

POWERS OF THE PUBLIC HEALTH COUNCIL

Section 150A. As used in this section and in section one hundred and fifty A1/2 the following words shall, unless the context otherwise requires, have the following meanings:?

"Department", the department of environmental protection.

"Facility", a sanitary landfill, a refuse transfer station, a refuse incinerator rated by the department at more than one ton of refuse per hour, a resource recovery facility, a refuse composting plant, a dumping ground for refuse or any other works for treating, storing, or disposing of refuse.

"Refuse", all solid or liquid waste materials, including garbage and rubbish, and sludge, but not including sewage, and those materials defined as hazardous wastes in section two of chapter twenty-one C and those materials defined as source, special nuclear or by-product material under the provisions of the Atomic Energy Act of 1954.

"Maintain", to establish, keep or sustain the presence of a facility on a site, whether or not such facility is in operation and whether or not such facility has been closed.

No place in any city or town shall be maintained or operated by any person, including any political subdivision of the commonwealth, as a site for a facility, or as an expansion of an existing facility, unless, after a public hearing, such place has been assigned by the board of health of such city or town in accordance with the provisions of this section, or, in the case of a facility owned or operated by an agency of the commonwealth, such place has been assigned by the department after a public hearing and unless public notice of such assignment has been given by the board of health or the department, whichever is applicable.

The determination by the board of health, or the department in the case of a state agency, of whether to assign a place as a site for a facility, or for the expansion of an existing facility, shall be based upon the site suitability criteria established by the department in cooperation with the department of public health pursuant to section one hundred and fifty A1/2, and any site assignment shall be subject to such limitations with respect to the extent, character and nature of the facility or expansion thereof as may be necessary to ensure that the facility or expansion thereof will not present a threat to the public health, safety or the environment.

Any person desiring to maintain or operate a site for a new facility or the expansion of an existing facility shall submit an application for a site assignment to the local board of health and simultaneously provide copies to the department and the department of public health. A copy of the application for site assignment shall be filed with the board of health of any municipality within one-half mile of the proposed site. Any municipality within such one-half mile shall be afforded all the procedural rights of an abutter for the purpose of administrative review by the department or public hearing by the board of health where the proposed site is located. The department shall, upon request by the board of health, provide advice, guidance and technical

assistance to said board during its review of a site assignment application. The department and a board of health may enter into such other cooperative agreements in addition to those herein specified for the purpose of achieving an effective and expeditious review of the application. The board of health may charge a reasonable application fee to cover the costs of conducting a hearing and reviewing technical data submitted to the board. The application fee may also include a portion of the reasonable costs of other technical assistance. The application fee shall be established in accordance with rules and regulations promulgated by the department.

Within 60 days of receipt of the application, the department shall issue a report stating whether the proposed site meets the criteria established under section 150A1/2 for the protection of the public health and safety and the environment. Any such reports shall be made available to the public in a timely manner prior to any public hearing concerning the site application.

Within sixty days of receipt of said application, the department of public health shall review said application and comment thereon as to any potential impact of a site on the public health and safety. The department of public health may, in addition to its comment, make or cause to be made a public report, in writing, as it relates to an expansion of an existing facility or the assignment of a place as a site for a facility and provide said report with its written comments to the board of health. The department of public health shall coordinate and cooperate with a board of health on any matter relating to said public health report.

Within 30 days of the receipt of the department's report, the board of health shall hold a public hearing satisfying the requirements of chapter thirty A. Within forty-five days of the initial date of such hearing, the board of health shall render its decision on whether to assign a site for a facility, in writing, accompanied by a statement of reasons therefor and publish notice of said decision including determinations of each issue of fact or law necessary to the decision.

No assignment shall be granted by the local board of health unless the department's report affirms that the siting criteria of said section one hundred and fifty A1/2 have been met by the proposed site. The board of health shall consider the concerns, if any, relative to the public health and safety cited by the department of public health. A local board of health shall assign a place requested by an applicant as a site for a new facility or the expansion of an existing facility unless it makes a finding, based on the siting criteria established by said section one hundred and fifty A1/2, that the siting thereof would constitute a danger to the public health or safety or the environment.

Any person aggrieved by a decision of a board of health in assigning or refusing to assign a place as a site for a new facility, or expanding or refusing to expand an existing facility, except a resource recovery facility in operation or under construction prior to July first, nineteen hundred and eighty-seven, may, within thirty days of the publication of notice of such decision, appeal under the provisions of section fourteen of chapter thirty A. For the limited purposes of such an appeal, a local board of health shall be deemed to be a state agency under the provisions of said chapter thirty A and its proceedings and decision shall be deemed to be a final decision in an adjudicatory proceeding.

No facility shall be established, constructed, expanded, maintained, operated or devoted to any past closure as defined by regulation unless detailed operating plans, specifications, any public health reports and necessary environmental reports have been submitted to the department, the department has granted a permit for the facility and notice of the permit is recorded in the registry of deeds, or if the land affected thereby is registered land in the registry section of the land court for the district wherein the land lies. Within 120 days after the department is satisfied that the operating plans, specifications and reports are complete, the department shall make a decision granting or refusing to grant a permit. The permit may limit or prohibit the disposal of particular types of solid waste at a facility in order to protect the public health, promote reuse, waste reduction and recycling, extend the useful life of the facility, or reduce its environmental impact.

Every decision by the department granting or refusing to grant a permit shall be in writing and shall contain findings with regard to criteria established by the department. Any person aggrieved by the action of the department in granting or refusing to grant a permit may appeal that decision under section 14 of chapter 30A. For the limited purposes of any such appeal, the department action shall be deemed to be a final decision in an adjudicatory proceeding.

Every person maintaining or operating a facility, including every political subdivision of the commonwealth, shall maintain and operate the same in such manner as will protect the public health and safety and the environment. Upon determination that the operation or maintenance of a facility results in a threat to the public health and safety or the environment, such site assignment decision by a board of health may be rescinded or suspended or may be modified through the imposition or amendment of conditions, at any time after due notice and public hearing satisfying the requirements of section eleven of chapter thirty A by the board of health of the city or town where such facility is located or by the department. Any person aggrieved by the decision of the board of health or the department in rescinding, suspending or modifying a site assignment may appeal said decision within thirty days of the publication of notice thereof pursuant to the provisions of section fourteen of chapter thirty A. For the limited purposes of such an appeal a local board of health shall be deemed a state agency under the provisions of said chapter thirty A and said decision shall be deemed to be a final decision in an adjudicatory proceeding and the decision of the department shall be deemed to be a final decision in an adjudicatory proceeding. The department may rescind, suspend or modify the permit upon a determination that the operation or maintenance of the facility results in a threat to the public health and safety or to the environment. Any person aggrieved by such decision of the department may, within thirty days of the publication of notice thereof, appeal said decision pursuant to the provisions of chapter thirty A.

If a facility is a landfill owned or operated by any person other than a town or agency of the commonwealth, such person shall pay to the town where the facility is located an amount in accordance with the provisions of section twenty-four A of chapter sixteen for each ton of solid waste which is disposed of in such landfill. On or before the twentieth day of each month every such person shall file a return subscribed under the penalties of perjury with the board of health of the town in which such facility is located, on such form as the commissioner of environmental protection shall require for determination of the fee imposed by this paragraph. Said fee shall be due and payable on or before the due date of the return. Notwithstanding the foregoing, however,

no fee shall be required or collected from an owner of a privately owned facility used by the owner thereof for the sole disposal of refuse generated from his own premises, and no such return need be filed.

No person shall dispose or contract for the disposal of solid waste at any place which has not been approved by the department pursuant to the provisions of this section or other applicable law.

The department shall allow any unlined landfill, owned or operated by a municipality or a solid waste district, to continue accepting refuse in compliance with existing approvals after January first, nineteen hundred and ninety-four; provided, that said municipality or district files a statement of intent with the department on or before August fifteenth, nineteen hundred and ninety-three, as to its intent to continue in operation after January first, nineteen hundred and ninety-four; provided further, that any landfill for which a statement of intent has been submitted shall operate in accordance with applicable federal and state statutes, regulations, existing approvals, and provisions included herein. For purposes of this paragraph, the term "existing approval" shall include any permit, site assignment, plan approval, condition of operation, or any other applicable order or rule governing the operations of a landfill issued or granted by a municipality, the department, or any other agency of the commonwealth, or for which an application was pending as of May first, nineteen hundred and ninety-three, when granted in accordance with applicable regulations; provided, that no such application shall be denied arbitrarily and capriciously. Any municipality or district which does not file such a statement of intent shall cease accepting refuse no later than January first, nineteen hundred and ninety-four, and shall commence closure of the landfill under its control subject to the approval of the department in accordance with regulations promulgated by the department. On or before October first, nineteen hundred and ninety-three, the department shall compile and publish a list of all landfills for which a statement of intent has been filed and classify separately, as supported by scientific data, those landfills which pose a significant threat to the public health, safety, or the environment, those landfills which pose a potential threat, and those landfills for which current scientific data demonstrate little or no present discernible threat or for which current data is inconclusive. In classifying landfills, the department shall utilize all available scientific data, including, without limitation, any scientific data submitted by the municipality or the district and any additional scientific data generated by the department relative to an assessment of the actual or potential migration of leachate or other contaminants off the site of the landfill. The department shall publish the list and accept public comment on said list. The department shall, if requested by November first, nineteen hundred and ninety-three, by the chief executive officer of a municipality or a district with a landfill on the list, participate in a public meeting in the municipality or district to be scheduled at mutual convenience within sixty days of such request. By February first, nineteen hundred and ninety-four, the department shall issue a final revised list taking into account any additional information generated or received through the comment and meeting process. The department shall work in conjunction with a municipality or a district to establish a schedule for the municipality or district to commence and complete closure of the landfill, considering the risks posed by the landfill and the fiscal capacity of the municipality or district to be incorporated in a consent order. If an agreement is not reached, the department may order any landfill which is classified as a significant threat to public health, safety or the environment to cease operations and commence closure, or take such other action as the

department deems necessary; provided, that the municipality or district may request an adjudicatory hearing on such order pursuant to chapter thirty A. A municipality or district operating a landfill classified by the department as a potential threat shall no later than July first, nineteen hundred and ninety-four, install a groundwater monitoring system approved by the department, and shall report the results of such monitoring to the department no more than quarterly thereafter. A municipality or district operating a landfill for which the department has determined little or no present discernible threat exists or for which current data is inconclusive shall no later than January first, nineteen hundred and ninety-five, install a groundwater monitoring system approved by the department, and shall report the results of such monitoring to the department no more than quarterly thereafter. It shall be a violation of this section to falsify or falsely report any monitoring results. If the results of such groundwater monitoring or other site specific assessment indicate that a landfill does pose a threat to public health, safety or environment, the department shall work in conjunction with a municipality or a district to establish a schedule for the municipality or district to commence and complete closure of the landfill, considering the risks posed by the landfill and the fiscal capacity of the municipality or district to be incorporated in a consent order. If an agreement is not reached, the department may order the municipality or district to cease operations and commence closure, or to take such other action as the department deems necessary; provided, that the municipality or district may request an adjudicatory hearing on such order pursuant to chapter thirty A. Nothing in this paragraph shall preclude the department from acting to address violations of this section, chapter twenty-one E or the regulations promulgated thereunder.

No site on which a facility was operated shall be conveyed or leased by the owner thereof, or be devoted to any use other than the operation of a facility, until notice that such facility was operated on the site is recorded in the registry of deeds, or if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies. No site on which a facility was operated shall be used for any other purpose without the prior written approval of the department.

The department shall adopt and may from time to time amend rules and regulations, and the commissioner may issue orders, to enforce the provisions of this section. Any person, including any political subdivision of the commonwealth who violates this section, or any order issued pursuant thereto, or any rule or regulation promulgated hereunder (1) shall be subject to a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than two years in a house of correction, or both, for each such violation; or (2) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation. Each day each such violation occurs or continues shall be deemed a separate offense. These penalties shall be in addition to any other penalties that may be prescribed by law.

The superior court shall have jurisdiction in equity to enforce the provisions of this section upon petition of the department or any aggrieved person.

Ash produced from the combustion of coal, including but not limited to fly ash and bottom ash, shall not be construed as refuse, rubbish, garbage, or waste material under this section when used as a raw material for concrete block manufacture, aggregate, fill, base for road construction, or other commercial or industrial purpose, or stored for such use. A location where such use or

storage takes place may be constructed, established, maintained, and operated without being construed as a facility or site for a facility under this section, and no assignment or approval from the board of health or the department shall be required for such construction, establishment, maintenance, or operation; provided, however, the department shall have jurisdiction to determine, after notice and hearing, that the establishment or operation of such a location has created a nuisance condition by reason of odor, dust, fires, smoke, the breeding or harboring of rodents, flies or vermin, or other causes, and to prevent or order abatement thereof; and provided, further, that no final disposal of ash produced by the combustion of coal may be accomplished by burial of such ash in the ground, other than as base for road construction or fill, unless the place where such disposal takes place has been assigned for such disposal by the board of health and plans for such disposal have been approved by the department pursuant to this section. The department may waive the requirements of the preceding paragraphs of this section and the application of any regulations, or portions thereof, promulgated under the preceding paragraphs of this section as they may apply to the disposal by burial of ash produced by the burning of coal, and shall review and may approve the plans, site and method of storage upon a determination that no nuisance is created and damage to the environment is minimal. Use of ash produced from the combustion of coal as intermediate cover material over rubbish at sanitary landfill facilities may be permitted by assignment of the board of health with approval of the department under this section.

Section 150B. The definition of "facility" in section two of chapter twenty-one D shall apply to this section. Any such facility shall be subject to this section and not subject to section one hundred and fifty A.

No place in any city or town shall be established or maintained or operated by any person, including any political subdivision or agency of the commonwealth, as a site for a facility, unless such place has either been assigned by the board of health of such city or town as a site for a facility after a public hearing, subject to the provisions of any ordinance or by-law adopted therein under chapter forty A or corresponding provisions of earlier laws, or, in the case of an agency of the commonwealth, has been assigned by the department of environmental protection, in this section called the department after a public hearing and unless public notice of such assignment has been given by the board of health.

The assignment of a place as a site for a facility shall be subject to such limitation with respect to the extent, character and nature of operation thereof as will insure that the facility imposes no significantly greater danger to the public health or public safety from fire, explosion, pollution, discharge of hazardous substances, or other construction or operational factors than the dangers that currently exist in the conduct and operation of other industrial and commercial enterprises in the commonwealth not engaged in the treatment, processing or disposal of hazardous waste, but utilizing processes that are comparable. In assessing the significance and degree of danger, the board shall consider and evaluate such evidence as all interested persons may submit to it including, but not limited to, evidence comparing the procedures and practices proposed for the conduct and operation of a facility with the procedures and practices existing in the conduct and operation of other industrial and commercial enterprises in the commonwealth not engaged in the

treatment, processing or disposal of hazardous waste which are conducted and operated in accordance with law and sound principles of modern engineering practice. The board of health shall notify the department upon receipt of an application to assign a place as a site for a facility. The department shall, upon request by the board of health, provide advice, guidance and technical assistance in reviewing the application. The department and a board of health may enter into such other cooperative arrangements in addition to those herein specified for the purpose of achieving a more effective and expeditious review of the application.

Every decision of the board of health in assigning or refusing to assign a place as a site for a facility shall be in writing and shall include a statement of reasons and the facts relied upon by the board in reaching its decision. The assignment of a place as a site for a facility shall be recorded in the registry of deeds, or if the land affected thereby be registered land, in the registry section of the land court wherein the land lies, before the construction, operation, or maintenance of the facility may commence.

Any person aggrieved by the action of a board of health in refusing to assign a place as a site for a facility may, within thirty days of the publication of notice of said decision, appeal to the superior court, which may affirm said decision of the board of health, remand the matter for further proceedings before the board of health, set aside or modify said decision, or order the board of health to take any action unlawfully withheld or unreasonably delayed if the court determines that the substantial rights of any party may have been violated because said decision violated constitutional provisions or was in excess of the statutory authority and jurisdiction of the board of health or was based upon an error of law or was made upon unlawful procedure or was unsupported by substantial evidence, or was arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with law.

Any person aggrieved by the action of a board of health in assigning a place as a site for a facility may, within thirty days of the publication of notice of such assignment, appeal to the department from the assignment of the board of health. Upon such appeal or upon the department's own initiative, the department may, after due notice and public hearing, rescind or suspend such assignment or modify the same by the imposition or amendment of terms, restrictions, conditions and requirements.

Upon determination that the maintenance and operation of a facility has resulted in a significant danger to public health or is not in compliance with the terms, restrictions, conditions and requirements established for its maintenance and operation in an assignment made pursuant to the provisions of this section, said assignment may be rescinded or suspended or may be modified through the imposition or amendment of terms, restrictions, conditions and requirements at any time after due notice and a public hearing by the board of health where such facility is located, upon its own initiative or upon complaint by any person aggrieved by such assignment, or by the department upon its own initiative or upon complaint by any person aggrieved by said assignment. Every such rescission, suspension or modification shall be in writing and shall include a statement of reasons and the facts relied upon by the board of health or the department in taking such action.

Any person aggrieved by the action of the board of health or the department in rescinding, suspending or modifying an assignment may, within thirty days of publication of notice or such rescission, suspension or modification of said assignment, appeal to the superior court, which may affirm said rescission, suspension or modification, remand the matter for further proceedings, set aside or modify said rescission, suspension or modification, order any action unlawfully held or unreasonably delayed if the court determines that the substantial rights of any party may have been violated because said rescission, suspension or modification violated constitutional provisions or was in excess of statutory authority and jurisdiction or was based upon an error of law or was made upon unlawful procedure or was unsupported by substantial evidence or was arbitrary, capricious or an abuse of discretion, or otherwise not in accordance with law.

The department shall adopt, and may from time to time amend rules and regulations, and the commissioner may issue orders, to enforce the provisions of this section. Any person, including any political subdivision of the commonwealth, who fails to operate and maintain a facility in accordance with the provisions of this section or in accordance with any rules, regulations, or orders hereunder promulgated (a) shall be punished by a fine of not less than one hundred nor more than twenty-five thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment; or (b), shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation. Each day's failure to comply with said provisions, rules, regulations or orders shall constitute a separate violation.

The superior court shall have jurisdiction in equity to enforce the provisions of this section upon petition of the department or any aggrieved person.

This section and section one hundred and fifty A shall not apply to any hazardous waste facility exempt from the licensing requirements of chapter twenty-one C, which was lawfully organized and in existence on May first, nineteen hundred and eighty, or to any hazardous waste facility which was licensed as such by any division of the department as of May first, nineteen hundred and eighty. If any facility has its license revoked and reapplies for a license after May first, nineteen hundred and eighty, the provisions of this section shall apply to said reapplication; provided, however, that the provisions of this section shall not apply to any facility, or the operation of any facility under receivership by a federal or state agency or by a judicially appointed and supervised receiver of any court of competent jurisdiction where the license of the facility has been suspended or revoked and said receivership has been imposed.

This section and section one hundred and fifty A shall not apply to any generator who stores, treats, processes, or disposes of any hazardous waste produced exclusively on-site; provided, however, that this section shall apply to any such generator who disposes of hazardous waste into or on the land. For purposes of this section, "on-site" shall be defined to mean the same or geographically contiguous property in single ownership which may be divided by public or private right-of-way; provided, however, that the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way; as well as noncontiguous properties owned by the same person but not connected by a right-of-way which such person controls and to which the public does not have access.

Notwithstanding any provisions of this section to the contrary, this section shall apply to the increase of capacity to store, treat, or dispose of any particular type of hazardous waste, unless such increase of capacity was approved by the department pursuant to chapter twenty-one C prior to the effective date of this paragraph, or unless an existing site assignment established pursuant to the requirements of this section provides for the conditions under which such increase of capacity shall be permitted.

Section 2. The commissioner shall administer the laws relative to health and sanitation and the regulations of the department, and shall prepare rules and regulations for the consideration of the council. The secretary of elder affairs and the commissioner shall jointly develop and submit to the council rules and regulations governing the licensure and operation of convalescent or nursing homes, rest homes, infirmaries maintained in a town and charitable homes for the aged. He may direct any executive officer or employee of the department to assist in the study, suppression or prevention of disease in any part of the commonwealth. He shall submit annually to the council a report containing recommendations in regard to health legislation.

The commissioner shall prepare from the birth, marriage and death records received by him under the provisions of chapter forty-six, and from the divorce returns received by him under the provisions of section forty-six of chapter two hundred and eight, such statistical tables as he deems useful, and shall make annual report thereof to the general court. The commissioner may transmit such information to the appropriate agency of the federal government to participate in the development of a cooperative system for producing uniform statistical information at the federal, state and local level. The commissioner may make further use of such records as he deems useful for administrative and research purposes connected with health programs and population studies. He shall, as soon as is reasonably practicable, cause the birth, marriage and death records to be bound with indexes thereto and shall retain their custody. He shall prepare an alphabetical index of such divorce returns showing the names of the parties, year and number of the judgment and the county in which the divorce occurred.

Prior to undertaking any activity or implementing any policy which would affect expenditures for medical assistance under chapter one hundred and eighteen E, including but not limited to the certification and licensure of providers of services under said chapter, the commissioner shall assure that such activity is reviewed by the commissioner of medical assistance.

The commissioner shall consult with the commissioner of mental health prior to taking an action substantially affecting the design and implementation of behavioral health services for children under guidelines established by the secretary of health and human services under section 16S of chapter 6A.

The commissioner, subject to the approval of the governor, may make such rules and regulations governing the conduct of written and oral examinations by the several boards of registration and examination under the department as shall be necessary to standardize procedures and protect the commonwealth and applicants for registration against fraud. Nothing in this section shall prevent a board from adopting, under authority of other provisions of law, specific rules and regulations that are not in conflict with the rules and regulations authorized by this section.



DUTIES OF LOCAL BOARDS OF HEALTH IN MASSACHUSETTS

The following is not intended as legal advice but as a quick and convenient summary. To avoid errors, please check the original source regulation or law before using these citations in an official document. For more detailed information, refer to the MAHB Legal Handbook, or the Guidebook for Massachusetts Boards of Health

Local boards of health in Massachusetts are required by state statutes and regulations to perform many important and crucial duties relative to the protection of public health, the control of disease, the promotion of sanitary living conditions, and the protection of the environment from damage and pollution. These requirements reflect the legislature's understanding that many critical health problems are best handled by the involvement of local community officials familiar with local conditions.

The following is a list of duties and responsibilities of local boards of health in Massachusetts. Each item includes a citation to the statute or regulation which imposes the duty or responsibility. The items have been grouped under general subject categories.

Following this listing of Required Duties is a list of Additional Powers of local boards of health which extend the local board's authority over the broad range of health, sanitation and environmental problems.

A. Records, Recordkeeping and Reports:

1. In cities, submit an annual report to the city council concerning the board's activities during the preceding year and concerning the sanitary condition of the city. M.G.L. c.111, s.28.
2. Maintain numerous records and retain them for required minimum retention periods. (A list of approximately three dozen categories of board of health records and their retention periods, will be found in the Guidebook for Massachusetts Boards of Health published by the Massachusetts Association of Health Boards.
3. Process numerous types of reports of cases of diseases. These reports are detailed in Food Borne Illness Investigation and Control Reference Manual, and MAHB Guide book.
4. Process of death certificates. M.G.L. c.46, s.11.

B. Health Care and Disease Control:

1. Upon request, telephone to a gas and electric utility company and certify in writing within seven (7) days of said telephone call that there is a serious illness in a residence such that no gas or electric company shall shut off or fail to restore gas or electric service

in any residence during such time as there is a serious illness. M.G.L. c.164, s.124A; 220 CMR 25.03(2).

2. Receive reports of cases of disease dangerous to public health. Keep records of these reports and also forward copies of these reports to the local school committee, and to other local boards in whose jurisdiction the patient resides, or may have contracted the disease, or may have exposed others. M.G.L. c.111, s.111. See 105 CMR 300.100 for list of diseases required to be reported.
3. Report cases of dangerous diseases to the Department of Public Health within twenty-four hours. M.G.L. c.111, s.112. See 105 CMR 300.100 for a list of diseases required to be reported.
4. Consult with the Department of Public Health regarding the prevention of dangerous diseases. M.G.L. c.111,s.7.
5. Send to the Department of Public Health weekly reports of deaths due to dangerous diseases. M.G.L. c.111 s.29.
6. Receive notices of school children sent home because of dangerous disease. M.G.L. c.71, s.55A. See the School Health Manual.
7. Report to the Department of Public Health cases of a certain contagious disease occurring at dairy farms. See 105 CMR 310.100-110 for list of such diseases required to be reported.
8. Receive reports of any inflammation, swelling, redness or unnatural discharge from the eyes of an infant less than two weeks old, and take immediate action to prevent blindness. M.G.L. c.111, s.110.
9. Receive reports of persons afflicted with cerebral palsy, and submit an annual report of these cases to the Department of Public Health. M.G.L. c.111, s.111A.
10. Provide anti-rabic vaccine and treatment. M.G.L. c.140, s.145A, 105 CMR 335.
11. Supervise or carry out the disinfection of dwellings which have housed a person who has suffered from or died of a disease dangerous to the public health. M.G.L. c.111, s.109.
12. Receive reports of food poisoning and send these reports to the State Department of Public Health, 105 CMR 300.000.
13. Receive notices from inspectors of the Division of Occupational Safety regarding violations of health laws or nuisances in industrial establishments, investigate these reports, and enforce appropriate laws. M.G.L. c.149, s.136.

C. Housing and Dwellings:

1. Enforce Chapter II of the State Sanitary Code: Minimum Standards of Fitness for Human Habitation, M.G.L. c.111, ss.127A and 127B: 105 CMR 410.000. enforcement of Chapter II includes inspecting dwellings (upon request or upon the board's initiative) for compliance with the minimum standards, certifying violations, issuing orders, holding

hearings, granting variances and instituting court proceedings if necessary to enforce such orders.

2. Enforce the State Lead Poisoning Prevention regulations. M.G.L. c.111, s.198; 105 CMR 460.000. Enforcement of these regulations includes inspecting dwellings (upon request or upon the board's initiative) for lead paint, issuing orders for removal of lead paint, and instituting court proceedings to enforce such orders if necessary.
3. Review and approve or disapprove preliminary and definitive plans for the subdivision of land. M.G.L. c.41, ss.81S-81V.
4. Inspect and certify public lodging houses for waterclosets, urinals, ventilation and cleaning. M.G.L. c.140, s.36.

D. Hazardous Wastes:

1. Assign the site for a hazardous waste disposal facility as follows (M.G.L. c.111, s.150B):
 - a. Notify the Department of Environmental Protection (DEP) of the receipt of an application to assign a site.
 - b. Assess significance and degree of danger to public health and consider and evaluate any evidence submitted.
 - c. Give public notice and hold a public hearing.
 - d. Every decision of the board in assigning or refusing to assign a site must be in writing and include a statement of reasons and facts relied on.
2. Chairperson of board serves on the local assessment committee, established whenever a developer seeks to construct and operate a hazardous waste facility within the city or town. Committee has certain duties including negotiating with the developer, entering a contract, and adopting necessary rules and procedures. M.G.L. c.21D, s.5.
3. Notify the mayor and city council or board of selectmen of the following (M.G.L. c.21C, s.4):
 - a. Pending applications for licenses for the collection, storage, treatment, or disposal of hazardous waste, upon notification from DEP.
 - b. Information supplied annually by DEP identifying types and quantities of hazardous waste generated, stored, treated or disposed of within the city or town.

E. Solid Waste:

1. Assign sites of sanitary landfills, refuse incinerators, waste storage or treatment plants, and refuse transfer stations, after a public hearing. Ensure that these do not present a danger to public health. M.G.L. c.111, s.150A.
2. Consider and act on applications for permits for the disposal of special wastes. 310 CMR 19.16.
3. Consider and act on applications for special permits for salvaging or recycling materials from sanitary landfill sites or refuse transfer stations. 310 CMR 19.18; 18.15(1).
4. Periodically inspect sanitary landfill sites, and provide written notice of deficiencies. 310 CMR 19.25.
5. Periodically examine and evaluate refuse transfer stations. 310 CMR 18.00.

6. Inspect and verify satisfactory completion of all corrective work to sanitary landfill projects. 310 CMR 19.26(3).
7. Handle requests for variances of regulations governing sanitary landfills and refuse transfer stations (forward these to DEP); keep notices of the grants of these variances 310 CMR 19.32; 18.27.
8. Keep on file an emergency plan governing emergencies occurring at a refuse transfer station. 310 CMR 18.21.

F. Septage and Garbage

1. Enforce Title V of the State Environmental Code; Minimum Requirements for the Subsurface disposal Sewage, 310.CMR 15.00.
2. Make rules and regulations for the removal, transportation and disposal of garbage, offal and other offensive substances. M.G.L. c.111, s.31B.
3. Issue permits for the removal or transportation of garbage, offal or offensive substances when such refuse has been collected in the city or town. Keep registry of all transporters of refuse through the city or town, and enforce local rules and regulations regarding such transport. M.G.L. c.111, s.31A.

G. Nuisances:

1. Investigate nuisances which in the board's opinion may be injurious to health. The board shall destroy, prevent or remove such nuisances, and shall make regulations relative to nuisances. M.G.L. c.111, s.122.
2. License noisome trades M.G.L. c.111, s.151.
3. Assign location for slaughter houses or other noxious or offensive trade. M.G.L. c.111, s.143.

H. Food:

1. Issue permits for all food service establishments, including restaurants and food service facilities in stores, recreational camps for children, family style campgrounds, institutions, hotels, motels, schools, retail food store, mobile food units and pushcarts, etc., 105 CMR 590.052.
2. Enforce Chapter X of the State Sanitary Code: Minimum Sanitation Standards for Food Establishments, 105 CMR 590.000. Enforcement includes conducting inspections, issuing orders, suspending or revoking permits where necessary.
3. Issue permits for plants which break and can eggs. M.G.L. c.94, s.89.
4. License milk pasteurization plants. M.G.L. c.94, s.48A.
5. City health departments shall have milk inspectors. Town boards may appoint milk inspector.
Inspectors must inspect and license milk producers and dealers. M.G.L. c.94, s.33 and s.40.
6. Issue permits for plants that bottle carbonated non-alcoholic beverages. M.G.L. c.94, s.10A; inspect such plants, and revoke permits where plants are found to be unsanitary or otherwise in violation of public health rules and regulations, M.G.L. 94 s.10C; 105 CMR 570 et. Seq. Send to the Department of Public Health copies of all licenses, applications and half the license fees, 105 CMR 570.002. Notify each owner prior to the expiration

date of each permit and close plants that fail to renew such permits, 105 CMR 570.002. M.G.L. c.94, s.10C.

7. Register and inspect bakeries and enforce State Bakery Regulations. M.G.L. c.94, s.94F; 105 CMR 550.000; 105 CMR 551.000. Furnish DPH with monthly reports of inspections, 105 CMR 550.001.
8. License plants that manufacture frozen desserts, M.G.L. c.94, s.65H; 105 CMR 561.000.
9. Inspect cold storage and refrigerated warehouses, M.G.L. c.94, s.67.
10. Enforce M.G.L. c.130, s.81 which prohibits importation of shellfish which have not been certified by a United States or foreign shellfish regulating agency.
11. Enforce statutes and regulations relative to the adulteration and misbranding of food. M.G.L. c.94, ss.186-195.

I. Pools and Beaches:

1. Enforcement Chapter V of the State Sanitary Code: Minimum Standards for Swimming Pools, 105 CMR 435.000. Enforcement includes issuing annual permits, conducting examinations, issuing orders, holding hearings, granting variances, taking water samples.
2. Enforce Chapter VII of the State Sanitary Code: Minimum Standards for Bathing Beaches, 105 CMR 445.000. Enforcement includes issuing annual licenses, approving plans for new or altered beaches, issuing orders, holding hearings, granting variances, receiving reports of accidents, taking water samples.
3. Prohibit swimming in water that fails to meet proscribed standards for bathing, 105 CMR 445.10 (-3).
4. Review plans for new or altered bathing beaches, 105 CMR 445.16.

J. Camps, Motels and Mobile Home Parks:

1. Inspect all recreational camps for children and family style campgrounds, motels, mobile home parks and cabins; and annually issue licenses for these facilities, M.G.L. c.140, ss.32B and 32C. Send copies of family style campground permits to the Department of Environmental Protection.
2. Enforce Chapter VI of the State Sanitary Code: Minimum Standards for Developed Family type Campgrounds, 105 CMR 440.000. Enforcement includes conducting examination; issuing orders; issuing, suspending and revoking licenses; holding hearings; granting variances.
3. Enforce Chapter IV of the State Sanitary Code: Sanitary Standards for Recreational Camps for Children, 105 CMR 430.000. Enforcement includes inspection, issuing orders and licenses, conducting hearings, granting variances.

K. Miscellaneous:

1. Pesticides
 - a) Local boards may make reasonable health regulations regarding pesticides provided such regulations are not inconsistent with the Massachusetts Pesticide Control Act, M.G.L. c.132B or state regulations, 333 CMR 2.00. Wendell v. Attorney General, 476 NE 2nd 585, 394 Mass 518 (1985). For example, a city or town may want to give its board of health an opportunity to determine whether the proposed application of pesticides in particular locations would be consistent with the products labeling or other restrictions imposed by the Department, Wendell v. Attorney General, *supra*, 394 Mass at 528.

- b) Receive public notice of the application of herbicides from applicants that intend to maintain a right of way by the application of herbicides. 333 CMR 11.07.
2. Nominate animal inspectors, M.G.L. c.129, s.15.
3. License massage parlors, M.G.L. c.140, s.51.
4. Issue burial permits, M.G.L. c.14, s.45.
5. License and if necessary revoke licenses for funeral directors. Transmit to the board of registration in embalming names and addresses of all licensees, M.G.L. c.114, s.49.
6. Approve location of cemeteries, M.G.L. c.114, s.34.
7. Retain charge of any case arising under M.G.L. c.111 in which the board has acted. M.G.L. c.111, s.32.
8. Enforce all local health regulations promulgated pursuant to M.G.L. c.111, s.31.

J. Smoking

1. Receive written complaints regarding the willful failure or refusal to comply with the Indoor Clean Air Act regarding restaurants, supermarkets or retail food outlets. M.G.L. c.270 s.22.
2. Inspect the area described in the complaint and enforce no-smoking laws. M.G.L. c.270 s.22.
3. Provide written response to complainant within 15 days and send copies of the complaint and response to DPH. M.G.L. c.270 s.22.

**ADDITIONAL POWERS AND AUTHORITY OF LOCAL
BOARDS OF HEALTH IN MASSACHUSETTS**

Local boards of health in Massachusetts have historically played a crucial role in the protection of public health, promotion of sanitary living conditions and protection of the environment. In recognition of the importance of local leadership and action in these areas, the legislature has enacted over the years numerous statutes which authorize and thereby encourage local boards to be responsible for dealing with the broad range of health, sanitation and environmental problems at the local community level.

The following is a list of statutes which grant additional powers and authority to local boards of health. Each item includes a citation to the appropriate statute. The items have been grouped under general subject categories which parallel, where possible, the categories in the prior lists of required local activities.

A. General Health Protection and Regulation:

1. Adopt and enforce any reasonable health regulations. M.G.L. c.111, s.31.
2. Issue an order reciting the existence of an emergency and requiring that such action be taken as the board deems necessary to meet the emergency. State Sanitary Code, Chapter 1, 105 CMR 400.200(B), pursuant to M.G.L. c.111, s.127A; and State Environmental Code, Title I, 310 CMR 11.05(1).

B. Health Care and Disease Control:

1. Direct the operation of and adopt rules for city and town medical dental and health clinics, M.G.L. c.111, s.50 and hospitals, M.G.L. c.111, s.92.
2. Require vaccination of inhabitants of the city or town. M.G.L. c.111, s.181.
3. Order the fluoridation of public water supplies. (This order may be overturned by a referendum vote.) M.G.L. c.111, s.8C.
4. Appoint school physicians. M.G.L. c.71, s.53.
5. In cities, and in towns with a population greater than ten thousand, establish public sanitary stations. M.G.L. c.111, s.33.
6. Isolation and quarantine of individuals and property relative to communicable disease Chapter 111 sections 92-121A

C. Housing and Dwellings:

1. Condemn a dwelling which is unfit for human habitation, order the occupants to vacate, order the owner to clean the dwelling or tear it down (or the board may itself clean or tear down). M.G.L. c.111, s.127B.

D. Nuisances:

1. Condemn all nuisances; clean or tear down a nuisance. M.G.L. c.111, s.128.

E. Food:

1. Inspect and condemn all unfit meat, fish vegetables, produce, fruit or provisions of any kind. M.G.L. c.94, s.146; 105 CMR 590.059.
2. Adopt and enforce regulations relative to the keeping and exposure of food for sale. M.G.L. c.94, 2.146.
3. Adopt and enforce regulations for bakeries and close bakeries found unfit for the production of handling of food or dangerous to the health of its employees. M.G.L. c.94 s.9D-9M, 105 CMR 550.14.
4. In towns, appoint milk inspectors. (City boards of health are required to appoint milk inspectors.) M.G.L. c.94, s.33.

5. Adopt bacterial standards for milk which are stricter than the standards adopted by the Department of Public Health M.G.L. c.94, s.13E.
6. Upon determination that drinking water in a dwelling or food service establishment is unsafe, order discontinuance of use or order provisions of a new source. M.G.L. c.111, s.122A.

F. Miscellaneous:

1. Adopt and enforce regulations to control air pollution. M.G.L. c.111, s.31C.

INSPECTION TIMETABLE FOR BOARDS OF HEALTH

The following list describes the majority of inspections Boards of Health are required to perform. It is not intended to be a comprehensive formal listing of all inspection requirements.

- 1) Food Establishments 105 CMR 590.000, State Sanitary Code Chapter X
-Inspect food establishments every six months.
- 2) Bathing Beaches 105 CMR 445.000, State Sanitary Code Chapter VII
-Inspect accredited bathing beaches twice during operating season.
-Take water samples twice monthly from accredited bathing beaches during bathing season.
-Periodically inspect no accredited beaches to determine compliance with physical and bacteriological water quality standards.
- 3) Swimming Pools 105 CMR 435.000, State Sanitary Code Chapter V
-Inspect periodically and before issuing annual permit.
-Take samples of swimming, wading or special purpose pool water for bacteriological analysis prior to its opening.
- 4) Family Type Campgrounds 105 CMR 440.000, State Sanitary Code Chapter VI
-Inspect periodically with the exception of those operated by the Commonwealth.
-Renew license annually if inspection reveals compliance with the provisions of the code.
- 5) Recreational Camps for Children 105 CMR 430.000, State Sanitary Code Chapter IV
-Inspect yearly and issue license annually if found to be in compliance with requirements of the code. Other town inspectors also must approve for license. Board of Health may also inspect at any time if there is reason to believe that a violation or violations of this chapter exist or upon request or complaint for any reason.
- 6) Subsurface Disposal of Sanitary Sewage 105 CMR 15.00,
State Environmental Code Title 5,
-Inspect the installation of all sewage disposal systems.
-Witness percolation tests, deep observation holes, and perform site examinations for each system.
- 7) Housing (Human Habitation) 105 CMR 410.000, State Sanitary Code Chapter II
-Inspect a dwelling or dwelling unit upon receipt of a written, oral or telephone request. Refer to code for specific timetable requirements.

- 8) Cabins, Motels and Mobile Home Parks M.G.L. Chapter 140, Section 32B, 32C
-Inspect periodically and renew licenses annually, of inspection reveals compliance with applicable regulations.
- 9) Disposal of Solid Waste by Landfill 310 CMR 19.00, State Environmental Code
-Periodically examine and evaluate sanitary landfills.

STATE REGULATIONS COMMONLY USED BY LOCAL BOARDS OF HEALTH

MASS. DEPT. OF PUBLIC HEALTH: THE STATE SANITARY CODE

105 CMR 300.00	Reportable Diseases and Isolation and Quarantine Requirements
105 CMR 400.000	General Administrative Procedures
105 CMR 410.000	Minimum Standards of Fitness for Human Habitation
105 CMR 430.000	Minimum Sanitation and Safety Standards for Recreational Camps for Children
105 CMR 435.000 *(310 CMR 12.00)	Minimum Standards for Swimming Pools
105 CMR 440.000 *(310 CMR 14.00)	Minimum Standards for Developed Family type Camp Grounds
105 CMR 445.000 *(310 CMR 17.00)	Minimum Standard for Bathing Beaches
105 CMR 460.000	Regulations for Lead Poisoning Prevention and Control
105 CMR 590.000	Minimum Sanitation Standards For Food Establishments

*Regulations which were previously available under asterisked D.E.P. CMR numbers. (State Legislature transferred to MDPH FY87)

310 CMR 15.00 Title 5 Minimum Requirements for Subsurface Disposal of Sanitary Sewage

310 CMR 19.00 Disposal of Solid Waste by Sanitary Landfill

PRICE LIST

105 CMR 400.000 through 419.000 (in one publication)	\$	plus postage
105 CMR 420.000 through 499.000 (in one publication)	\$	plus postage
105 CMR 590.000 through 595.000	\$	plus postage
310 CMR 11.00 through 17.00	\$	plus postage
310 CMR 18.00 through 21.00	\$	plus postage

NOTE: Any single regulation may be purchased separately.

ABOVE ARE AVAILABLE FROM: Secretary of State Bookstore at these locations:

State House
First Floor, Room 116
Boston, MA 02133

State House West
436 Dwight Street
Springfield, MA 01103

1-617-727-2834

1-413-784-1376 check number

THIS IS A GUIDE ONLY...

Update: Mar. 2003

Charlie Kaniecki, M.D.P.H. District Health Officer

MASSACHUSETTS GENERAL LAWS FREQUENTLY USED BY LOCAL HEALTH OFFICIALS

The following are cited in the Manual of Laws Relating to Public Health:

Chapter	Section old Page	Description	
40	54 347	Restrictions on Issuance of building Permits Availability of Water Supply	
41	23 367	Rescission of vote by selectmen; election of other officers, tenure, etc.	
41	81U 389	Subdivision Control Act: Board of health authority	
79A	13	Enforcement of state sanitary code; displacement of persons; moving expenses; state financial assistance; reports	507
111	31 881	Health regulations; publication; violation	
111	122	Regulations relative to nuisances; examinations	947
111	125A 949	Review of order adjudging the operation of a farm to be a nuisance	
111	127B 951	Dwellings unfit for human habitation; order to vacate or to abate nuisance; removal of occupants; demolition expense, lien; inspection reports, code violations; notices, enforcement proceedings, jurisdiction; appeal	
111	131 963	Compulsory examination of premises; complaint; warrant	
111	141	Application to county commissioners from refusal or neglect of board to abate nuisance; hearing notice	966

111	188	Disposition of fines and forfeitures	
	993n		
129	14B	Feeding garbage to swine; definitions; permit; application;	
	1315	revocation; processing of garbage; inspection of premises;	
		entry; record	
140	51	Massage; baths	1422
148	25B	Buildings used for human habitation; use of space heaters	
	1481		
188	14	Wrongful acts of lessor or landlord of buildings or premises	1563
		occupied for dwelling or residential purposes; criminal	
		penalties; civil remedies; jurisdiction; sections applicable	
		to acts of reprisal, waiver in leases or rental agreements	
		prohibited.	
218	26	District Courts – Criminal Jurisdiction (General Provisions)	
	1576		