:

Abandoned Well - A well that has not been used for water supply for a period of one year or more, unless the owner declares his/her intention to use the well again for supplying water within one year.

Board of Health - The Board of Health or its agent.

Pollution - Adverse effect on water quality created by the introduction of any matter.

Potable - Water which is pure and free from impurities that may cause disease or harmful physiological effects and is safe for human consumption, bathing and/or washing purposes.

Rented or Leased Property - Any dwelling used for habitation or business purposes by an occupant other than the owner, for the use of which a fee is paid. This includes, but is not limited to, campgrounds, motels, bed and breakfasts, inns, and other accommodations used on a transient basis, as well as community-type buildings which are rented to community groups.

Well - Any pit, pipe, excavation, spring, casing, drill hole, or other source of water to be used for any purpose of supplying water, and shall include dug wells, driven or tubular wells, drilled wells (artesian or otherwise) and springs, gravel packed, gravel walled wells, gravel developed and washed borings and as further described in the U.S. EPA Manual of Individual Water Supply Systems. For the purpose of these regulations, it shall include both private potable water wells and non-potable water wells.

Well Intended for Human Consumption - Any well supplying water for human consumption, bathing or washing purposes, which is not otherwise regulated as a "public water system" (community or non-community water supply) under 310 CMR 22.00.

2. Registration of Well Drillers:

All well drillers doing business in the Town of Eastham shall annually file with the Board of Health a copy of their current well driller registration certificate issued by the Commonwealth of Massachusetts under the General Laws, Chapter 21G Section 20.

[17] Adopted July 12, 1993
Effective August 1, 1993
Voted December 20, 1999
Published March 14, 2000
Updated November 17, 2016
Effective November 18, 2016
Amended January 26, 2017
Updated 10.31.19
Effective 11.1.19

3. Well Installation, Alteration and Repair

a. No well shall be installed or altered, except by a well driller who is registered with the Water Resources Commission, Division of Water Resources, under MGL Chapter 21G Sections 20 and 310 CMR 46, and the Eastham Board of Health.

b. All wells shall be located on the same lot as the building they serve.

4. Well Construction Permit:

a. No well shall be installed, or altered, until a Well Construction Permit has been obtained from the Board of Health. A permit so granted shall expire six (6) months from the date of issue, unless construction has begun. A six (6) month extension may be granted at no additional cost.

b. The fee for a well permit for a new construction permit shall be determined by Eastham Board of Selectmen.

c. An application for a Well Construction Permit shall be submitted by the drilling contractor or his/her agent to the Board of Health on forms furnished by the Board. The well driller is responsible for obtaining said permit prior to construction.

d. The location and design of the water well must be approved by the Board of Health, prior to the issuance of a Well Construction Permit. Prior to approval, the Board of Health requires the following information be submitted.

i. The assessor's map, parcel and lot number of the property on which the well will be located.
ii. Design and capacity of the water system, as described under well yield and water system design. Wells that are non-potable and are not intended for human consumption are not required to submit design and capacity of the water system to the Board of Health.
iii. A site plan showing proposed location of well in relation to building foundations, property lines, the water supply well intended for human consumption and the subsurface sanitary disposal system(s) serving the lot. The site plan need not be prepared by a qualified professional.
iv. For emergency repair, alteration, or replacement of an existing well, the Board of Health may waive the requirements that a site plan be submitted.

All permits issued shall be subject to the conditions that all facilities shown shall be constructed in the location approved by the Board of Health. All permits issued shall be subject to the requirements of these regulations and to such further conditions, as the Board of Health shall prescribe.

5. Well Construction

a. The Board of Health recommends that well construction meet the guidelines outlined in the Massachusetts Department of Environmental Protection Private Well Guidelines

b. Upon completion of drilling operation the top of well casing shall be protected with a PVC, stainless steel, or steel cap to prevent contamination.

c. The top of a well shall be above ground that is higher than any surface sources of contamination and above any known conditions of flooding by drainage or runoff from the surrounding land, unless located in a flood- proofed well house.

d. Wells must be constructed so as to maintain existing natural protection against all known or potential pollution of the groundwater and to exclude all known sources of pollution from entering the well.

e. All non-yielding holes which are installed in the process of constructing a well must be filled so as to not act as a conduit to the groundwater.

f. A metal tag shall be affixed to the top of any sub-surface well casing at the time of installation so that the well may later be located, if necessary, by a metal detector.

g. In areas where salt water or other pollutant intrusion is known or likely to occur, the Board of Health, working with a design engineer and/or well driller as appropriate, may specify the well screen level, pumping rate, water storage capacity, or any other construction parameter which must be used to ensure that water of adequate quality is obtained.

6. Well Drillers Report:

Within thirty (30) days after completion of any well (productive or non-productive), a registered well driller shall submit to the Board of Health, a copy of the report containing the name of the owner of the well, the geographic location of the well, well depth, depth to bedrock or refusal, casing type, casing size and casing length, well screen type, well screen length, and depth at which well screen is set, static water level, method used to test well yield, length of time (in hours) well pumped, drawdown, well yield, and drilling logs describing the material penetrated. The Board of Health will not issue a Compliance Potability Certificate for the well until this report has been received.

7. Well Destruction:

a. Upon destruction of any well, a well completion report must be submitted by the owner or his/her agent to the Board of Health. The well completion report for decommissioned wells must meet the standards of well completion reporting to the Massachusetts Department of Environmental Protection.

b. Any abandoned well shall be cut 3-4 feet below grade and below pitless adapter, if present, capped and buried. Where in the opinion of the Board of Health adverse conditions exist, more stringent abandonment protocols may be required.

8. Well Location:

a. In general, wells intended for human consumption shall be located as far as possible from potential sources of contamination. The following minimum distances are required:

	Potable	Non-Potable
Property Line	10 feet	10 feet
Leaching Catch Basin/Drywell	25 feet, but recommended that this distance be maximized	25 feet, but recommended that this distance be maximized
Roadway	25 feet from edge of road layout (not edge of pavement)	25 feet from edge of road layout (not edge of pavement)
Utility Rights-of-Way	50 feet, but recommended that this distance be maximized	50 feet, but recommended that this distance be maximized

Septic Tank	50 feet	10 feet
Septic Leaching Facility	100 feet	25 feet
Septic Distribution Box	50 feet	10 feet
Building Sewer lines	10 feet	10 feet
Subsurface Drains	25 feet, but recommended that this distance be maximized, as pollutants frequently travel along the outside of subsurface drain pipes	25 feet, but recommended that this distance be maximized, as pollutants frequently travel along the outside of subsurface drain pipes

Where, in the opinion of the Board of Health, adverse conditions exist, the above distances may be increased. In certain cases, the Board of Health may require the owner to provide additional means of protection. Where possible, the well shall be located up the groundwater gradient from sources of contamination.

B. Additional requirements for potable water wells intended for human consumption

Wells that serve the purpose of providing potable water for human consumption must meet the following requirements, in addition to the requirements set forth Section A – Private Wells Regulations.

1. Water Quality:

a. Prior to the issuance of the compliance potability certificate of the well, the owner or his/her agent, shall take a water sample(s) from the well and submit it to a state certified testing laboratory for analysis, with the cost to be borne by the owner. The results of all analyses shall be submitted to the Board of Health. At a minimum, water must be tested for the following chemical and bacteriological standards: total coliform, nitrate- nitrogen, pH, conductivity, sodium and iron.

b. The Board of Health will determine the potability of the well, using as guidelines the National Interim Primary and Secondary Drinking Water Standards and the U.S. Maximum Contaminant Levels (MCLs). The water quality standards for common parameters are as follows:

Primary Standards	
Total Coliform	0 Colonies/100ml by membrane filtration
Nitrate	10 ppm

Secondary Standards	
pH	Recommended pH above 5.0
Sodium	Recommended below 20 ppm
Iron	0.3 ppm

In the event that any secondary standards are exceeded, yet the water is deemed fit for human consumption by a state certified testing lab, the owners of said property shall be notified of test results so as to allow any corrective measures to be implemented.

Test results must meet current established maximum contaminant levels (MCLs) for volatile organic compounds.

c. Commercial establishments that meet the state definition of non-community public water supply must submit routine water quality test results with applications for all Board of Health Licenses or Renewals.

2. Testing Requirements

a. Rationale - The area surrounding the capped landfill has been the focus of testing and concern vis a vis water quality in recent years. Some limited traces of Volatile Organic Chemicals (VOCs) have been found in this area, and occasionally even an exceedance has been found.

b. Water Quality:

Approval of any well as a supply of potable water (intended for human consumption) shall require the owner or owner's agent to provide the Board of Health satisfactory test results as required by 310 CMR 22.00 et seq., as amended to the date of application, from water sample(s) taken from any potential well and submitted to a state-certified laboratory test, at the owner's expense, for the following tests:

i. Total Coliform, Nitrate-Nitrogen, pH, Conductivity, Sodium and Iron
ii. Volatile Organic Compounds, employing EPA method 524.2 Methods for Determination of Organic Compounds in Drinking Water.

c. In locations where potential sources of contamination are believed to exist, or where geologic or hydrologic conditions require more restrictive or additional standards than those outlined above, additional water testing and special standards may be required by the Board of Health to ascertain that water meets the Maximum Contaminant Levels set for public water supplies by the U.S. EPA under the Safe Drinking Water Act and 1986 SDWA amendments.

d. When the Board of Health deems it necessary, the Health Agent, or other agent of the Board of Health, may be present to witness the taking of a water sample and/or may take the water sample and deliver it to the testing laboratory him/herself.

e. The Board of Health further recommends that all well owners have their wells tested, at a minimum of every two years, and at more frequent intervals when water quality problems are known to exist.

f. In cases where the well water does not meet the water quality standards outlined above the Board of Health may require the property owner to provide an alternative approved source of drinking water for the inhabitants or the building which is served by the well.

g. Routine and VOC tests of a property's well water by a state certified testing lab to verify suitability for human consumption shall be required in change of ownership of said property. The buyer shall be notified of test results prior to finalization of transfer.

h. Well Yield and Water System Design:

i. Before approval, every well shall be pump tested to determine yield. The pump test shall include a drawdown test at a minimum pumping rate of 5 gallons per minute for one (1) hour.

i. Submission of Well Water Test Results:

i. Prior to issuance of a Compliance Potability Certificate for well water intended for human consumption, the results of all water quality and yield tests shall be submitted to the Board of Health. The owner of the property, which the well will serve, or the well driller, acting as agent for the owner, shall certify, on a form provided by the Board of Health, the following:

a) The location and date the sample was taken, and the laboratory at which it was analyzed.
b) That the water sample whose analysis results were submitted to the Board of Health was taken from the well for which approval is being sought.

3. Well Approval:

a. New wells shall not be placed into use for human consumption until the Board of Health has approved the potability and quantity of the water provided and issued a Compliance Potability Certificate for the well to the owner of the property which the well serves.

b. A Compliance Potability Certificate for a well will not be issued until:

i. The well water has been shown to meet the water quality criteria outlined in the regulations, and/or has been certified fit for human consumption by a state certified testing lab.
ii. For wells installed at newly constructed buildings, the Board of Health shall require that a certified as built plot plan, drawn by a qualified Professional be submitted to the Board of Health. Such plot plan must show the actual location of the well on the lot as cross tie distances from lot corners, and must show the location of the septic system, as installed, in relation to the well. The plot plan must also identify, by assessors map, parcel and lot number, the property on which the well is located.
iii. Wells which fail to meet some or all of the requirements in these regulations may be approved by the Board of Health after a hearing at which a variance from these standards may be granted.

C. Requirements for Wells in the Mandatory Municipal Water Supply Zone (see attached map)

Due to the potential contamination of groundwater in the Mandatory Municipal Water Supply Zone (bounded by Glacier Hills Road, Nauset Road, Doane Road, State Highway and the Bike Trail on the attached map) the following restrictions will apply:

1. In the Central Area bounded by Glacier Hills Road, Schoolhouse Road, Route 6 and Bike Trail (see attached map) all private wells (potable and non-potable) must be abandoned.

2. In areas outside the Central Area but within the Mandatory Municipal Water Supply Zone conversion of private drinking water wells for irrigation use may be allowed if the well:

   a. is not completed in the 1, 4 Dioxane Plume
   b. is less than 100 ft. in depth
   c. the 1, 4 Dioxane concentration results are below 0.3 ug/l (or the current ORS-G, GW-1 standard/guidelines).

3. All private wells tested with a 1, 4, Dioxane concentration above 0.3 ug/l (or the current ORS-G, GW-1 standard/guideline) shall be plugged and abandoned per Massachusetts Department of Environmental Protection Policy "Standard References for Monitoring Wells" or the Massachusetts DEP "Private Well Guidelines" Policy.

4. All private wells tested with 1, 4 Dioxane concentration less than 0.3 ug/l (or the current ORS-G GW-1 standard/guideline) shall be cut 3-4 feet below grade and below pitless adapter, if present, capped and buried simultaneous as part of the connection to municipal water.

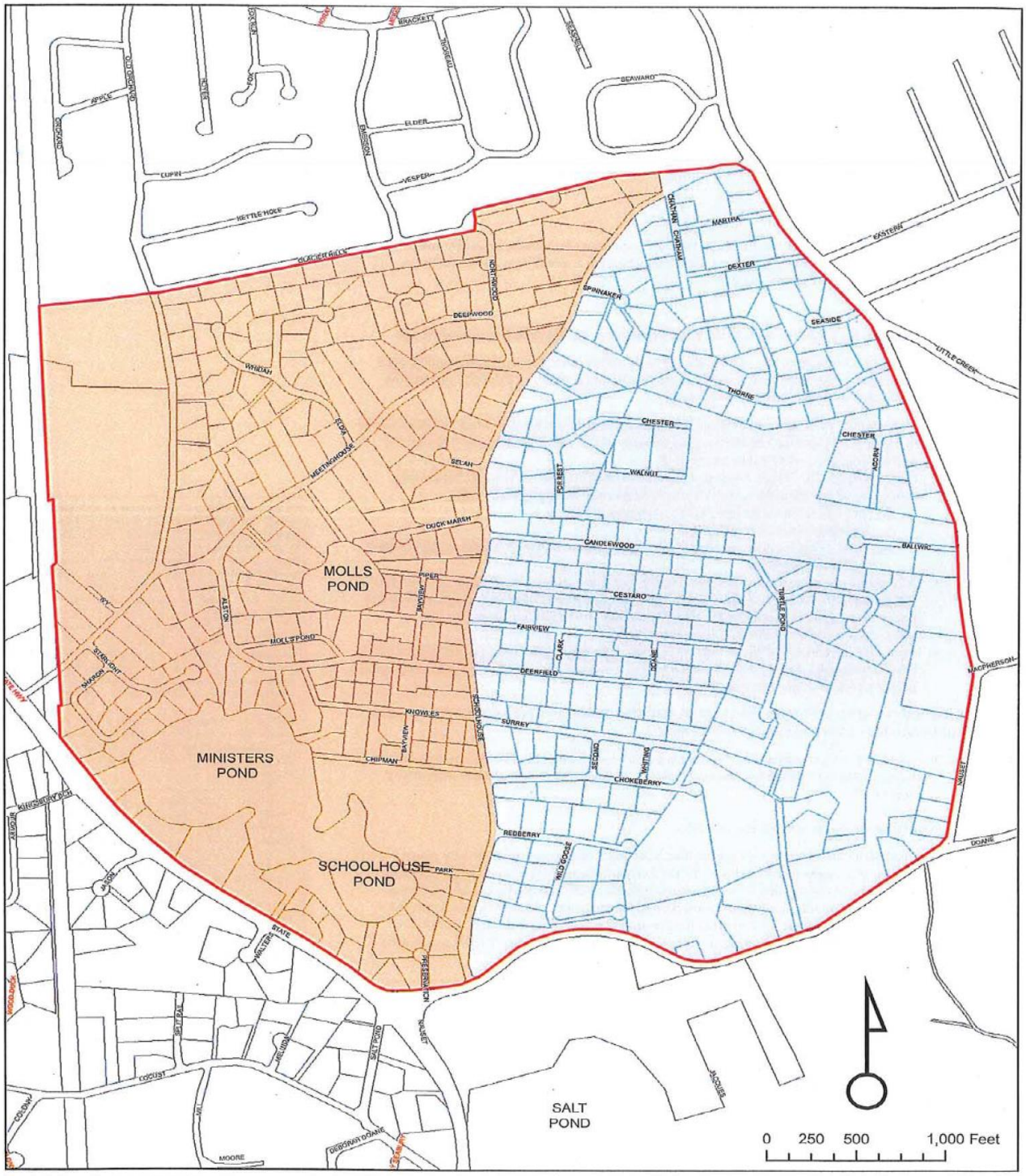
D. Requirements for potable wells converted to non-potable irrigation wells outside the mandatory municipal water supply zone

1. A certificate to convert the existing potable well for non-potable use must be obtained from the Board of Health and is subject to Eastham Municipal Water Regulations Section 6.9

E. Variance and enforcement procedures:

1. The Board of Health may vary the application of any provision of this article with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of these minimum standards, nor with the protection of human health and environmental quality.
2. Every request for a variance shall be made in writing and shall state the specific variance requested and the reasons therefore. Any variance granted by the Board of Health shall be in writing.

Map of Mandatory Municipal Water Supply Zone



MANDATORY CONNECTION AREAS

CENTRAL - MANDATORY WELL ABANDONMENT/NO IRRIGATION WELLS

EAST - IRRIGATION WELLS MAY BE CONSIDERED

SECTION III: GROUNDWATER PROTECTION FOR DRINKING WATER SOURCES[18]

A. Scope of Authority

The Town of Eastham Board of Health has adopted the following Groundwater Protection Regulation pursuant to authorization granted by MGL. c 111 s. 31 and 122. This regulation shall apply, as specified below, to all applicable facilities within the Town of Eastham.

B. Purpose of Regulation

Whereas:

- siting of certain uses and activities have the potential to release hazardous waste, petroleum products and other pollutants into drinking water supply areas; and
- discharges of leachate, pathogens, and other pollutants have repeatedly threatened surface and ground water quality throughout Massachusetts; and
- surface and ground water resources contribute to the Town's public drinking water supplies;

The Town of Eastham adopts the following regulation, under its authority as specified in Section A, as a preventative measure for the purpose of preserving and protecting public drinking water quality and to minimize the risk to public health and the environment.

C. Applicability

The regulation shall apply to all applicable facilities within the Zone II and Interim Wellhead Protection Areas located within the Town of Eastham. These drinking water supply areas are delineated on a map entitled Groundwater Protection Overlay District Analysis and dated 7/27/15, which is set forth at the end of this section.

D. Definitions

Automobile Graveyard: An establishment that is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, or ruined vehicles or motor vehicle parts, as defined in MGL c.140B, s.1

Aquifer: A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

CMR: Code of Massachusetts Regulations.

Commercial/Industrial Facility: A public or private establishment where the principal use is the supply, sale, and/or manufacture of services, products, or information, including but not limited to: manufacturing, processing, or other industrial operations; service or retail establishments; printing or publishing establishments; research and development facilities; small or large quantity generators of hazardous waste; laboratories; hospitals.

Commercial Fertilizer: Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed to have value in promoting plant

[18] Adopted and Effective July 30, 2015
Updated 10.31.19
Effective 11.1.19

growth, except un-manipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, and other products exempted by state regulation.

Discharge: The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, pouring, or placing of toxic or hazardous material or hazardous waste upon or into any land or water such that it may enter the surface or ground waters.

Dry Well: A subsurface pit with open-jointed lining or holes through which storm-water drainage from roofs, basement floors, foundations or other areas seep into the surrounding soil.

Groundwater Protection Area: The drinking water supply area protected by this regulation.

Hazardous Material: Any substance in any form which because of its quantity, concentration, or its chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with one or more 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. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as toxic or hazardous under MGL c. 21E. This term shall not include hazardous waste or oil. Materials used in activities related to the maintenance and operation of public water supply wells will not be considered hazardous materials under this definition.

Hazardous Waste: A substance or combination of substances, which because of quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety, or welfare or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed. This term shall include all substances identified as hazardous pursuant to the Hazardous Waste Regulations, 310 CMR 30.000.

Historical High Groundwater Table: A groundwater elevation determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey.

Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water runoff to penetrate into the soil.

Interim Wellhead Protection Area (IWPA): The Mass DEP designated protection radius around a public water well that lacks a Zone II.

Junkyard: An establishment that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, as defined in MGL c.140B, s.1.

Landfill: A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to the Solid Waste Regulations, 310 CMR 19.006.

MassDEP: Massachusetts Department of Environmental Protection.

MGL: Massachusetts General Law.

Non-Sanitary Wastewater: Discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage.

Petroleum Product: Includes, but is not limited to: fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. Petroleum product shall not include liquefied petroleum gas including, but not limited to, liquefied natural gas, propane or butane.

Open Dump: A facility operated or maintained in violation of the Resource Conservation and Recovery Act 42 USC 4004(a)(b), or state regulations and criteria for solid waste disposal.

Recharge Areas: Land areas, such as a Zone II and Interim Wellhead Protection Areas, where precipitation and surface water infiltrates into the ground to replenish groundwater and aquifers used for public drinking water supplies.

Septage: The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. This term shall not include any material that is a hazardous waste, as defined by the Hazardous Waste Regulations 310 CMR 30.000.

Sludge: The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment including wastewater residuals. This term shall not include grit, screening, or grease and oil which are removed at the head-works of a facility.

Treatment Works: Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

Utility Works: Regulated activities providing for public services, including roads, water, sewer, electricity, gas, telephone, transportation and their associated maintenance activities. This term shall include the installation of detention and retention basins for the purpose of controlling storm water.

Very Small Quantity Generator (VSQG): Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

Waste Oil Retention Facility: A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with MGL c.21, s.52A.

Zone II: The delineated recharge area to a public drinking water well as approved by MassDEP and defined under the MA Drinking Water Regulations 310 CMR 22.00. Zone II of the Municipal Water System Can be seen on the Groundwater Overlay District Map dated 7/27/15.

E. Prohibitions

1. Prohibited Land Uses and Activities

The following land uses and activities are prohibited in the Groundwater Protection Overlay District:

a. Landfills and open dumps; except for areas approved for the disposal of brush and stumps.

b. Automobile graveyards and junkyards;

c. Disposal or stockpiling of chemically treated snow and ice that have been removed from highways and roadways from outside the Groundwater Protection Area;

d. Petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under North American Industry Classification System (NAICS) Codes 424710 and 454311, except for liquefied petroleum gas;

e. Treatment or disposal works, subject to 314 CMR 5.00, for non-sanitary wastewater, including those activities listed under 310 CMR 15.004(6), except for:

   i. replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
   ii. treatment works approved by MassDEP designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13); and
   iii. publicly owned treatment works.

f. Facilities that generate, treat, store, or dispose of hazardous waste subject to MGL. c. 21C and 310 CMR 30.000, except for:

   i. very small quantity generators (VSQGs);
   ii. household hazardous waste collection centers or collection events;
   iii. waste oil retention facilities; and
   iv. treatment works for the restoration of contaminated ground or surface waters in compliance with MGL. c.21E and 310 CMR 40.000.

g. The use, generation, storage, treatment or disposal of toxic or hazardous materials in quantities greater than those associated with normal household use.

2. Additional Prohibited Land Use and Activities unless designed in accordance with specific performance standards.

a. Storage of liquid hazardous materials and/or liquid petroleum products, unless such materials are stored above ground and on an impervious surface, and in containers (or above ground tanks) within a building, or outdoors in covered containers (or above ground tanks) designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements;

b. Rendering impervious more than 15% or 2,500 square feet, whichever is greater, of any lot, except one with artificial recharge that will not degrade water quality. Artificial recharge methods used must comply with best management practices described in MassDEP's 'Storm Water Handbook', Volumes I,II,III, as amended;

c. Removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table, unless the substances removed are re-deposited on site within

45 days of removal to achieve a final grading greater than four feet above the historical high water mark, and except for excavations for the construction of building foundations, the installation of utility works , or wetland restoration work conducted in accordance with a valid Order of Condition issued pursuant to MGL. c. 131, s.40;

d. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;

e. Storage of de-icing chemicals including sodium chloride and chemically treated abrasives, unless such storage is within a structure designed to prevent the generation and release of contaminated leachate and runoff;

f. Storage of animal manure, unless such storage is within a structure designed to prevent the generation and release of contaminated leachate and runoff; and

g. Storage of commercial fertilizers, unless such storage is within a structure designed to prevent the generation and release of contaminated leachate and runoff.

F. Compliance

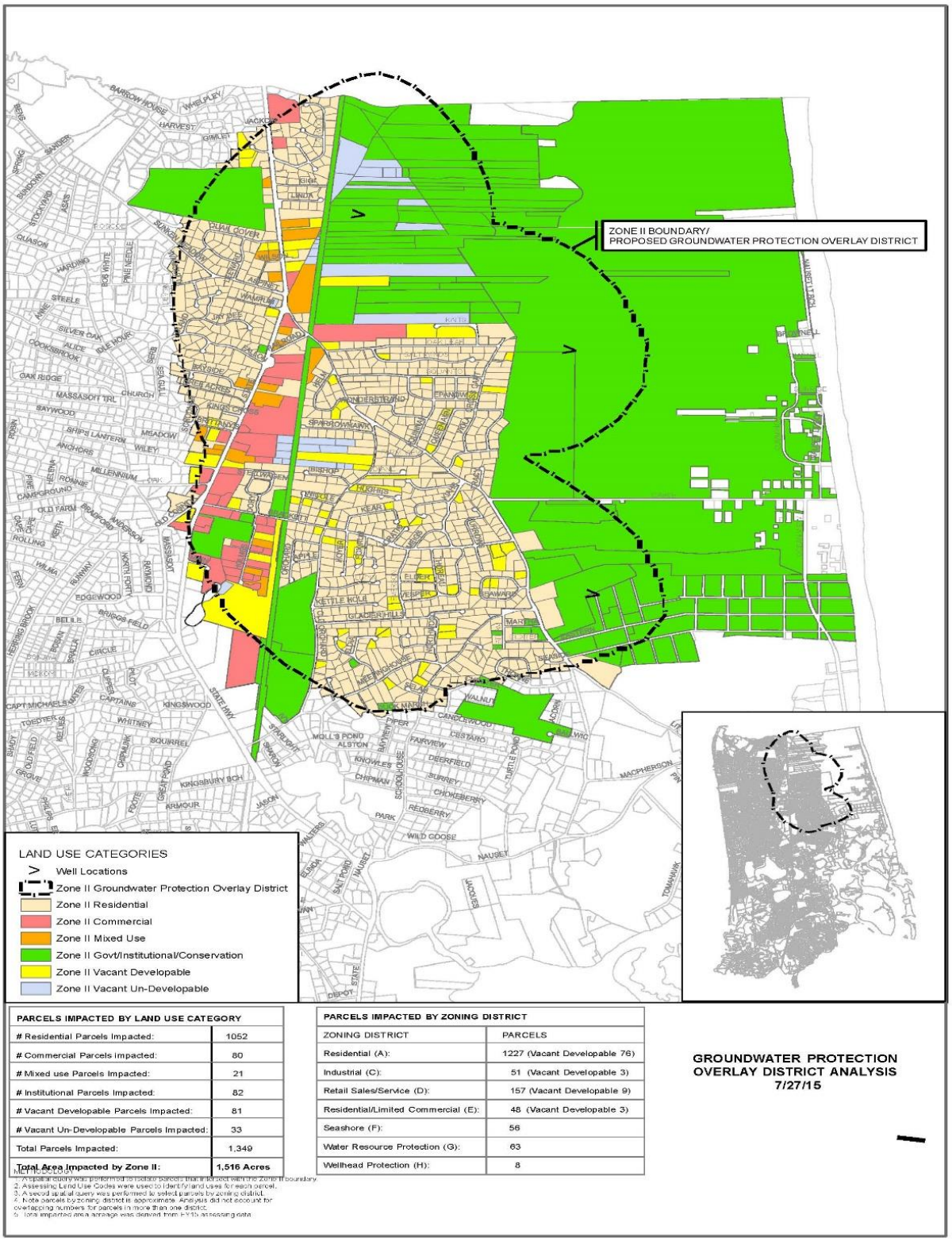
1. Certification of conformance with the provisions of this regulation by the Board of Health shall be required prior to issuance of construction and occupancy permits.

2. All new construction and/or applicable change of use within the Town of Eastham shall comply with the provisions of this regulation.

G. Penalties

Any person who violates any provision of this regulation, or who fails to comply with any Order by the Board of Health under this regulation, for which a penalty is not otherwise provided in any of the general laws shall be subject to a fine of not less than $200.00 but no more than $1000.00. Each day's failure to comply with an Order may constitute a separate violation.

Map of Groundwater Protection District



PARCELS IMPACTED BY LAND USE CATEGORY	
# Residential Parcels Impacted:	1052
# Commercial Parcels Impacted:	80
# Mixed use Parcels Impacted:	21
# Institutional Parcels Impacted:	82
# Vacant Developable Parcels Impacted:	81
# Vacant Un-Developable Parcels Impacted:	33
Total Parcels Impacted:	1,349
Total Area Impacted by Zone II:	**1,516 Acres**

PARCELS IMPACTED BY ZONING DISTRICT	
ZONING DISTRICT	PARCELS
Residential (A):	1227 (Vacant Developable 76)
Industrial (C):	51 (Vacant Developable 3)
Retail Sales/Service (D):	157 (Vacant Developable 9)
Residential/Limited Commercial (E):	48 (Vacant Developable 3)
Seashore (F):	56
Water Resource Protection (G):	63
Wellhead Protection (H):	8

GROUNDWATER PROTECTION OVERLAY DISTRICT ANALYSIS
7/27/15

NOTES:
1. A spatial query was performed to select parcels that intersect within the Zone II boundary.
2. Assessing Land Use Codes were used to identify land uses for each parcel.
3. A second spatial query was performed to select parcels by zoning district.
4. Note parcels by zoning district is approximate. Analysis did not account for overlapping numbers for parcels in more than one district.
5. Total impacted area acreage was derived from FY15 assessing data.

SECTION IV: FLOOR DRAIN REGULATION[19]

A. Purpose of Regulation

Whereas:

- floor drains in industrial and commercial facilities are often tied to a system leading to a leaching structure or a septic system; and
- improper maintenance or inappropriate use of these systems may allow the passage of contaminants or pollutants entering the drain to discharge from the leaching structure or septic system to the ground; and
- discharges of hazardous wastes and other pollutants to floor drains leading to leaching structures and septic systems have repeatedly threatened surface and ground water quality throughout Massachusetts; and
- ground water resources in the Town of Eastham contribute to public drinking water supplies.

The Town of Eastham adopts the following regulation, under its authority as specified in Sub-Section B, as a preventative measure for the purposes of preserving and protecting the community's drinking water supply from discharges of pollutants to the ground via floor drains, and minimizing the threat of economic losses due to such discharges.

B. Scope of Authority

The Board of Health adopts the following regulation pursuant to authorization granted by M.G.L. Chapter 111 Sections 31 and 122. This regulation shall apply to all new and existing facilities located within the Town of Eastham MassDEP approved Zone II Groundwater Protection Overlay District (see map from previous section).

C. Definitions

For the purposes of this regulation, the following words and phrases shall have the following meanings:

Commercial and Industrial Facility: A public or private establishment where the principal use is the supply, sale, and/or manufacture of services, products, or information, including but not limited to: manufacturing, processing, or other industrial operations; service or retail establishments; printing or publishing establishments; research and development facilities; small or large quantity generators of hazardous waste; laboratories; hospitals.

MassDEP: Massachusetts Department of Environmental Protection.

Discharge: The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, incineration, or placing of toxic or hazardous material or waste upon or into any land or water so that such hazardous waste or any constituent thereof may enter the land or waters of the Commonwealth. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site leaching structure or sewage disposal system.

[19] Adopted & Effective July 30, 2015
Updated 10.31.19
Effective 11.1.19

Floor Drain: An intended drainage point on a floor constructed to be otherwise impervious which serves as the point of entry into any subsurface drainage, treatment, disposal, containment, or other plumbing system.

Leaching Structure: Any subsurface structure through which a fluid that is introduced will pass and enter the environment, including, but not limited to, dry wells, leaching catch basins, cesspools, leach fields, and oil/water separators that are not water-tight.

Oil/Water Separator: A device designed and installed to separate and retain petroleum based oil/grease, flammable wastes and sand particles from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity. Other common names for such systems include MDC traps, gasoline and sand traps, grit and oil separators, grease traps, and interceptors.

Toxic or Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or waters. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapter 21C and 21E or Massachusetts Hazardous Waste regulations (310 CMR 30.000), and also include such products as solvents, thinners, and pesticides in quantities greater than normal household use.

Use of Toxic or Hazardous Material: The handling, generation, treatment, storage, or management of toxic or hazardous materials.

Zone II: The delineated recharge area to a public drinking water well as approved by MassDEP and defined under the MA Drinking Water Regulations 310 CMR 22.00. Zone II may be seen on the Groundwater Protection District Map in previous section.

D. Prohibitions

With the exception of discharges that received MassDEP permit prior to July 30, 2015, no floor drain shall be allowed to discharge, with or without pretreatment (such as an oil/water separator) to the ground, a leaching structure, or septic system in any industrial or commercial facility if such floor drain is located in:

1. An industrial or commercial process area; or

2. A petroleum, toxic, or hazardous materials and/or hazardous waste storage area; or

3. A leased facility lacking either 1 or 2 as described above, but which has the potential for a change in use to one which has either 1 or 2; and is in the opinion of the Board of Health or its Agent, sufficient to warrant the elimination of the ground discharge present at this facility.

E. Requirements for Existing Facilities

1. The owner of a facility in operation with a prohibited floor drain system as defined in Subsection D shall:

a. Where possible, disconnect and plug all applicable inlets to and outlets from applicable leaching structures, oil/water separators, and/or septic systems; and

b. Remove all existing sludge in oil/water separators, septic systems and, where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations, 310 CMR 30.000. Remedial activity involving any excavation and/or soil or groundwater sampling must be performed in accordance with appropriate MassDEP policies; and
c. Alter the floor drain system so that the floor drain shall be either:

   i. Connected to a holding tank that meets all applicable requirements of MassDEP policies and regulations, with hauling records submitted to the Board of Health at the time of hauling; or
   ii. Connected to a municipal sanitary sewer line, if available, with all applicable MassDEP and local permits; or
   iii. Permanently sealed. Any facility sealing a drain shall be required to submit for approval to the Board of Health a hazardous waste management plan detailing the means of collecting, storing, and disposing any hazardous waste gene rated by the facility, including any spill or other discharge of hazardous materials or wastes.

2. Any oil/water separator remaining in use shall be monitored weekly, cleaned not less than every 90 days, and restored to proper conditions after cleaning so as to ensure proper functioning. Records of the hauling of the removed contents of the separator shall be submitted to the Board of Health at the time of hauling.

3. Compliance with all provisions of this regulation must be accomplished in a manner consistent with Massachusetts Plumbing, Building, and Fire Code requirements.

4. Upon complying with one of the options listed under subsection E.1.c, the owner/operator of the facility shall notify MassDEP of the closure by filing the UIC Pre-Closure Form BRP WS-06d (which may be obtained by calling MassDEP at 617-292-5770) and sending a copy to the Board of Health.

F. Compliance for New Construction & Changes of Use

1. All new construction and/or applicable change of use within the Town of Eastham shall comply with the provisions of this regulation.

2. Certification of conformance with the provisions of this regulation by the Board of Health shall be required prior to issuance of construction and occupancy permits; and

3. The use of any new oil/water separator shall comply with the same requirements as for existing systems, as specified above in Section E.2.

G. Penalties

Failure to comply with provisions of this regulation will result in the levy of fines of not less than $ 200.00, but no more than $1000.00. Each day's failure to comply with the provisions of this regulation shall constitute a separate violation.

SECTION V: RENTAL OF PREMISES TO BE USED FOR HUMAN HABITATION[20]

In order to protect the health, safety and well being of the occupants of the housing and the general public the Eastham Board of Health adopts the following regulations.

A. No person shall rent or lease, or offer to rent or lease, any building or any portion of a building to be used for human habitation without first registering with the Board of Health, which shall determine the number of persons such building or portion of a building may lawfully accommodate under the provisions of the Massachusetts State Sanitary Code, and without first also conspicuously posting within such building or portion of a building a Certificate of Registration provided by the Board of Health specifying the number of persons such building or portion of a building may lawfully accommodate.

B. No tenant shall lease, rent or occupy any building or any portion of a building subject to the provision of this chapter if, at the time of such lease, rental or occupancy, the number of persons occupying such building or portion of a building exceeds the number of persons authorized to occupy such building or portion of a building, by a Certificate of Registration if issued and posted, or, if no Certificate of Registration is issued or posted, the number of persons that may be lawfully accommodated as determined by the Board of Health, under the Massachusetts State Sanitary Code.

C. There shall be a fee to be set by Board of Selectmen to procure a Certificate of Registration which shall be valid until December 31st of each year. The landlord may apply annually for a Certificate of Registration conditional on Board of Health receipt of acceptable, current potable water test results tested by certified laboratory.

D. Any Certificate of Registration issued under this Chapter shall be revoked if, at any time, the granting authorities are satisfied that the building or portion of the building does not meet the requirements of 105 CMR 410.000: State Sanitary Code, Chapter II, Minimum Standards of Fitness for Human Habitation, and relevant Town of Eastham By-Laws and Regulations as to the building structure itself and those persons residing therein or staying overnight. The granting authority may suspend and make inoperative, for such period of time as they may deem proper, the Certificate mentioned herein for any cause deemed satisfactory to them. The revocation and suspension shall not be made until after investigation and a hearing or after giving the Certificate holder an opportunity to be heard. Notice of the hearing shall be delivered to the holder not less than three (3) days before the time of said hearing.

E. Any violation of any provision of this regulation shall be punishable by a fine consisting of no more than three hundred ($300.00) dollars for each day existing.

F. This regulation shall not apply to boarding and lodging houses or motels licensed under Chapter 140, Section 23 of the General Laws or establishments licensed under Chapter 140, Section 2 of the General Laws.

G. This may be enforced by Eastham Police Officer, Health Agent, or other designee.

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[20] Adopted April 6, 1988
Revised July 20, 2001
Effective July 27, 2001
Revised May 26, 2005
Effective July 1, 2005
Revised December 29, 2011
Effective December 29, 2011
Updated 10.31.19
Effective 11.1.19

SECTION VI: NUISANCES[21]

A. Authority

This regulation was adopted pursuant to the authority conferred thereupon under M.G.L. C. 111, SS 31 and 122.

B. Purpose

The purpose of this Regulation is to preserve and protect the public health through the prompt identification and correction of nuisances that are sources of filth and potential causes of sickness in the town and to further provide penalties for failure to correct said nuisances, sources of filth and causes of sickness in a timely fashion after notice from the Board of Health.

C. Definitions

The following definition shall apply in the interpretation and implementation of the Regulation.

NUISANCE - any source of filth or potential cause of sickness, including but not limited to, any collection of junk and/or debris, such as abandoned household property, industrial or commercial equipment, and unsafe structures, but exclusive of putrescible wastes utilized in farming, gardening or fisheries; provided that this use does not cause offensive odors.

D. Regulation of Nuisances

No owner, occupant, tenant or manager of any property situated in the Town of Eastham shall cause or permit to exist a nuisance on said property.

Upon determination by the Board of Health or its agent(s) that a nuisance exists, the Board of Health or its agent(s) shall notify the owner, occupant, tenant or manager of the property of the nuisance, by certified mail, return receipt requested. Said notice shall specify the nature of the nuisance, order specific correction and indicate a time certain within which correction must be completed. The Board will notify the owner, occupants, tenant or manager when it is investigating into a possible nuisance on the property and provide an opportunity for said owner, occupant, tenant or manager to be heard in response to the notification. Nothing herein shall be construed to abrogate or limit the authority of the Board of Health to exercise its statutory powers to abate a nuisance pursuant to M.G.L. C. 111, SS 122, et seq without prior hearing, upon its determination that the nuisance comprises a clear and imminent danger to the public health.

The property owner shall be required to abate the nuisance within period specified by the Board of Health or its agent, not to exceed 45 days. If the nuisance is not abated in this period, the Board of Health may have the nuisance abated. Costs for abatement, and all other associated costs shall be reimbursed to the Town of Eastham. Failure to reimburse the Town within 60 days of abating the nuisance shall result in placement of a lien on this property for the amount due the Town.

E. Penalty

[21] Adopted August 1, 1994
Effective August 15, 1994.
Updated 10.31.19
Effective 11.1.19

Any person who violates any provision of this Regulation may be punished by a fine not to exceed one thousand ($1,000.00) dollars. Each day or portion thereof during which violation continues shall constitute a separate offense.

SECTION VII: FUEL STORAGE SYSTEMS[22]

Whereas, leaking fuel storage systems pose an immediate and serious threat to Cape Cod's sole source aquifer, and,

Whereas, the Town of Eastham does not have records to locate all such systems installed within the Town,

Therefore, under Chapter 111, Section 31, of the Massachusetts General Laws, the Eastham Board of Health hereby adopts the following revised regulation to protect the ground and surface waters from contamination with liquid toxic or hazardous materials.

A. Definitions:

Toxic or hazardous materials - all liquid hydrocarbon products including, but not limited to gasoline, radioactive materials or other substance controlled as being toxic or hazardous under the provisions of Massachusetts General Laws, Chapter 21C, Section 1, et. Seq.

Above Ground Tank (AGT) - as any tank located above the ground to store fuel oil for the purpose of heating.

The following regulations apply to all toxic or hazardous material storage systems:

B. Installation of Fuel Storage Tanks:

1. Underground Storage Tanks

    a. All underground fuel oil storage tanks shall be prohibited within the Town of Eastham.

    b. Any existing underground fuel oil storage tanks must be removed in compliance with the Fire Department Permits and Regulations.

2. Above Ground Storage Tanks (AGT)

    a. All above ground fuel oil storage tanks (inside and outside) installed shall be required to provide 110% containment capacity to prevent contamination from leaks that may occur. Exterior fuel oil storage tanks must be covered with substantial impermeable construction material to prevent water accumulation within the containment in such a way that it satisfies the Board of Health and the Fire Department. The area beneath the exterior shall be 4 inch thick continuous concrete slab. Double walled fuel oil storage tanks could be substituted for containment devices. The fuel oil storage tank or containment device must be approved by the Fire Department before installation occurs.

    b. At time of property transfer all AGT's shall be required to be replaced with double walled fuel oil storage tanks or shall be required to provide 110% containment capacity to prevent

[22] Approved September 1, 1989
Revised December 19, 2002
Effective January 31, 2003
Updated 10.31.19
Effective 11.1.19

contamination from leaks that may occur. Exterior fuel oil storage tanks must be covered with substantial impermeable construction material to prevent water accumulation within containment in such a way that it satisfies the Board of Health and the Fire Department. The area beneath the exterior tank shall be 4 inch thick continuous concrete slab. All above-ground elements of a fuel storage system shall be maintained free of leaks and visible rust.

c. All underground fuel copper lines which do not have secondary containment shall be replaced with an approved double-containment system at which time any service to the system requiring a permit is performed or whenever property ownership is transferred if lines are underground including basement foundations.

d. All in-tank or interstitial-space monitoring systems shall be checked on a monthly basis to verify system integrity.

e. All tanks installed above ground outside shall be of material approved for outside use.

C. Tank Registration:

The following regulations shall apply to:

1. all tanks containing fuel oil, whose contents are used exclusively for consumption on the premises, and to

2. farm and residential tanks of 1,100 gallon capacity, or less, used for storing motor fuel for non-commercial purposes.

   a. Owners shall have on file with the Board of Health or the Fire Department the size, type, age and location of each tank, and the type of fuel or chemical stored in them. Evidence of date of purchase and installation, including fire department permit, if any, shall be included along with a sketch map showing the location of such tanks on the property. Upon registering the tank, the tank owner will receive a permanent metal or plastic tag, embossed with a registration number unique to that tank. This registration tag must be affixed to the fill pipe or in such a location as to be visible to any distributor when filling the tank and to any inspector authorized by the Town.

D. Report of Leaks or Spills

Any person who is aware of a spill, loss of product, or unaccounted for increase in the consumption which may indicate a leak shall report such spill, loss or increase immediately to the head of the Fire Department and to the Board of Health.

E. Costs:

In every case, the owner shall assume the responsibility for costs incurred necessary to comply with this regulation.

F. Variances:

Variances from this regulation may be granted by the Board of Health after a hearing at which the applicant establishes the enforcement thereof would do manifest injustice.

G. Enforcement:

Any owner or operator who violates any provision of this regulation shall be subject to the penalties provided under MGL C. 111 S. 31, as amended. Each day during which such violation continues shall constitute a separate offense. Upon request of the Chief of the Fire Department or the Board of Health, the licensing authority shall take any legal action as may be necessary to enforce the provisions of this regulation.

SECTION VIII: THE CONTENT AND APPLICATION OF FERTILIZER TO TURF[23]

A. Purposes

Mounting evidence supports the claim that excessive nutrient enrichment of the region's groundwaters and surface waters may have significant public health impact. Direct effects on drinking water sources are well known and include the increased concentrations of nitrogen to levels that can violate the Safe Drinking Water Standards. The indirect public health effects through surface water enrichment from nitrogen and phosphorus can be equally unhealthy, and may lead to environmental and ecological alterations, resulting in toxic algae blooms and the proliferation of human and animal disease organisms including bacterial, fungal, myxozoa and insect vector pathogens.

The Board of Health has determined that excessive, inappropriate or improper use of fertilizers is part of the overall problem of nutrient enrichment, and therefore promulgates the following regulation, regarding the use of fertilizer on turf. This regulation incorporates current Best Management Practices which are deemed essential in this effort to protect the public health and aid in achieving compliance with the Total Daily Maximum Loads (TMDL) for the Towns water resources prescribed by the Commonwealth of Massachusetts while allowing reasonable use of fertilizers for the enhancement of turf quality.

B. Applicability

1. It is, therefore, desirable to control by regulation and education, in the Town of Eastham, the use of fertilizer that contains phosphorus and nitrogen for the purposes set out herein.
2. This Regulation is not intended to eliminate the use of fertilizer but only to eliminate excess amounts of phosphorus and nitrogen from reaching our water bodies and groundwater. This Regulation adopts the BEST MANAGEMENT PRACTICES as the required operating procedures for turf management throughout the Town.
3. This Regulation shall apply to turf management practices only.

C. Authorization

This Regulation is adopted by the Town of Eastham's Board of Health as authorized by Massachusetts General Laws, Chapter 111, Section 31, and is further authorized as Implementing Regulations pursuant to the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07, and by Section 9 of Chapter 262 of the Acts of 2012.

D. Definitions

For the purposes of this Regulation, the following words shall have the following meanings unless the context clearly indicates a different meaning:

Agriculture/ Agricultural Use - farming in all of its branches including the cultivation and tillage of the soil, the production, cultivation, growing, and harvesting of any agricultural, floricultural or horticultural commodities, including but not limited to cranberries.

[23] Adopted November 20, 2014
Effective February 2015 (date of Fertilizer Management DCPC closing memo)
Updated 10.31.19
Effective 11.1.19

Best Management Practice (BMP) - a sequence of activities designed to limit a nonpoint pollution source as conforming to the most current edition of "Best Management Practices for Soil and Nutrient Management in Turf Systems," prepared by University of Massachusetts Extension, Center for Agriculture, Turf Program.

Compost - the biologically stable humus-like material derived from composting, or the aerobic, thermophilic decomposition of, organic matter, which is applied as a fertility source (also referred to as enhancement or conditioning) for turf.

Eastham - the Town and all of its waters.

Fertilizer - a substance that enriches turf with elements essential for plant growth, such as nitrogen, phosphorus, or other substances; fertilizer hereunder does not include dolomite, limestone, or lime, grass clippings, compost or compost tea.

Fertilize, fertilizing, or fertilization - the act of applying fertilizer to turf. "Fertilizer Applicator" - any person who applies fertilizer to turf and soils.

Groundwater - water found in cracks, fissures and pore spaces in the saturated zone below the ground surface, including but not limited to perched groundwater.

Impervious surface - a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, except for compacted areas on athletic fields such as clay or baseball infields, intensely trafficked turf and the like.

Landscaping - for purposes of this Regulation, establishment (including by sod, seeding, or transplanting), renovation, maintenance, management or fertilization of turf.

Nutrient - any of the following 17 elements needed for growth of a plant; the three (3) non-mineral elements: carbon, hydrogen, and oxygen; the six (6) macronutrients: nitrogen, phosphorus, potassium, calcium, magnesium, and sulfur; and the eight (8) micronutrients: boron, copper, iron, chloride, manganese, molybdenum, nickel and zinc.

Slow-release, controlled-release, timed-release, or slowly soluble/ available nitrogen - nitrogen in a form that delays its availability for uptake and use after application, and is not rapidly available to turf.

Soil - the upper-most layer of the earth's surface, comprised of mineral and organic matter, which can host biological communities.

Soil test - a technical analysis of soil conducted by a soil testing laboratory that uses standards recommended by and compliant with the University of Massachusetts Amherst Extension Program BMPs, including a Modified Morgan soil testing procedure and extractable nutrient values.

Turf - grass-covered soil held together by the roots of the grass, also known as "sod" or "lawn."

Waters or Water - bodies include, but are not limited to, streams, including intermittent streams, creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine waters, canals, lagoons, and estuaries within the Town, including without limitation all waters defined in Massachusetts General Laws Chapter 131, Section 40 and Town Wetland By-law or Regulation with the exception of the following: coastal and inland banks, beaches, coastal dunes, dune fields, and lands subject to coastal storm flowage, inland or coastal flooding or inundation, or within 100 feet of the hundred-year storm line.

E. Standards Of Performance

1. Best Management Practices

The Best Management Practices ("BMP"), as defined in subsection D and attached as Appendix 1, is hereby incorporated into and made part of this Regulation.

2. Performance Standards for Fertilizer Application

a. Fertilizer shall not be applied during or immediately prior to predicted heavy rainfall, such as but not limited to thunderstorms, hurricanes, or northeastern storms, or when the soil is saturated due to intense or extended rainfall;

b. Neither fertilizer nor compost shall be applied between November 12 and the following April 14;

c. Fertilizer Applicators shall not apply, spill, or deposit fertilizer on any impervious surface and fail to remove the applied, spilled, or deposited fertilizer immediately (and in which case the Applicator shall then either contain, dispose of legally or apply the fertilizer as allowed), and shall not apply, spill or deposit fertilizer in a manner that allows fertilizer to enter into storm drains or waterbodies or nearby properties;

d. Unless the Town's By-laws, including its Wetland By-law or Regulations, contain a stricter standard, or other enforcement or approval mechanism such as through the Town's Conservation Commission, which shall control, fertilizer shall not be applied closer than 100 feet to any water-body, or within the Zone of Contribution to a public drinking well unless permission is obtained through the enforcement authority set out herein allowing such activity.

e. Fertilizer that contains phosphorus shall not be applied unless a soil test taken not more than 36 months before the proposed fertilizer application indicates that additional phosphorus is needed for growth of that turf, or unless establishing new turf or re-establishing or repairing turf after substantial damage or land disturbance, in which case the application shall be in compliance with the BMP.

f. A single application of fertilizer that contains nitrogen shall not exceed 1.0 pound of actual nitrogen per thousand square feet, shall consist of at least 20% slow-release nitrogen fertilizer and the annual rate per 12 month period shall not exceed 3.2 pounds of actual nitrogen per thousand square feet. Single applications may be done at intervals of no less than four weeks until the annual maximum is reached.

g. The fertilizer application requirements of this Section 5.2. shall apply with the same limitations to combination products, i.e. amount of nitrogen and phosphorus

3. EXEMPTIONS

The following activities shall be exempt from this Regulation:

a. Application of fertilizer for Agriculture/ Agricultural Use.

b. Application of fertilizer to home gardens, landscape ornamentals, shrubs, trees bushes, vegetables, fruit and container plants.

c. Application of mulch exempted

F. Education

1. The Town may rely on the Cape Cod Cooperative Extension to assist in maintaining a program of fertilizer education that is based on the BMP.

2. Fertilizer education may consist of, but is not limited to, collaboration with retailers to post in-store information on town fertilizer regulations; mailings and flyers for the general public concerning town fertilizer regulations, and other public educational efforts the BOH, from time to time, deems appropriate.

G. Enforcement, Penalties, Variance/Appeal

1. Enforcement and Penalties:

The Board of Health, through the Health Agent, Assistant Health Agent, or other enforcing officer or official designated by Board of Health, may enforce this Regulation and address violations thereof through any lawful process:

a. First offense a WARNING, shall be issued,

b. Second offense a fine of no more than $100.00 (one hundred dollars)

c. Third offense and subsequent violations a fine of $300.00 (three hundred dollars) per day may be imposed

2. Variance/Appeals

a. Variance

A request for variance to any part of this regulation may be made directly to the Board of Health. A variance may be granted when in the opinion of the Board of Health the public and environmental health will not be compromised. The applicant must provide a written request to appear at a Board of Health Meeting and provide an opportunity to provide information on why a variance should be granted that would provide equal protection to public health and the environment.

b. Appeal

Under Section 31 of Massachusetts General Law c. 111 any person or persons aggrieved by a Board of Health Order may request a hearing before the Board of Health by filing a written request within seven (7) days of receiving the Order. At the hearing the petitioner will have an opportunity to be heard and to show why an order should be modified or reconsidered. Any person aggrieved by final order of the Board of Health may seek relief there from within thirty (30) days in Barnstable Superior Court, as provided by the laws of the Commonwealth.

H. Amendments

Under Section 31 of Massachusetts General Law c. 111 no amendment to this Regulation shall be adopted until such time as the Board of Health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing.

No such amendment shall be effective unless the proposed amendment has been reviewed and approved by the Board of Health.

Amendments shall also be subject to the procedures set out in Sections 10 and 11 of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended. Specifically, amendments must also be consistent with the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07 and the Guidelines for Implementing Regulations set out therein, including the requirement for consistency with the BMP.

SECTION IX: THE TRANSFER STATION AND RECYCLING[24]

These Regulations provide for the safe and effective operation of the Town of Eastham, Solid Waste Transfer Station to protect human health, and to promote recycling.

A. Authority

The following regulation is adopted pursuant to MGL Chapter 111, Section 150A. This regulation supplements 310 CMR 19.000, which for enforcement purposes, is adopted by the Town of Eastham, and shall be located in Appendix 2. This regulation shall address:

1. Management of solid waste and recyclable materials, and
2. Transfer Station operational standards.

B. Definition of Terms

The definitions set forth in CMR 19.006 are included as Appendix 2 of these regulations.

C. Use of Transfer Station

1. Eligible for the use of Transfer Station facilities are: Eastham residents, non-resident taxpayers, businesses operating in the Town, and other persons visiting the Town.
    a. Such eligibility shall be evidenced by the purchase of a non-transferable sticker, displayed on all vehicles used for transporting waste to the Transfer Station. Both residents and visitors may also show eligibility by the purchase of single-entry coupons.
    b. Eligibility to purchase stickers shall be based on presentation of a valid registration for the vehicle to be used, and other verification of permanent or temporary residence, such as an address on a tax bill, a lease or seasonal rental agreement.
2. Organizations may conduct cleanup campaigns in Town parks, beaches, roadsides, or other public areas with pre-arrangement of the disposal from such campaigns with the Superintendent of Public Works (DPW).
3. The Cape Cod National Seashore is eligible after execution of a contract with the Town of Eastham delineating specific terms and conditions for use of the Transfer Station.
4. An annual operating license from the Board of Health is required for vehicles used for the COMMERCIAL collection of waste in the Town of Eastham.
5. A Swap Shop where residents take and leave useful items may be operated by the Recycling Committee under the supervision of the DPW. The removal of items for the express purpose of resale is prohibited.

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[24] Approved February 8, 1995
Effective March 1, 1995
Adopted May 31, 2007
Effective June 1, 2007
Revised July 31, 2014
Effective August 1, 2014
Updated 10.31.19
Effective 11.1.19

D. Management of Waste Materials

1. Facilities at the Eastham Transfer Station are operated for the collection and disposal of household and commercial waste generated only within the Town of Eastham unless otherwise directed and authorized by the Board of Health. Access shall be through the paved entry/exit road, during hours of operation only.

2. Waste materials are subject to restrictions that require separation of certain materials from the mass of co-mingled trash.

3. The following materials shall not be disposed of in the transfer station compactors. After Separation, these materials (most of which are recyclable) shall be placed in the receptacles or areas designated to receive them.

   a. Ashes from wood and coal stoves
   b. Batteries - wet cell, automotive, and rechargeable
   c. Bottles and other glass containers (Recyclable)
   d. Building and construction - demolition debris
   e. Cans and small metal containers - tin, aluminum or bi-metal (Recyclable)
   f. Mattresses, fully upholstered furniture, cushions and pillows
   g. Metals - both scrap metal and white goods (Recyclable)
   h. Newspapers (Recyclable)
   I. Oil and Antifreeze - automotive, marine or small engine
   j. Plastics- HDPE, milk, water jugs, plastic containers and heavy plastic products
   k. Tires - either on or off the rim
   1. Yard waste - leaves, grass clippings, brush, etc.
   m. Fluorescent bulbs, thermostats, and other items containing mercury
   n. Items with refrigerants such as AC units, dehumidifiers, etc.
   o. Mixed paper.
   p. Cardboard.
   q. Containers with coin deposit value.
   r. TV sets.
   s. Computer related devices.

More specific instructions shall be made available to the public by the Board of Health through periodic distribution of information materials.

4. Single Stream Recycling (SSR) is authorized for Haulers licensed by the Board of Health and SSR material generated outside Eastham may be accepted at the Transfer Station. SSR is a method of collecting recyclable materials in which all items (paper, plastic, and metal/glass containers) are mixed together, rather than being separated by residents. Private refuse haulers that collect recyclable materials typically use this method of recycling. Once collected, SSR materials are transported to a material Recovery Facility (MRF) where they are sorted into categories and sold as a commodity.

5. The following materials are strictly prohibited from the Eastham Transfer Station Site:

   a. Explosive materials, corrosive materials, pathological waste, biological waste, offal, entrails, etc. of butchered animals, radioactive materials, ashes, foundry sand, mining waste.

b. Sewage sludge, cesspool and other human waste, human and animal remains, motor vehicles.

c. Brush and tree stumps, liquid waste, including liquid chemical waste, sewage and other highly diluted water-carried materials or substances and those in gaseous form, or special nuclear by-product materials within the meaning of the Atomic Energy Act of 1954 was amended, or any other material which:

   i. may present a substantial endangerment to public safety or is banned by the Massachusetts Department of Environmental Protection
   ii. would cause applicable water quality or water effluent standards to be violated by the normal operation of the project, or
   iii. because of its size, durability or composition can not be processed at the project, may materially impair its structures or equipment or has a reasonable possibility of otherwise adversely affecting the operation of the plant.

d. Special waste shall not be accepted at the Transfer Station at any time. Such wastes include asbestos waste, infectious waste, sewages and water treatment sludges, and any solid waste not hazardous pursuant to 310 CMR 30.00 and that exists in such quantity or in a chemical or physical state so that particular management controls are required to prevent an adverse impact from the collection, transmission, transfer, storage, processing treatment or disposal of the solid waste.

e. Acceptable wastes, after any required separation and preparation, shall be placed in the compactor bins, or deposited in the areas or receptacles designated for each class of material, as instructed by appropriate signage and/or verbal instruction from Transfer Station employees.

f. Transfer Station employees shall periodically inspect loads of waste materials brought for disposal to ensure compliance with this regulation. Patrons entering the disposal area, shall upon request of a Transfer Station attendant, provide proof or answer questions concerning the origin or nature of their waste materials.

g. Transfer Station employees shall keep daily and periodic records of the type of waste received, and of the weights of waste and restricted materials shipped from the Transfer Station. These records will be kept in a manner and form appropriate to the financial and operational management of the Transfer Station, and for use in complying with the Commonwealth's stated waste-reduction goals.

6. Solid Waste Disposal Fees

To offset the costs of special handling, processing and transportation at the Transfer Station, fees are charged for the disposal of certain solid-waste items and materials. Fee Schedules are reviewed every year by the Board of Selectmen and the Town Administrator, and after public notice and hearing, are available at the Town Hall and the Transfer Station (The fee schedule will be discussed at the Public Hearing).

E. Violations and Penalties

Violations of the above regulations shall result in...Warning by Written Notice. Subsequent violations shall result in the issuance of fines, under MGL Chapter 40, Section 21.

SECTION X: THE PRACTICE OF BODY ART[25]

A. Authority

This regulation is adopted under the authority of Massachusetts General Law C.111 § 31.

B. Purpose and Scope

The purpose of this Regulation is to protect the health, safety, and welfare of the residents of, and the visitors to, the Town of Eastham through the control of infection and the spread of diseases including, but not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV) and human immunodeficiency virus (HIV). This Regulation protects the public health by prescribing minimal standards for the practice of body art through general sanitation of the premises; proper sterilization of all instruments and equipment; and requiring training in the standard procedures for the prevention of disease transmission. This will ensure that the practice of body art in the Town of Eastham shall be conducted with the highest professional standards.

C. Definitions

Aftercare - written instructions given to the client, specific to the body art procedure(s) rendered, about caring for the body art and the surrounding area. These instructions will include information about when to seek medical treatment, if necessary.

Bloodborne Pathogens Standard - OSHA Regulation 29 Code of Federal Regulations (CFR) 1910.1030.

Board of Health or Board - the Board of Health of the Town of Eastham

Body Art - the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine in the Commonwealth, such as implants under the skin, which shall not be performed in a body art establishment.

Body Art Establishment or Establishment - a specified place or premise that has been granted a permit by the Board, whether public or private, where the practices of body art are performed, whether for profit or not.

Body Art Practitioner or Practitioner - a specified person who has been granted a permit by the Board to perform body art in a Body Art Establishment that has been granted a valid permit by the Board.

[25] Approved February 7, 2001
Effective February 23, 2001
Updated 10.31.19
Effective 11.1.19

Body Piercing - the puncturing or penetration of the skin of a person with pre-sterilized single-use needles and the insertion of pre-sterilized jewelry or other adornment thereto in the opening. This definition includes piercing of the outer perimeter of the ear, but does not include piercing of the earlobe with pre-sterilized single-use stud-and-clasp ear-piercing systems.

Branding - inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.

Client - any person who has requested a Body Art procedure at a Body Art Establishment.

Contaminated Waste - any liquid, or semi-liquid, blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any waste containing blood and other potentially infectious materials, as defined in 29 CFR 1910.1030 (latest edition), known as "Occupational Exposure to Bloodborne Pathogens", or as defined as "infectious or physically dangerous medical or biological waste" in accordance with 105 CMR 480.000: STORAGE AND DISPOSAL OF INFECTIOUS OR PHYSICALLY DANGEROUS MEDICAL OR BIOLOGICAL WASTE (STATE SANITARY CODE, CHAPTER VIII).

Cosmetic Tattooing - see "Tattooing."

Department - the Massachusetts Department of Public Health or its authorized representatives.

Disinfectant - any product registered as a disinfectant by the U.S. Environmental Protection Agency.

Disinfection - the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

Ear-piercing - the puncturing of the lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.

Equipment - all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a Body Art Establishment.

Hand Sink - a lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms, or other portions of the body.

Hot Water - water that attains and maintains a temperature of one hundred ten to one hundred thirty degrees Fahrenheit (110°-130°F) or forty-three to fifty-four degrees Celsius (43°-54°C).

Instruments Used For Body Art - hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or may be exposed to body fluids during body art procedures.

Invasive - the entry into the client's body either by incision or insertion of any instruments into or through the skin or mucosa, or by any other - intended to puncture, break, or otherwise compromise the skin or mucosa.

Jewelry - any personal ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel; solid fourteen karat (14K) or eighteen karat (18K) white or yellow gold,

niobium, titanium, or platinum; or dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

Minor - any person under the age of eighteen (18) years.

Operator - any person who alone, jointly, or severally with others, owns, has care, charge, or control of any body art establishment as agent or leasee of the owner or as an independent contractor, but is not a body art practitioner.

Permit - approval in writing by the Board either:

a. To operate a body art establishment, or
b. To operate as a body art practitioner within a body art establishment.

Approval is granted in accordance with 105 CMR 124.000 and is separate from any other licensing requirement that may exist within communities or political subdivisions comprising the Board's jurisdiction.

Person - an individual; any form of business or social organization; or any other non-governmental legal entity including, but not limited to, corporations, partnerships, limited-liability companies, associations, trusts, or unincorporated organizations.

Physician - an individual registered by the Board of Registration in Medicine pursuant to Massachusetts General Law C. 112 § 2 as a qualified physician.

Procedure Surface - any surface of an inanimate object that contacts the client's un-clothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.

Sanitization Procedure - a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by the Department.

Sanitary - clean and free of agents of infection or disease.

Sanitized - effective disinfectant treatment by a process using intermediate disinfectants for enough time to reduce the bacteria count including pathogens to a safe level on semi- critical or non-critical equipment.

Scarification - altering the skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, which result in permanently raised wheals or bumps known as keloids.

Sharps - any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, needles, needle devices, lancets, scalpel blades, razor blades, and broken glass.

Single Use - products or items that are intended for one-time, one-person use and are disposed of after use on each client, including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.

Standard Precautions - a set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC). This method of infection control requires the employer and employee to assume

that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products. For guidelines and controls see:

Schillie S, Vellozzi C, Reingold A, et al. "Prevention of Hepatitis B Virus Infection in the United States: Recommendations of the Advisory Committee on Immunization Practices." MMWR Recomm Rep 2018;67(No. RR-1):1–31. DOI: http://dx.doi.org/10.15585/mmwr.rr6701a1.

Schillie S, Murphy, Sawyer M, et al. "CDC Guidance for Evaluating Health-Care Personnel for Hepatitis B Virus Protection and for Administering Postexposure Management." MMWR Recomm Rep 2013;62(No. RR-10):1–19.

Kuhar D, Henderson D, Struble, K, et al. "Updated U.S. Public Health Service guidelines for the management of occupational exposures to HIV and recommendations for postexposure prophylaxis." MMWR 2005; 54(No.RR09); p. 1-17.

CDC. "Recommendations for the prevention and control of hepatitis C virus (HCV) infection and HCV-related chronic disease." MMWR 1998; 47(No.RR-19).

CDC. "Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HBV, HCV, and HIV and Recommendations for Postexposure Prophylaxis." MMWR 2001; 50(RR11); 1-42.

Sterilize - the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Tattoo - the indelible mark, figure, or decorative design introduced by insertion of dyes or pigments into or under the subcutaneous portion of the skin.

Tattooing - any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.

D. Applicability

The Regulation shall apply to any person who operates a body art establishment or engages in the practice of body art as herein defined, except:

1. Physicians licensed in accordance with Massachusetts General Law C. 112 § 2 who perform body art procedures as part of patient treatment; and

2. Individuals who pierce only the lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system.

E. Operation of Body Art Establishments

Unless otherwise ordered or approved by the Board, each body art establishment shall be constructed, operated, and maintained to meet the following minimum requirements.

1. Physical Plant

a. All walls, floors, ceilings, and procedure surfaces within the body art establishment shall be smooth, free from open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.

b. All body art establishments shall be completely separated by solid partitions, or by walls extending from floor to ceiling, from any room used for human habitation; any food establishment or room where food is prepared; any hair salon; any retail sales; or any other such activity that may cause potential contamination of work surfaces.

c. Effective measures shall be taken by the body art operator and/or practitioner to protect against entrance into the establishment and against the breeding or presence on the premises of insects, vermin, and rodents. Insects, vermin, and rodents shall not be present in any part of the establishment, its appurtenances, or appertaining premises.

d. There shall be a minimum of forty-five square feet (45 ft2) of floor space for each practitioner in the establishment. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by dividers, curtains, or partitions, at a minimum.

e. The establishment shall be well-ventilated and provided with an artificial light source equivalent to at least twenty foot-candles (20 FC) three (3) feet off the floor, except that at least one hundred foot-candles (100 FC) shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

f. A separate, readily accessible hand sink with hot and cold running water, under pressure, preferably equipped with wrist- or foot-operated controls and supplied with liquid soap and disposable paper towels, shall be provided within the body art establishment. One (1) hand sink shall serve no more than three (3) body art practitioners.

g. There shall be a minimum of one (1) lavatory, excluding any service sinks, and one (1) working toilet in a body art establishment.

h. At least one (1) covered, foot-operated waste receptacle shall be provided in each practitioner area and each toilet room. Receptacles in the practitioner area shall be emptied daily, and solid waste shall be removed from the premises at least weekly. All refuse containers shall be lidded, cleanable, and kept clean.

i. All instruments and supplies shall be stored in clean, dry, and covered containers.

j. Practitioners who use ear-piercing systems shall conform to the manufacturer’s directions for use and all applicable U.S. Food and Drug Administration (FDA) requirements.

k. Reusable cloth items shall be mechanically washed with detergent and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

2. No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (e.g., seeing eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.

3. Information to be Kept on File

The following information shall be kept on file on the premises of a body art establishment and shall be available for inspection by the Board:

a. Employee information

   i. Full names and exact duties
   ii. Date of birth
   iii. Gender
   iv. iv. Home address
   v. v. Home and work phone numbers
   vi. vi. Identification photo

b. Establishment information

   i. Establishment name;
   ii. Hours of operation; and
   iii. Owner's name and address.

c. A complete description of all body art procedures performed.

d. Aftercare instructions for all body art procedures performed.

e. An inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including the names of the manufacturers and serial or lot numbers, if applicable. Invoices or orders shall satisfy this requirement.

f. A copy of the Service Agreement for the sterilizer.

g. Copies of all signed and dated Release Forms.

h. A copy of this regulation.

4. It shall be unlawful for any person to perform body art procedures unless such procedures are performed in a body art establishment with a current permit.

5. Each body art practitioner shall be a minimum of eighteen (18) years of age.

6. Each body art practitioner shall perform all body art procedures in accordance with Standard Precautions set forth by the U.S. Centers for Disease Control and Prevention.

7. Smoking, eating, or drinking are prohibited in the area where body art procedures are performed.

8. Operators and/or practitioners shall refuse service to any person who, in the opinion of the operator and/or practitioner, is under the influence of alcohol or drugs.

9. The practitioner shall maintain a high degree of personal cleanliness, conform to hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner shall thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

10. In performing body art procedures, the practitioner shall wear disposable single-use gloves. Gloves shall be changed if they become contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed before the next set of gloves is donned. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves shall not preclude or substitute for handwashing procedures as part of a good personal hygiene program.

    If, while performing a body art procedure, the practitioner's glove is pierced, torn, or otherwise contaminated, the procedure delineated in Section 9 above shall be repeated immediately. The contaminated gloves shall be immediately discarded and the hands washed thoroughly (see Section 9 above) before a fresh pair of gloves is applied. Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or new sterilized instrument or item before the procedure resumes.

11. Contaminated waste, as defined in this regulation, that may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled shall be placed in an approved "red" bag marked with the International Biohazard Symbol. It shall then be disposed in accordance with 105 CMR 480.000: STORAGE AND DISPOSAL OF INFECTIOUS OR PHYSICALLY DANGEROUS MEDICAL OR BIOLOGICAL WASTE (STATE SANITARY CODE, CHAPTER VIII), or, at a minimum, in compliance with 29 CFR 1910.1030, "Occupational Exposure to Bloodborne Pathogens." Used sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste that does not release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on site shall not exceed thirty (30) days, as specified in 29 CFR 1910.1030.

12. No practitioner shall perform any body art procedure upon a client who appears to be under twenty-five (25) years of age without the client presenting a valid State-issued picture identification card or driver's license with an appropriate photograph to confirm that the client is eighteen (18) years of age or older. No practitioner shall perform any body art procedure upon a client under the age of eighteen (18) years without the presence, consent, and proper identification of a parent, legal custodial parent, or legal guardian. Nothing in this section is intended to require a practitioner to perform any body art procedure on a person under eighteen (18) years of age regardless of parental or guardian consent.

13. The skin of the client shall be free of rash or visible infection. No body art procedure shall be performed upon any client affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions, or acute respiratory infections.

14. The skin of the practitioner shall be free of rash or infection. No person, operator, or practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions, or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that the person, operator, or practitioner could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

15. Proof shall be provided upon request by the Board that all practitioners in a body art establishment have either completed or were offered and declined, in writing, the Hepatitis B vaccination series. This offering should be included as a pre-employment requirement.

F. Public Notification Requirements

1. All establishments shall prominently display, and give to each client, a Disclosure Statement, provided by the Department, which advises the public of the risks and possible consequences of body art procedures.

2. Verbal and written instructions, provided by the Department, for the aftercare of the body art procedure site shall be provided to each client by the operator or practitioner upon completion of the procedure. The written instructions shall contain:

   a. Advise on the proper cleansing of the area which received the body art;
   b. Advise to consult a health care provider for:

      i. Unexpected redness, tenderness, or swelling at the site of the body art procedure
      ii. Rash
      iii. Any drainage from the site of a tattoo or excessive drainage from the site of any other body art procedure
      iv. Fever within twenty-four (24) hours of the body art procedure.

   c. Address and phone number of the establishment.

   These documents shall be signed and dated by both parties, with a copy given to the client and the operator and/or practitioner retaining the original with all other required records.

3. The facility permit holder shall also post in public view the address and phone number of the Board and the procedure for filing a complaint.

G. Client Records

1. Prior to performing any body art procedure, the body art practitioner shall request the client to complete the following Release Form, containing the following health information in a “Yes/No” format:

a. History of diabetes
b. History of hemophilia (bleeding)
c. History of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants
d. History of allergies or adverse reactions to pigments, dyes, or other sensitivities
e. History of epilepsy, seizures, fainting, or narcolepsy
f. The use of medications, such as anticoagulants, which thin the blood and/or interfere with blood clotting
g. Any other pertinent medical information.

2. The Release Form shall contain the following statement:

   If you answered "Yes" to any of the previous questions, please be aware that the performance of any body art procedure may jeopardize your health. Please consult with your personal physician as to the advisability and risks of any body art procedure.

   In signing this form, I acknowledge that the above information is accurate and true, that I am aware of the risks associated with the body art procedure desired, and release the operator and/or practitioner from any liability associated with the performance of said body art procedure.

   The operator and/or practitioner shall have the client sign and date the Release Form, in duplicate, confirming that the above information was obtained. The owner and/or practitioner shall give the duplicate Release Form to the client and retain the original for their records.

3. Each operator and/or practitioner shall keep records of all body art procedures administered, including date, time, identification and location of the body art procedure(s) performed, and the practitioner's name. All client records shall be confidential and shall be made available to the Board upon notification.
4. Nothing in this section shall be construed to require the practitioner to perform a body art procedure upon a client.

H. Injury Reports

A written report of any injury, infection complication, or disease to a client as a result of a body art procedure, or complaint of injury, infection complication, or disease, shall be forwarded by the owner and/or practitioner to the Board and to the Department with a copy to the complainant or injured client within five (5) working days of its occurrence or knowledge thereof. The report shall include:

1. The name of the affected client
2. The name and location of the body art establishment involved
3. The nature of the injury, infection complication, or disease
4. The name and address of the affected client's health care provider, if any
5. Any other information considered relevant to the situation

I. Records Retention

The body art establishment shall keep a record of all clients who have had body art procedures performed. The record shall include:

1. The name, date of birth, and address of the client

2. The date of the procedure
3. The name of the practitioner who performed the procedure(s)
4. The type and location of the procedure(s) performed
5. The signature of the client
6. If the client is a minor, proof of parental or guardian presence and consent
7. The original copy of the signed and dated Release Form

Such records shall be retained for a minimum of three (3) years and shall be available to the Board upon request. The Board and the body art establishment shall keep such records confidential.

J. Preparation and Care of the Body Art Area

1. Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where the body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be autoclaved after each use. Following shaving, the skin and the surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.

2. In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single-use, discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.

K. **Sanitation and Sterilization Procedures**

1. All non-single-use, non-disposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water, a solution of household chlorine bleach as recommended by the CDC, or by following the manufacturer's instructions to remove blood and tissue residue, and shall be placed in an ultrasonic unit operated in accordance with the manufacturer's instructions.

2. After being cleaned, all non-disposable instruments used for body art shall be packed individually in peel-packs and subsequently sterilized. All peel-packs shall contain either a sterilizer indicator or an internal temperature indicator. Peel-packs shall be dated with an expiration date not to exceed six (6) months.

3. All cleaned, non-disposable instruments used for body art shall be sterilized in a steam autoclave. The sterilizer shall be used, cleaned, and maintained in accordance with the manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit shall be available for inspection by the Board.

4. Sterile equipment shall not be used if the package has been breached or after the expiration date without first repackaging and resterilizing. Sterilizers shall be located away from workstations or areas frequented by the public. If the body art establishment uses only single-use, disposable instruments and products and uses sterile supplies, an autoclave shall not be required.

5. Each holder of a permit to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the Board. These test records shall be retained by the operator for a period of three (3) years and shall be made available to the Department upon request. If at any time, the results of the spore destruction tests indicate that the sterilizer is not attaining sterilization, the operator and/or practitioner shall immediately cease operation and inform the Board.

6. All instruments used for body art procedures shall remain stored in sterile packages until just prior to the performance of a body art procedure. When assembling instruments for body art procedures, the practitioner shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

7. All inks, dyes, pigments, needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used in accordance with the manufacturer's instructions.

8. The mixing of approved inks, dyes, or pigments, or their dilution, with potable water is acceptable. Immediately before a tattoo is applied, the quantity of the ink, dye, or pigment to be used shall be transferred from the container and placed in a single-use paper or plastic cup. Upon completion of the tattoo, these cups and their contents shall be discarded.

L. Requirements for Single-Use Items

1. All products applied to the skin, including, but not limited to, needles and body art stencils, shall be single-use and disposable.

2. Single-use items shall not be used on more than one client for any reason. After use, all single-use sharps shall be immediately disposed of in approved sharps containers and in accordance with 105 CMR 480.000.

3. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used only once and then discarded.

M. Permit Requirements

1. Body art establishments shall submit a scale drawing and floor plan of the proposed establishment for a plan review by the Board as part of the permit application process.

2. Body Art Establishment Permit

    a. No person, firm, partnership, joint venture, association, business trust, corporation, or organized group of persons may operate a body art establishment without a valid Body Art Establishment Permit from the Board.

b. Any person operating a body art establishment shall obtain an annual permit from the Board. The Board shall set a reasonable fee for such permit.

c. A permit for a body art establishment shall not be transferable from one person or place to another.

d. The holder of a Body Art Establishment Permit shall only hire practitioners who have complied with the requirements of the Section titled Body Art Practitioner Permit of this Regulation.

3. Body Art Practitioner Permit

a. No person shall practice body art procedures without first obtaining a Body Art Practitioner Permit from the Board. The Board shall set a reasonable fee for such permits.

b. The Body Art Practitioner Permit shall be valid from the date of issuance and shall automatically expire in one (1) year from the date of issuance unless revoked sooner by the Board.

c. An application for a Body Art Practitioner Permit shall include:

i. Name
ii. Date of birth
iii. Gender
iv. Residence address
v. Mailing address, if different
vi. Phone number
vii. Place(s) of employment as a practitioner
viii. Training and/or experience
ix. Proof of attendance at a bloodborne pathogen training program, or its equivalent, approved by the Board.

d. The applicant shall provide documentation of attendance and completion of courses approved by the Board, or completion of an examination, on the following subjects:

i. Anatomy;
ii. Skin diseases, disorders, and conditions (including diabetes);
iii. Infectious disease control, including waste disposal, handwashing techniques, sterilization equipment operation and methods, and sanitization/disinfection/sterilization methods and techniques.

e. Examples of courses approved by the Board include “Preventing Disease Transmission” (American Red Cross) and “Bloodborne Pathogen Training” (U.S. OSHA).

f. Training or courses provided by professional body art organizations or associations or by equipment manufacturers may also be submitted to the Board for approval.

g. Proof of liability insurance.

4. No permit shall be issued unless, following reasonable investigation by the Board, the body art establishment or practitioner has demonstrated compliance with the provisions of this Regulation.

5. All permits shall be conditioned upon the continuing compliance with the provisions of this Regulation.

6. All permits shall be posted in a prominent and conspicuous area where clients may readily observe them.

N. Complaints

1. All complaints shall be in writing.

2. The Board shall investigate all complaints received about an establishment's and/or practitioner's acts or practices which may violate any of the provisions of this Regulation.

3. If the Board finds that an investigation is not warranted because the alleged act(s) or practice(s) are not in violation of this Regulation, the Board shall notify the complainant of this finding and the reasons on which it is based.

4. If the Board finds that an investigation is warranted because the alleged act(s) or practice(s) may be in violation of this Regulation, the Board, after an appropriate investigation, shall apply whatever enforcement action deemed proper to remedy the situation and shall notify the complainant of its action.

5. Investigation of complaints may lead to enforcement actions including, but not limited to, revocation, suspension, or refusal to renew a permit by the Board.

O. Grounds for The Denial Of A Permit

1. The Board may deny a permit on any of the following grounds:

    a. Failure to conform to any provision of this regulation;
    b. Any actions or omissions which would indicate that the health or safety of the public would be at risk should a permit be approved;
    c. Any previous violation of this regulation;
    d. Any attempt to practice or obtain a permit through fraud, deceit, or misrepresentation;
    e. Criminal conduct which the Board determines to be of such a nature as to render the establishment or practitioner unfit to practice body art as evidenced by criminal proceedings resulting in conviction, guilty plea, plea of nolo contendre, or admission of sufficient facts;
    f. Any other just and sufficient cause which the Board may determine would render the establishment or practitioner unfit to practice body art;
    g. Practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
    h. Being habitually drunk or being dependent on, or a habitual user of, narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;

i. Knowingly permitting, aiding, or abetting an unauthorized person to perform activities requiring a permit; or
j. Having been disciplined in another jurisdiction in any way by the proper permitting authority for reasons substantially the same as those set forth in this Regulation.

2. The Board may deny a permit only after a hearing conducted by the Board.

3. Applicants denied a permit may reapply six (6) months after denial.

P. Grounds for The Revocation Of, Or The Refusal To Renew A Permit

1. The Board may revoke or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for revocation or the refusal to renew:

   a. Fraud or misrepresentation in obtaining a permit, or its renewal;

   b. Criminal conduct which the Board determines to be of such a nature as to render the establishment or practitioner unfit to practice body art as evidenced by criminal proceedings resulting in conviction, guilty plea, plea of nolo contendre, or admission of sufficient facts;
   c. A violation of any provision of the Regulation;

   d. Any other just and sufficient cause which the Board may determine would render the establishment or practitioner unfit to practice body art;

   e. Practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

   f. Being habitually drunk or being dependent on, or a habitual user of, narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;

   g. Knowingly permitting, aiding, or abetting an unauthorized person to perform activities requiring a permit;

   h. Continuing to practice while their permit is lapsed, suspended, or revoked;

   i. Having been disciplined in another jurisdiction in any way by the proper permitting authority for reasons substantially the same as those set forth in this Regulation; or

   j. The refusal to practice body art on a person because of such person's race,

2. The Board may revoke or refuse to renew a permit only after a hearing conducted by the Board.

Q. Grounds For The Suspension Of A Permit

The Board may summarily suspend a permit pending a final hearing on the merits of the question of revocation if, based upon the evidence before it, the Board determines that an establishment and/or practitioner is an immediate and serious threat to the public health, safety, or welfare. The suspension of a permit shall take effect immediately upon written notice of such suspension by the Board.

R. Hearings

1. Right to a Hearing - Unless otherwise specified in this Regulation, any person or persons served any order pursuant to any provision of this Regulation may request a hearing before the Board by filing a written petition, provided that such petition is filed with the Board within seven (7) days of receipt of such an order.

2. Hearing Notice - Upon receipt of a petition, the Board shall inform the petitioner and any other affected parties, in writing, of the date, time, and place of the hearing and of their right to inspect and copy the Board's file concerning the matter to be heard.

3. Time of Hearing - The hearing shall commence not later than twenty-one (21) calendar days after the date the order was received.

4. Hearing Procedures - At the hearing, the petitioner and any other affected parties shall be given an opportunity to be heard, to present witnesses or documentary evidence, and to show cause why an order should be modified or withdrawn.

5. Final Decisions After A Hearing

    a. The Board shall sustain, modify, or withdraw the order and shall inform the petitioner, in writing, of its decision within seven (7) days after the conclusion of the hearing. If the Board sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.

    b. If a written petition for a hearing is not filed with the Board within seven (7) days of receipt of the order or, if after a hearing, the order has been sustained in whole or in part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.

6. Appeal of the Final Decisions - Any person aggrieved by the final decision of the Board may seek relief therefrom within thirty (30) days in any court of competent jurisdiction, as provided for by the laws of this Commonwealth.

S. Penalties

1. Any person who shall violate any provision of this Regulation for which penalty is not otherwise provided in any of the General Laws of the Commonwealth or in any other provision of this Regulation shall, upon conviction, be fined not less than Ten Dollars ($10.00) nor more than Five Hundred Dollars ($500.00).

2. Any person who shall fail to comply with any order issued pursuant to any provision of this Regulation shall, upon conviction, be fined not less than Ten Dollars ($10.00) nor more than Five Hundred Dollars ($500.00).

SECTION XI: THE SALE OF TOBACCO PRODUCTS[26]

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development; whereas the Institute of Medicine concludes that raising the minimum age of legal access to tobacco products will reduce tobacco initiation, particularly among adolescents 15-17, and will improve health across the lifespan and save lives; whereas more than 80 percent of all adult smokers begin smoking before the age of 18; and more than 90 percent do so before leaving their teens; whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices; whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction; whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012; and whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history; now, therefore it is the intention of the Eastham Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Eastham Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

[26] Adopted May 28, 2015
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Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Distinguishable: Perceivable by either the sense of smell or taste.

E-Cigarette: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Nicotine Delivery Products: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a

tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non- Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Eastham Board of Health.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or side stream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars” and “hookah bars”.

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, nicotine delivery products or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Eastham is twenty-one (21).

2. Required Signage

    a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Eastham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.

    b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Eastham Board of Health that discloses current referral information about smoking cessation.

    c. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that “The sale of tobacco products, including e- cigarettes, to someone under the minimum legal sales age of 21 years is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by - of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Eastham without first obtaining a Tobacco Product Sales Permit issued annually by the Eastham Board of Health. Only owners of establishments with a permanent, non-mobile location in Eastham are eligible to apply for a permit and sell tobacco products at the specified location in Eastham.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Eastham regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the Eastham Board of Health annually.

5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.

6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein, until such employee reads this regulation and federal and state laws regarding the sale of tobacco products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

8. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

9. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

11. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site

of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

F. Prohibition of the Sale of Blunt Wraps

No Person or entity shall sell or distribute blunt wraps in Eastham.

G. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. No means, instruments or devices that allow for the redemption of any tobacco products, as defined herein, for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

H. Out-of-Package Sales:

The sale or distribution of tobacco products, as defined herein, in any form other than an original factory- wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

I. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

J. Vending Machines:

All vending machines containing tobacco products, as defined herein, are prohibited.

K. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

L. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Eastham shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

M. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Eastham shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

N. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

    a. In the case of a first violation, a fine of one hundred dollars ($100.00).

    b. In the case of a second violation within twenty-four (24) months of the date of the current violation, a fine of two hundred dollars ($200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.

    c. In the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars ($300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

    d. In the case of further violations or repeated, egregious violations of this regulation within a twenty-four (24) month period, the Board of Health may revoke a Tobacco Product Sales Permit.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

4. The Eastham Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. After a hearing, the Eastham Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

O. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

P. Enforcement:

Enforcement of this regulation shall be by the Eastham Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Eastham Board of Health or its designated agent(s) and the Board shall investigate.

SECTION XII: PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES[27]

A. Purpose

The purpose of this regulation is to protect the health of the employees and general public in the Town of Eastham.

B. Authority

This regulation is promulgated under the authority granted to the Eastham Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health.. . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

C. Definitions

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-Cigarette: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a de minimus amount of time.

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Eastham.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Municipal Building: Any building or facility owned, operated, leased or occupied by the Town of Eastham.

[27] Adopted May 28, 2015
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Retail tobacco store: an establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Eastham Board of Health.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

D. Smoking Prohibited

1. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.
2. Smoking is hereby prohibited in Eastham in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).
3. Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
    a. Town-owned parks, playgrounds, athletic fields and beaches;
    b. Retail tobacco stores; and
    c. The area within twenty-five (25) feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such twenty-five (25) foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.
4. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

E. Enforcement

1. An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
    a. $100 for the first violation;
    b. $200 for a second violation occurring within two (2) years of the date of the first offense; and
    c. $300 for a third or subsequent violation occurring within two (2) years of the second violation.
2. Each calendar day on which a violation occurs shall be considered a separate offense.

3. This regulation shall be enforced by the Board of Health and its designees.
4. Violations of Section 4(b) shall be disposed of by a civil penalty using the non- criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
5. Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
6. If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
7. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

F. Conflict With Other Laws Or Regulations

Notwithstanding the provisions of Section 4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

SECTION XIII: SEVERABILITY[28]

If any provision of this regulation is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any remaining provisions of this regulation. Any part of these regulations subsequently invalidated by a new state law or modification of an existing state law shall automatically be brought into conformity with the new or amended law and shall be deemed to be effective immediately.

[28] Updated 10.31.19
Effective 11.1.19

SECTION XIV: KEEPING OF NON-COMMERCIAL FARM ANIMALS

A. Purpose and Authority

To provide minimum standards for the keeping of non-commercial farm animals in the Town of Eastham to protect the public health, the Eastham Board of Health, in accordance with and under the authority granted by Massachusetts General Law (M.G.L.) Chapter 111, Sections 31, 122, and 155, has promulgated and voted to adopt the following regulation for keeping of non-commercial farm animals.

B. Applicability

The following regulations apply to the keeping of non-commercial farm animals, as defined below, in the Town of Eastham. These non-commercial farm animals may be permitted on lots containing a minimum of 20,000 square feet of buildable upland (30,000 for horses and cows) in all zoning districts except zoning districts where such uses are prohibited, subject to the requirements found in these regulations and other applicable state and local laws and regulations.

C. Definitions

Abutter – owners of the abutting land or property within three hundred (300) feet of the area of the property where the applicant proposes to keep the animals. A person will only qualify as an abutter, for the purpose of this regulation, if he or she possesses an ownership interest in the abutting land or property.

Animal shelter – an open or closed structure providing protection from wind, cold, rain and sun considered appropriate for the animal(s) in question. This includes barns, stables, open sheds, coops, hutches, pens, pigsties, rabbitries.

Buildable upland – land which is an area without exposed groundwater and that is not subject to the jurisdiction of the Eastham Conservation Commission pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c.131, section 40 and regulations promulgated pursuant thereto at 310 CMR 10.00: Wetland Protection; and /or by the Eastham Conservation Bylaw and the regulations of the Eastham Conservation Commission (see Wetlands definition below).

Farm animal – any animal which is not commonly kept as a household pet and which is normally and has historically been kept and raised on farms in the United States, including, but not limited to alpacas, cows, ducks, emus, geese, goats, horses, sheep, pigs, llamas, ostriches, rabbits, turkeys and chickens.

Feed management plan – a plan for the keeping and management of animal feed.

Manure management plan – a plan for the handling of manure, which should address cleaning, composting, storage, utilization and removal of manure.

Non-commercial farm animal – any farm animal kept on a residential property primarily for personal use where sale of the animal or animals or their byproducts such as wool, eggs, etc., is incidental to the principal use of the property and the reason for keeping the animal.

Permit holder – any person who has received a permit issued by the Health Department to keep non-commercial farm animals.

Pest management plan – plan which defines the measures that shall be taken by the permit holder to minimize the presence of rodents, insects and pests, and to minimize the creation of odors and other nuisances.

Wetlands – any bank, riverfront area, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding , as defined by the Massachusetts Wetlands Protection Act, M.G.L. c.131, section 40 and regulations promulgated pursuant thereto at 310 CMR 10.00: Wetland Protection; and /or by the Eastham Conservation Bylaw and the regulations of the Eastham Conservation Commission.

D. Permits and Application Requirements

1. Effective January 1, 2022, no person shall keep a non-commercial farm animal on any property within the Town of Eastham without a permit issued by the Health Agent, except for those with 3 or fewer rabbits or a total of less than 4 ducks and chickens.

2. Application Requirements

   a. Applications for a permit for keeping non-commercial farm animals shall be submitted along with the fee determined by the Select Board to the Eastham Health Department on a form approved by the Board of Health.
   b. Applications shall include the following information:
      i. Contact information - name, mailing address, phone, e-mail of permit applicant, and property owner(s) (if different), including emergency contact numbers.
      ii. Location – street address of the premises to be used.
      iii. List of proposed animals (number and species).
      iv. A certified plot plan or reasonable substitute of the entire lot, with dimensions of the area where animals will be kept and exercised and the location and dimensions of the shelters, food storage and waste collection sites within the area, the location of the primary residence structure(s), fences, abutting structure(s), septic systems, private wells and wetlands (within 100 feet of the area where animals will be kept, including exercise area). All plans should be drawn to scale or accompanied by a written statement of dimensions and the plan should specify

whether animal shelters will be new or existing structures. New or proposed structures may be hand drawn on existing plans.

v. An animal care plan as specified in Section E.4 below.

vi. If the applicant is not the owner of the property, documentation must be provided establishing that the property owner consents to the keeping of animals on the property.

vii. Annual water test results for routine parameters of on-site private well, or municipal water connection confirmation.

c. The applicant shall be required to comply with all other applicable laws, including but not limited to any applicable requirements of the Town's Zoning Bylaws, the State Building Code and/or any applicable requirements of the Conservation Commission. If the Animal Control Officer, Health Agent or other authorized agent, or the Board of Health, determines that a building permit may be needed, the applicant will be instructed to apply for a building permit with the Eastham Building Department. The Building Department will determine what approvals are needed, and will coordinate this with the applicant. All such building and zoning requirements must be met before the permit is issued by Animal Control Officer, Health Agent or other authorized agent.

d. If the Animal Control Officer, Health Agent or other authorized agent, or Board of Health determines that the location for keeping a farm animal identified in the permit application may impact or be in the jurisdiction of the Conservation Commission, the applicant will be responsible for contacting the Eastham Conservation Agent to determine whether additional review may be required.

e. All such building, zoning and conservation requirements must be met before the permit is issued by the Health Agent or other authorized agent.

3. Permit Requirements

a. The permit shall not be transferable to other animals of a different species, or assignable or transferable for the use of other persons or for the use on other premises.

b. Permits will be valid from January 1 through December 31, unless sooner revoked or suspended as set forth in Section G of this regulation.

c. A permit holder must apply for a renewal of the permit at least thirty (30) days prior to the expiration of the permit.

d. An inspection by the Eastham Animal Control Officer, Health Agent or other authorized agent shall be conducted before a permit may be issued or renewed.

e. If the permit holder intends to increase the number of animals or change the species of animals to be kept prior to the end of the permit year, the permit holder must notify the Health Department and receive an amended permit prior to bringing any such animals to the property.

f. All non-commercial farm animals kept under a permit issued by the Health Agent shall be registered on the permit, with exception of animals less than 3 months of age. The permit holder shall notify the Health Department within thirty (30) days of the animal reaching 3 months of age.

g. For properties served by private wells, the permit will include a requirement that well water be analyzed annually by a certified laboratory for routine parameters.

h. Persons keeping such animals prior to the effective date of these regulations may continue to do so for the life of the animals being kept provided that they apply for a permit within thirty (30) days after the effective date of this regulation; that they comply with Sections E.1 and E.4, and that they have maximum feasible compliance with the other provisions of these regulations as determined by the Health Agent or other authorized agent, or by the Board of Health.

i. 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.

E. **Basic Requirements**

1. General Care

a. Areas in which such animals are kept shall be subject to inspection by the Animal Control Officer, Health Agent or any agent authorized by the Town.

b. All such animals kept in the Town of Eastham shall be effectively kept and controlled so as not to become a nuisance, due to excessive noise, odor or other condition, or a danger to their own health or the public health. Allowing animals and/or animal waste to pollute any wetland or waterway is prohibited.

c. All animals shall be maintained on the premises of the permit holder.

d. No owner or keeper shall willfully or through neglect allow or permit any infestation of insects or vermin, or allow any condition which interferes with the use and enjoyment of neighboring properties through unreasonable noise, odor or other offensive condition.

e. All non-commercial farm animals kept in the Town of Eastham shall be provided with the appropriate food, water, shelter, and veterinary care in accordance with their characteristic needs and with generally recognized and accepted practices.

f. All animals shall be maintained in a clean and healthy condition, shall be properly vaccinated and shall not be subject to abuse, mistreatment or malnourishment.

2. Minimum Lot Size

ANIMAL TYPE	MINIMUM BUILDABLE UPLAND
Horses & Cows	30,000 sf
All Other Non-Commercial Farm Animals	20,000 sf

3. Setback Requirements (in feet)

In addition to any setback requirements of the Town's Zoning Bylaws, the Wetlands Protection Act and regulations, the State Building Code, and/or any other applicable law, all compost manure piles shall meet the following set back requirements:

	Compost Manure Pile
Street/Way	50ft
Abutter's Property Line	50ft
Private Water Supply Well	100ft
Public Water Supply Well	400ft
Wetland	100ft
Public Beaches	200ft

4. Animal Care Plan

No permit(s) shall be issued until an Animal Care Plan has been submitted to and approved by the Animal Control Officer, Health Agent, or other authorized agent of the Board of Health. Animal Care Plans shall account for all animals under the purview of these regulations. Animal care plans shall include, but not be limited to information on the following items:

a. Feed storage - the owner shall provide for vermin-proof and insect-free storage of dried animal feed.

b. Barn/Shelter cleaning and maintenance routine.

c. Waste Management Procedures

i. All animal waste shall be managed in accordance with an Animal Care Plan approved by the Animal Control Officer, Health Agent, or other authorized agent of the Board of Health. Animal waste may be either removed from the property or composted on the premises or stored temporarily (not to exceed two (2) consecutive weeks). No manure or used bedding shall be permitted to remain outside the barn or stable unless collected in compost piles.

ii. All animal waste stored or composted must be contained on site and shall be located to prevent runoff from entering any wetland or waterway, including drainage ditches.

d. Animal Shelter Minimum Provisions (see appendix 3 for more information on shelter size guidelines).

i. Light and Ventilation:

All structures used for the sheltering of animals shall have appropriate light and ventilation.

ii. Stables and Barns:

1) All barns and stables shall have in a conspicuous location, a class 1 fire extinguisher (minimum of 5 lb. ABC or equivalent) which is pressure tested annually or has a gauge.

2) All barns and stables shall be of durable construction and kept free from decay and damage, and in a clean and sanitary condition, free from insect and rodent infestation.

3) All stalls and pens shall be constructed in accordance with the Livestock and Poultry Best Management Practices Handbook, compiled by the UMass Extension: https://www.mass.gov/files/documents/2016/08/nu/livestock.pdf , as may be updated from time-to-time, or such other Best Management Practices Manual as may be approved by the Board of Health.

4) Barn floors shall have at a minimum one of the following:

- Stall rubber matting over a proper base material.
- Two (2) to three (3) inch thick wooden planks laid over good drainage material.

5) Bedding cleaned and changed in a routine and timely manner.

iii. Coops/Rabbitries:

All structures shall be of durable construction and kept structurally sound, free from decay and damage, and in a clean and sanitary condition, free from insect and rodent infestation, and constructed to prevent predators from gaining entry.

5. Maximum Number of Animals

The maximum number of animals (of each type) permitted may depend on the size of the proposed area for keeping the animals, as well as other factors determined by the Eastham Animal Control Officer, Health Agent or other Agent authorized by the Town, or the Board of Health. Such determination will be made based on facts and circumstances of each application to ensure that keeping of animals does not result in a public nuisance or a danger to public, environmental or animal health.

F. Variance

1. All variance requests will be considered by the Board of Health at a public hearing.
2. Variance to any section of this regulation may be requested in writing to the Board of Health.
3. Variance requests shall include a completed application, reason for the request, copy of the letter sent to abutters, certified mailing receipts and an application fee to be set by the Select Board. When such a request is received, a hearing shall be scheduled as per F. 4.
4. Notice of the public hearing relative to the request shall be provided to all abutters by certified mail by the Applicant and by legal notice in a local newspaper of general circulation by the Eastham Health Department. Both forms of notice shall provide for at least fourteen (14) days' notice prior to the public hearing.

5. The applicant must demonstrate that the issuance of a permit with the requested variance(s) will not be detrimental to the public welfare and would not endanger the animals, the health, safety or welfare of the occupants, visitors, or abutters to the property, or the environment, and that all other applicable requirements of this regulation have been satisfied. The Board may impose conditions, safeguards and other limitations on a variance consistent with public health, safety and welfare and the environment.

G. Appeals

1. All appeal requests will be considered by the Board of Health at a public hearing.
2. Appeals to any section of this regulation may be requested in writing to the Board of Health.
3. Appeal requests shall be filed within 21 days of receipt of the determination or Order, include a copy of or specific reference to the determination or Order being objected to, and a statement of the reasons for the objection.

H. Penalties and Enforcement

1. If there is a violation of this regulation or the conditions of any permit issued pursuant thereto, the Animal Control Officer, the Health Agent , or a designated agent, may issue a written order ("Order") to the person or persons having control of the premises and to the permit holder (if different) to correct the offending deficiencies as required.
2. In accordance with Massachusetts General Law Chapter 111, Section 31, any violation of this regulation shall be subject to fines of up to $1,000 for each offense. Each day the violation continues shall be considered a separate offense. Nothing contained herein shall preclude the Board from seeking equitable relief to enforce this regulation.
3. Any person who violates this regulation or the conditions of any permit issued pursuant thereto may be penalized by non-criminal disposition as provided by Massachusetts General Laws, Chapter 40, Section 21D and the Town of Eastham's Non-Criminal Disposition Bylaw. If non-criminal disposition is elected, then any person who violates any provision of this regulation, the conditions of a permit, or an order to correct issued pursuant thereto shall be subject to the following penalty:

OFFENSE	PENALTY
FIRST	$50.00
SECOND	$100.00
THIRD AND SUBSEQUENT OFFENSES	$200.00

4. The Animal Control Officer or Health Agent may modify, suspend, revoke or deny a permit if a permit holder is found to be in violation of any provision of this regulation or the conditions of any permit or order to correct issued pursuant thereto after a hearing.

5. Any person to whom an Order to Correct or permit modification, suspension or revocation has been served pursuant to this Section shall have the opportunity to request a hearing before the Board of Health. A request must be made in writing within fourteen (14) days after the Order has been served. For the purposes of this Section, an Order shall be deemed to have been served on the date of receipt of certified mail, except as stated otherwise on the Order. At the hearing, the person served with the Order shall be given an opportunity to present evidence and show why an Order should be modified or withdrawn. The terms of the order shall remain in effect and shall be complied with unless and until the order is reversed or modified by the Board.

6. This regulation is intended to further the objectives of and to act in concert with any existing federal, state and local laws concerning the maintenance of property, the keeping of animals and the abatement and prevention of nuisances, sources of filth and causes of sickness within the Town. Nothing in this regulation is intended to limit or restrict the authority of the Board of Health, the Animal Control Officer or the Health Agent to act in accordance with any other law within their jurisdiction, including but not limited to the authority of the Board of Health to abate nuisances pursuant to Massachusetts General Laws, Chapter 111, Sections 122-125A. The election of one remedy by the Board shall not preclude enforcement through any other lawful means.

APPENDIX 1 –"BEST MANAGEMENT PRACTICES FOR SOIL & NUTRIENT MANAGEMENT IN TURF SYSTEMS" UMASS EXTENSION, CENTER FOR AGRICULTURE. 2013

APPENDIX 2: 310 CMR 19.00: SOLID WASTE MANAGEMENT

Appendix 3 Guidelines on Animal Shelters

Animal Shelters shall be of sufficient size to ensure that the animal has shelter from the weather and sufficient room for the animal to be housed, stand, lie down, turn around freely, and fed in a humane manner in accordance with best management practices.

ANIMAL TYPE	SHELTER SIZE[29,30] (Minimum Sizes)	
Alpaca/Llama	6'x8' stall per animal	
Cows	*Bulls are prohibited*	
Calves (birth -6 months)	30 sf per calf	
Weaned (6-24 months)	35-40 sf per calf	
Mature Cow	75 sf per cow	
Goats		
Large Breed	12 sf per animal	
Small Breed	10 sf per animal	
Sheep		
Ewes with lambs:	20 sf per pair	
Weaned lambs	10 sf per lamb	
Lambing Pen:	20-25 sf per pen	
Ram Pen:	20-30 sf per ram	
Horses/Ponies/Donkeys	Stall Size	Ceiling Height
Miniature Horse	6' x 8'	8'
Small (Under 900 lbs.)	10' x 10'	8'
Riding (900-1100 lbs.)	10' x 12'	12'
Small Draft	12' x 14'	12'
Large Draft	16' x 16'	12'
Foaling	2X stall size for single animal	
Pigs	*Due to pigs sensitivity to the elements, shelter from direct sunlight & rain is required*	
40 lbs.	2.5 sf per animal	
60 lbs.	3.3 sf per animal	
100 lbs.	4.7 sf per animal	
Over 250 lbs.	10 sf per animal	
Chickens		
Large Breeds	2-3 sf per bird	
Bantam Breeds	1 sf per bird	
Other Animals:		
Ducks/Geese/Turkeys	10-15 sf per pair	
Emus	10-15 sf per pair	
Ostriches	60-80 sf per pair	
Rabbits	Hutch Size	Ceiling Height
	12 sf per rabbit	3'

[29] *The Center for Agriculture, Food, and the Environment, UMass Amherst, U Mass Extension/Crops, Dairy, Livestock, and Equine* ***Program, Fact Sheets*** **https://ag.umass.edu/crops-dairy-livestock-equine/fact-sheets/livestock;** *University of New Hampshire Co-op Extension, Resources https://extension.unh.edu/resource/housing-and-space-guidelines-livestockh.edu/resource/housing-and-space-guidelines-livestock*

[30] *Note: Where dimensions are provided in square feet, applicants may convert to X by Y dimensions (ex. 50ft. x 100ft.) for purposes of calculating usable area..*