

# CHAPTER 2

## LEGAL AUTHORITY AND PROCEDURES

### SOURCES AND SCOPE OF LEGAL AUTHORITY

In the area of public health, there are three primary repositories of authority: the federal government, the state government, and local authorities. Examination of the constitutional basis of power at each level of government helps one understand the role of local official health agencies.

**The Federal Government:** The powers of the federal government are limited to those functions explicitly delegated by the Constitution. All other powers are reserved for the states or the people. Although powers delegated to the federal government are limited, and although health and safety matters have traditionally been considered matters properly regulated by state and local governments, federal regulatory action derived from the powers to regulate interstate commerce and to levy taxes for the general welfare has considerable impact on state and local health programs and enforcement.

**The State Government:** In contrast to the defined powers of the federal government, state governments have broad powers. These include “powers to prescribe, within the limits of the state and federal constitutions, reasonable regulations necessary to preserve the public health, safety, and welfare.” These powers are commonly referred to as “police powers” and are derived from the nature of state government.

While there is no specific definition of the states’ police powers, the courts have historically found two basic purposes that justify a state’s actions with regard to the public health:

- actions for the protection of a given individual; and
- actions for the protection of society at large.

It is a widely accepted function of government to protect the health of society, even at the expense of the individual’s freedom.

Although the state government is the primary repository of authority in public health matters, there are constraints on this authority. In some cases, these may be explicit powers granted to the federal government, or prohibited to the states by the federal constitution or federal laws. In other cases, individual rights of citizens, as they are expressly enumerated in the federal and state constitutions, may take precedence over the state’s authority. In public health, policies such as requiring adequate sewage systems and performing inspections of private dwellings depend on a balance between the individual’s right to privacy and the governing agency’s overall concern with the health of the individual involved and society at large.

State governments are clearly the primary authority in the field of public health and possess the power to make laws for the public health. This power consists, in part, of being able to delegate authority. It is from this power that state agencies and local boards of health derive most of their authority. State agencies derive virtually all of their powers from laws enacted by the state legislature and approved by the Governor. Local governments also derive most (but not all) of their authority from such state laws.

**Local Authorities:** Local public health departments and agencies derive their authority primarily through explicit and specific delegation of power from the state legislature. This authority includes both the powers that are expressly granted by state statutes and those powers that are necessarily implied from those statutes. In delegating power, the state legislature places limits on the exercise of that power. In this way the state specifies the manner in which the power is to be exercised, the consequences of failure to exercise it, and the consequences of improper exercise of that power.

The extent of the state's delegation of power varies from designating the board of health as the primary enforcement agent of the state's regulations (as is the case with the housing section of the Sanitary Code) to authorizing the board of health to draft its own regulations regarding public health matters (see M.G.L. c. 111 §31). The only absolute restraint is that such regulations must be consistent with state law. In certain cases, statutes specify that local regulations must be approved by a state regulatory agency before they may become effective (e.g. air pollution, food service, radiation control, etc.). Local regulations may be more stringent than existing state mandates, but in no case may they be inconsistent with state regulations. In addition, regulations must be "reasonable" solutions to the problems they address. "Reasonableness" may be tested in court.

It should also be recognized, however, that local governments may also act without delegation of authority from the state, under their own ordinances or bylaws, subject to certain limitations. Under an amendment to the Massachusetts Constitution promulgated in 1986 (the "Home Rule Amendment"), local governments have the power, through their own ordinances and bylaws and without specific authorization by the state, to regulate in areas in which state law does not prohibit them from regulating. Cities and towns may, under this "home rule" power, (by approval of the city council and mayor in cities or by approval from the board of selectmen and town meeting in a town) promulgate general ordinances and bylaws relating to health matters (e.g. rubbish storage and collection, insecticide spraying, etc.). These ordinances and bylaws may, by their terms, be enforceable by the local board of health or some other public board or official (e.g. building inspector, police, etc.). They may also grant rule making authority to the local board of health. In short, cities and towns are free to promulgate health related bylaws and ordinances governing all subjects that are not prohibited (by state or federal law) from being regulated. However, such ordinances and regulations are not enforceable if they conflict with applicable federal or state law or if they are unconstitutional (because they are not reasonably related to legitimate local government interest, or some other reason).

To effect enforcement of the health regulations or ordinances promulgated by the local board or the city or town, and those regulations and statutes promulgated by the state but enforceable by the local board, the local boards are sometimes granted the power (in those regulations, statutes and ordinances) to make inspections and examinations, to issue, revoke or suspend licenses and permits, and to issue orders to any individual or business which is in violation of the regulations or standards. The local boards are directly responsible for the enforcement of these standards. Failure of a board of health to enforce the Sanitary Code or the Environmental Code may result in the state re-assuming its power to enforce state laws and regulations.

If it is determined by the Commissioner of the Department of Public Health (DPH), the Commissioner of the Department of Environmental Protection (DEP) or their designees that the local board of health has failed after a reasonable time to enforce the Sanitary or Environmental Code, DPH or DEP may assume enforcement powers to effect compliance with the Code (see M.G.L. c. 111 §127A and 105 CMR 400.300 as well as M.G.L. c. 21A §13 and 310 CMR 11.00).

Determination by the Commissioner is made in the following manner:

If, as a result of a study, inspection, or survey, the DPH or DEP determines that the board of health has not effected compliance with the Sanitary or Environmental Code, DPH or DEP will send a notice to the board of health.

The notice gives the board of health a reasonable amount of time to effect compliance, and requests the board to notify the DPH or DEP as to what action has been taken to effect compliance with the Code.

If the board of health fails to provide this information, or if DPH or DEP decides that insufficient action has been taken to effect compliance, it will be deemed that the board of health has failed in its duties, and DPH or DEP may assume the board's power to effect compliance.

Certain statutes provide for "coordinate powers" of DPH with local boards of health (e.g. M.G.L.c.111 §7 concerning the investigation of contagious or infectious diseases), or "concurrent responsibility and authority" (e.g. M.G.L. c. 111 §198 concerning enforcement of lead poisoning prevention and control statutes).

## **RULE MAKING: PROCEDURES FOR MAKING LOCAL REGULATIONS**

Historically, legislation and regulation have been tools for translating knowledge of causes of disease and ill-health into programs for the protection of public health.

Boards of health may determine that regulations are necessary to control the causes or to outline methods of dealing with a public health problem. Local regulations may not be inconsistent with state or federal regulations, but may be more stringent. Most state regulations are called "minimum standards" and local boards are authorized to make stricter standards.

The process of drafting regulations usually requires collaboration between the board of health and the town counsel or city solicitor who provides or coordinates the legal expertise necessary for the proper drafting of the regulations.

If the town or city employs a health officer, he/she may be asked to assume responsibility for defining and documenting the problem and drafting a proposed regulation (with the assistance of the city or town's attorney) for presentation to the board. The board then considers the issues, holds hearings as necessary, and makes the final decision.

Regulations may be prospective in nature. That is, boards of health may require precautions to avoid potential dangers as well as to restrict conditions proven to be harmful. (Benes et. al.1995).

M.G.L. c. 111 §31 is an unusually broad grant of authority which empowers boards of health to adopt "reasonable health regulations." The power of boards of health to adopt regulations under section 31 is extensive and "provides a comprehensive, separate, additional source of authority for health regulations" (Benes et. al.1995).

The following section is intended to assist the board in drafting regulations. Note that the first step in this process is developing and checking the rationale - the nature, documentation, extent and impact of the problem or need - before the board of health proceeds to the rule making stage. It may be that health problems or needs can be addressed through the use of existing state law, thus making new regulations unnecessary.

## **Guidelines for Drafting and Promulgating Regulations**

### **I. RATIONALE AND CONSENSUS OF BOARD**

- A. define problem
- B. demonstrate need for regulation
- C. get “go ahead” from the entire board prior to drafting
- D. hold public meeting or hearing on the problem if desired or required by general laws regulating the overall activity (e.g. assignment of sanitary landfill site)

### **II. CONTENT**

- A. Title and table of contents of regulation(s)
- B. Define terms
- C. Designate individual or agency responsible for enforcement
- D. Establish standards
- E. Describe duties and procedures
- F. Describe enforcement and sanctions
  - nature of sanctions
  - conditions warranting sanctions
  - process for applying sanctions
- G. Indicate the specific sections of the general laws under which the regulations are adopted
- H. Specify by what authority the regulations are adopted (M.G.L. c. 111 §31 and other relevant sections of the general laws)
- I. Indicate the effective date of the regulations
- J. Indicate the relationship of the new regulation(s) to any relevant existing regulations(s), including specific provision for regulation(s) to be repealed by acceptance of the new regulation(s)

### **III. STYLE/ FORMAT**

- A. Be brief
- B. Follow conventional numbering system for regulation(s), as defined by general laws or local regulations
- C. Express regulations in the present tense
- D. Use active voice
- E. Use third person singular to the extent possible
- F. Follow accepted punctuation form
  - the meaning of the regulations should not depend solely on the punctuation
  - if a minor change in punctuation changes the meaning of the regulations, they should be rewritten

### **IV. PROMULGATION**

- A. For Title V (septic system) regulations, hold a public hearing on regulations, with notice of hearing published twice and the first notice published 14 days prior to the hearing. For other regulations, a public hearing is not required.
- B. Approve regulations by a majority vote of the board
- C. Publish a summary of the regulations in the newspaper
- D. File attested copies of all regulations with DEP

V. LANGUAGE: Use clear and consistent definitions that are substantially consistent with traditional meaning. (For a good example of locally drafted regulations, see

the Dumpster Regulations of the Town of Winchester in the Appendix).

## **PERMITS AND FEES**

A board of health can require a permit, set a fee, or set out substantive performance standards as a part of a regulation. Boards may regulate by describing in a regulation all possible conditions under which an activity can be conducted without substantial injury to the public health and without a permit. In some instances, it would be difficult, if not impossible, to specify in a regulation conditions under which a person could conduct an activity without board of health review. The board may instead require a permit, whereby the board makes a decision based upon evidence presented on a case by case basis (Benes et. al. 1995).

Permits and fees may be authorized by a state statute or regulation, such as a permit for the transportation of garbage or refuse required by M.G.L. c.111 §31B. Boards of health may also require permits and set fees where there is no direct statutory authorization for a specific type of permit, such as the above, but is a necessary part of their general regulatory power. For instance, boards of health could adopt regulations, pursuant to their general regulatory powers under M.G.L. c. 111 §31, to require every person who owns or operates a genetic engineering facility to register and receive a permit prior to operation (Benes et. al.1995).

Boards of health may also be authorized to require permits and set fees pursuant to a town bylaw or city ordinance. If the amount of the fee is not determined by state statute or by a general town bylaw or ordinance, then boards may set the fee (Benes et.al.1995). However, the amount of the fee must be reasonably related to the administrative costs expected to be incurred by the board in connection with the board's regulation of the activity (i.e. the costs of board inspections, administrative and record keeping duties, etc.).

**Fees:** Fees imposed by the municipality tend to fall into one of two categories: user fees, based on the rights of the municipality as proprietor of the instrumentalities used; or regulatory fees (including licensing and inspection fees), founded on the police power to regulate particular businesses or activities (Benes et.al.1995).

Such fees are distinguishable from taxes in that:

- they are charges in exchange for a particular governmental service which benefits the party paying the fee in a manner “not shared by other members of society”
- they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service
- the charges are collected, not to raise revenues, but to compensate the governmental entity providing the services for its expenses (Benes et.al.1995).

**Permits:** If the board of health requires a permit as part of the regulatory process, it should set out standards on which it will rely in reaching a decision. It is not necessary for those standards to be excessively detailed, for it may be impossible “to specify in what circumstances permits should be granted and in what circumstances denied. Each case must depend upon its particular facts.” Nonetheless, the board is obligated in its regulation to provide standard or guidelines that the board will use in exercising its permit-granting authority (Benes et.al.1995).

If a permit is required for an activity, then the board of health, which has the power to grant or to

withhold the permit, must decide what action to take “in a fair, judicial and reasonable manner upon the evidence as presented ... keeping in mind the object of the applicable regulation” (Benes et. al. 1995).

### **INFLUENCING STATE ADOPTION OF REGULATIONS:**

If the board of health wishes to influence or change state regulations, or to call attention to a regional problem, it can follow several courses of action:

- contact relevant committees or boards
- discuss the issues with DPH or DEP and other regional officials
- contact DPH, DEP or other state agencies
- attend, and testify at, hearings held by DPH or DEP on proposed regulations.

The executive departments of the state government have rules of procedure and rules for adopting administrative regulations (e.g. 310 CMR 2.00, Rules for Adopting Administrative Regulations). It may be useful for you to review these rules to help you understand how state regulations are adopted.

### **ENFORCEMENT AND DUE PROCESS**

Local boards of health have the power and responsibility to enforce regulations made under the State Sanitary Code and Environmental Code (see M.G.L. c. 111 §§127A and 127B and 105 CMR 400.000 and other chapters of the State Sanitary Code. See also M.G.L. c. 21A §13, 310 CMR 11.00 and 310 CMR 15.0).

M.G.L. c. 111 §187 specifically authorizes boards of health to apply to the Supreme Judicial Court or Superior Court for enforcement of its orders relative to the public health, and specifies the applicability of M.G.L. c. 214 §§11-12. Jurisdiction over certain civil actions (such as actions for injunctions and actions for receiverships) brought by local boards of health to enforce Chapter II of the State Sanitary Code (Housing) is vested in the Superior Court, District Court and/or Housing Court under various provisions of M.G.L. c. 111 §§127A-127I.

Jurisdiction over criminal actions to enforce state and local regulations and ordinances and any other misdemeanors established by law is vested in the district courts, the Boston Municipal Court and the Superior Court under M.G.L. c. 218 §26. It should be stated that a criminal proceeding can only be commenced if there is a specific state statute which makes the public health violation a criminal offense. A board cannot proceed against a violator criminally in the absence of such a statute. In trying to determine whether a state statute is a criminal statute, the most relevant question is: Does the statute say that violators may be punished by a “fine” or “penalty” or by “imprisonment?” If the statute contains no such language, it is very unlikely that the board can commence any criminal proceeding.

To effect the enforcement of the Sanitary and Environmental Codes, local boards of health are encouraged to exhaust all administrative enforcement actions before pursuing court action. The procedural provisions of these codes are quite specific and should be referred to and followed exactly in each instance. The following outline suggests general strategies for the enforcement of the Sanitary Code and Environmental Code.

- A. Make an inspection
  1. routine, or
  2. upon request or complaint.

B. If you anticipate enforcement problems, you may want to take photographs of violations and, if court action is contemplated, take samples as necessary and observe procedure if specified in regulation.

C. Serve notice of the violation(s) and/or serve a copy of any orders; indicate statutory or regulatory basis for your enforcement action in the notice or order.

D. Determine whether the violation or condition constitutes an “emergency” or “imminent health threat.”

1. If the violation or condition constitutes an “emergency” or “imminent health threat,” the board should consider whether you can/should either order the owner to correct the violation immediately (e.g. within 24 or 48 hours) or to cease operations completely until the violation has been corrected (which may require a suspension of the owner’s permit without a prior hearing).
2. If the violation or condition does not constitute an emergency, the board should issue an order allowing a reasonable time for correction (Note: the specific code chapter under which the board is acting may specify a “standard” time for correction, such as 10 days).

E. Make a re-inspection on or soon after the deadline for correction (or, if the facility is closed due to an emergency permit suspension by the board, upon receipt from the owner of a verbal or written assertion that the violation leading to the suspension has been corrected).

F. If correction has not been achieved, issue a notice of non-compliance which states the grounds for the finding of noncompliance and lists what actions the board is taking (i.e. license or permit revocation or suspension or administrative penalty assessment) and which advises the owner of his right to a hearing before the board concerning that administrative action. If no license or permit suspension or revocation action or administrative penalty imposition is involved, skip below to item J; otherwise, go to item G.

G. Arrange hearing, if appropriate.

H. Hold hearing before the full board; board to issue decision after hearing.

I. Serve notice of imposition or penalty or revocation of license or permit, if applicable, after holding any hearings required by law and serving adequate notice.

J. In cases where no administrative action is to be taken, you may go directly to court and file a criminal or civil action, depending on the circumstances. Generally, criminal actions in the district court are appropriate for seeking payment of fines or penalties and civil actions in the Superior Court are appropriate when you are seeking injunctions (i.e. court orders to enforce a Board of Health order or decision).

K. Proceed with civil or criminal process.

Since legal action can be expensive, time-consuming and exhausting, especially for a small staff, it is important for the board to use administrative sanctions at its disposal, such as revocation of licenses and permits and imposition of administrative penalties, where possible. When administrative sanctions are not available, a criminal complaint may be required to obtain compliance.

**Inspections:** Numerous provisions of the General Laws as well as Chapter I of the Sanitary Code and Title 1 of the Environmental Code authorize local boards of health to enter and examine certain premises or facilities either upon complaint or according to a local plan for systematic, periodic area inspection. Inspections are to be conducted in the manner described in the relevant statute or the relevant provision or article of the Sanitary or Environmental Code. Generally, the statutes and regulations allow such inspections to be performed, without prior notice to the facility owner, at any “reasonable time.” (See sections below, items in Appendices, and subsequent chapters for additional information).

**Periodic Area Inspections:** Periodic area inspections serve to determine whether conditions exist that are deleterious to the health and well-being of the public. These may be regular (i.e. once a year, twice a year, etc.) or periodic “monitoring” inspections intended to make sure that the regulated facility is in compliance.

**Inspections Upon Request or Complaint:** Inspections may be performed upon the request or complaint of a person that credibly appears to have reason to believe that a facility is out of compliance with applicable regulations. These inspections typically involve the examination of premises for specific alleged conditions that may constitute violations of law, rather than a comprehensive examination of the entire premises.

If an occupant or owner objects to such an inspection, it is necessary to obtain a warrant to conduct the inspection. Chapter I of the Sanitary Code authorizes local boards of health to obtain a search warrant to conduct an inspection, “if any owner, occupant, or other person refuses, impedes, inhibits, interferes with, restricts or obstructs entry or free access to every part of the structure, operation or premises where inspection authorized by (the) Code is sought.” The board should have substantial evidence indicating that a search is necessary. If cause for a search is judged to be warranted, officials of the district court, with the help of the board or health officer, will develop an affidavit recommending that the court magistrate issue a search warrant (M.G.L. c. 111 §5(1)). The warrant apprises the owner, occupant or other person of the nature of and justification for the inspection. The board may seek police assistance in presenting the warrant.

If efforts to conduct an inspection are impeded by an owner, occupant or other person, the board of health may revoke or suspend any license, permit or other permission regulated by the board. This power should provide considerable leverage to the board to obtain compliance.

**Suggestions for Conducting an Inspection:**

Routine inspection of housing units should take place at a mutually convenient time. Establishments such as catering services, recreational camps, refuse disposal facilities and food manufacturing plants should be inspected at times when they are operating, when possible problems can be observed.

The inspector should identify him/herself, show his/her credentials, and state his/her intent to inspect the premises and the nature of the inspection.

If entry is refused, the inspector should leave and report the refusal to the board of health for further action, such as approval of obtaining a search warrant for the inspection.

At the time of inspection, the inspector should note all violations and complete the appropriate inspection forms.

If expert assistance is deemed necessary but is not available at the time of the inspection,



the inspector should complete the form to the best of his/her ability, indicating areas that require a separate inspection with expert assistance. The board should promptly schedule the expert inspection.

At the conclusion of an inspection, the inspector should report all violations to the owner or occupant of the premises, the operator of the establishment, or some other responsible person as may be specified in statutes and regulations.

**Orders:** Public health officials may issue an order for compliance with the Sanitary or Environmental Codes whenever a violation is found. Such an order gives notice to the violator that a violation exists and serves notice upon him/her to correct it within a specified time. Failure to comply with an order may result in other legally sanctioned procedures, such as commencement of civil proceedings or criminal prosecution in court.

In enforcing local regulations and the Sanitary and Environmental Codes, local boards have the authority to serve orders on all persons in violation of regulations.

Orders are served in the following manner:

- personally, by any person authorized to serve civil process, or  
by any person authorized to serve civil process, by leaving a copy of the order at the individual's last and usual place of abode, or
- by sending the individual a copy of the order by registered or certified mail, return receipt requested, if the individual is within the Commonwealth, or
- by posting a copy of the order in a conspicuous place on or about the premises and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality where the building or premises affected is situated, if the individual's last and usual place of abode is unknown or outside the Commonwealth.

**Emergency Powers:** In addition, local boards possess enforcement powers for emergency situations. Regulations 105 CMR 400.000 (Chapter I of the Sanitary Code) and 310 CMR 11.00 (Title I of the Environmental Code) grant local boards the authority, in accordance with the provisions of M.G.L. c. 111 §30, to dispense with ordinary enforcement procedures in the interest of protecting the public health in emergency situations. The board may, without notice or hearing, issue an order citing the existence of an emergency and requiring that such action be taken as the board of health deems necessary.

The agent of the board of health, or director or commissioner of the health department, as the case may be, is authorized to act for the board in cases of emergency or in cases when the board cannot conveniently meet. She/he has all the authority that the board has, but must report emergency actions to the board for approval within two days, and must be directly responsible to and under the control of the board (M.G.L. c. 111 §30).

**Hearings:** Boards of health may hold hearings upon their own initiative, or upon petition by any party wishing to be heard concerning a public health matter. Usually hearings are requested by people who wish to contest an order issued by the board of health for correction of a violation of state or local regulations. Hearings typically provide opportunities for individuals to show why an order should be modified or withdrawn. In addition, hearings may serve as a forum for the discussion of proposed or existing local or state regulations.

In certain cases specified in statutes or regulations, the board may be required to hold a public

hearing before granting a license, before making local regulations, or before revoking a license or permit. For example, a hearing must be held before the board grants variances under the Sanitary or Environmental Codes.

Unless it is specifically prohibited by an article of the Sanitary or Environmental Codes (in which case an appeals process is outlined), any person or group of people may request a hearing following an order served on that individual or group by the board of health.

- The petition must be in writing and received by the board within seven days after the order was served, unless differently specified by local regulation. If the petition is not received within seven days, each day's violation constitutes a separate offense.
- The board must arrange the hearings within 30 days after the order was served and must inform the petitioner of the time and place of the hearing under provisions of the Code.
- The hearing may be postponed if the petitioner supplies sufficient reason.
- After the hearing, the board sustains, modifies, or withdraws the order and informs the petitioner of the decision in writing.
- If the order is sustained or modified, it must be carried out within the time period designated in the original order or in the modification. Each day's failure to comply constitutes a separate offense.
- The board of health must make every notice, order and other documentation of the hearing a matter of public record in the office of the town or city clerk, or in the office of the board of health.

Boards of health conduct hearings that are either quasi-judicial (concerning orders, licenses, permits or other such matters) or quasi-legislative in nature (involving debate of new or existing local regulations). The following outlines suggest practices for each type of hearing:

**Quasi-Judicial Hearings:**

- The hearing officer should be impartial and yet familiar with the particular case and the laws and regulations pertinent to the case (M.G.L. c. 30A § 1A \_).
- Hearings must be public unless permitted by the open meeting law to be closed according to the procedure outlined in M.G.L. c. 30A § 11A \_.
- The parties involved may be represented by counsel. The counsel may be either a lawyer or non-lawyer.
- The names of all parties, counsel and witnesses (and on whose behalf they are appearing) should be included in the hearing records.
- The health officer should introduce him/herself and direct the hearing by stating the purpose of the hearing and highlighting the main issues of the case.
- Although agencies need not observe the rules of evidence observed by courts, evidence may be admitted "only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs" (M.G.L. c. 30A § 11). Evidence may be taken in any order.
- The petitioner has the burden of proof and should proceed first.
- Both parties should be allowed sufficient time to state their cases. Any witness may be cross-examined by either party.

- In very informal hearings, it may be appropriate for the hearing officer to help the party present his/her full case and offer advice as to his/her legal rights.
- In minor matters, the hearing officer may announce the decision immediately. The decision should be immediately noted on the record. In lengthy or complex hearings, it is better to reserve the decision and render a determination in writing with a well-reasoned opinion in support of the decision. The decision must be served on the party and the party's counsel. Decisions may be delivered by mail. Information describing procedures for appeal should be included in the decision.

**Quasi-Legislative Hearings:** Quasi-legislative hearings are usually held before the board of health promulgates rules, regulations or standards. The participation of interested groups in quasi-legislative hearings provides local boards with a basis of information for the development of effective regulations and may help secure voluntary compliance with new or existing regulations.

- Hearings should be scheduled far enough in advance for the parties involved to arrange their representation and to prepare their testimony.
- Notice of the hearing may be made by publication in a local newspaper and through letters to interested groups and corporations.
- When a new regulation is proposed, a preliminary draft ought to be available in advance of the hearing.
- All parties should be given equal time to present their case.
- Only hearing officers may ask questions of either party. Cross-examination is not allowed in quasi-legislative hearings.
- Each group should be given the opportunity to submit a supplementary written statement.
- Participation of parties is voluntary. Only in very rare instances is specific information subpoenaed for quasi-legislative hearings.

**Appeals:** After the hearing, any individual not satisfied with the final decision of the board may appeal the decision to a court of competent jurisdiction to the extent allowed by law. The right of the aggrieved party to appeal the board's decision is not automatic. There is no statute giving an aggrieved party the right to challenge any final administrative decision of a local board of health, as there is with final state agency administrative decisions (see M.G.L. c. 30A). However, aggrieved parties may bring an action under M.G.L. c. 12 §11I alleging that their civil rights were violated. Alternatively, an aggrieved party could bring "an action in the nature of certiorari" in Superior Court under M.G.L. c. 249 §4 seeking to "correct errors" in the administrative proceedings before the board of health.

**Penalties:** The local board of health may revoke or suspend permits and licenses it has granted, with or without a hearing, as specified in the applicable laws and regulations. It is also authorized to seek in court to impose penalties on any individuals who violate provisions of the Sanitary or Environment Codes in any or all of the three following ways:

- Anyone who impedes inspection of any structure, operation or premises after a search warrant has been presented shall be fined not less than \$10 nor more than \$500.
- Anyone who fails to comply with an order issued by the board of health shall be fined, upon conviction in court, not less than \$10 nor more than \$500. Each day's failure to comply with an order is considered to be a separate violation.
- Anyone who violates any provision of the Sanitary or Environmental Codes for which no penalty is provided in the code or in the General Laws shall be fined upon

conviction in court, not less than \$10 nor more than \$500 (see M.G.L. c. 111 §127A, and the Sanitary and Environmental Codes: 105 CMR 400.700; 310 CMR 11.10).

**Variances:** The board of health may grant a variance to the application of any provision of the Sanitary or Environmental Code (except provisions regarding conditions deemed to endanger or impair health or safety, and those regarding solid waste disposal facilities which may only be granted by DEP) when, in the opinion of the board, the enforcement would do a manifest injustice, **provided** that the variance:

- (1) does not conflict with the spirit of the minimum standards,
- (2) all affected parties have been notified, and
- (3) a hearing has been held.

Variations granted by the board of health must be in writing. A copy of each variance must be kept in the office of the board of health. Notice of the grant of variance must be filed with the Commissioner of Public Health, or with the Commissioner of Department of Environmental Protection, in a case in which a variance to a provision of the Environmental Code is granted.

The board may limit the variance by whatever qualifications or conditions (including time limitations) it deems necessary. The board may also revoke, modify or suspend the variance, in whole or in part, by notifying the holder in writing. If this happens, the holder of the variance in question may request a hearing in accordance with 105 CMR 400.800(B) (Chapter I of the Sanitary Code) and 310 CMR 11.12 (Title 1 of the Environmental Code).

**Court Procedures:** The board of health may commence a court action when other efforts to obtain compliance with local or state laws or regulations have failed. There are two basic types of action - civil and criminal. An example of a civil action is an action in Superior Court under M.G.L. c. 111 §127A to “enjoin” (i.e. stop) a violation of the State Sanitary Code. An example of a criminal action is an action in the District Court seeking monetary penalties for violations of the Sanitary Code.

In a civil action, the town attorney must file a complaint in court and serve a copy of it to the defendant. To start a criminal action to enforce compliance with the law, the health officer (or member of the board of health or an agent of the board) signs and files, with the court having jurisdiction, an application for a complaint, sometimes called an “information,” setting forth completely and precisely the violations. The city or town attorney may file the application. A clerk in the court will serve the complaint on the defendant. The parties will then be required to appear at a show cause hearing before a magistrate. If the magistrate finds just cause, a complaint will be issued and a trial will be scheduled.

**Civil Proceedings:** Civil proceedings usually follow this pattern:

Complaint by board

Answer to complaint by defendant

Period of “discovery”

Trial

If the board prevails, court will “execute judgment”: judge may make appropriate order to correct violation (injunction) impose fine or other penalty, and/or may attach the property or garnish wages of the violator.

**Criminal Proceedings:** In criminal proceedings, the sequence of events is approximately as follows:

- Board or its agent files complaint/application in court (usually in the district court)
- Clerk of court issues summons (upon application by board of health or other applicant)
- Show cause hearing is held to determine whether a complaint should be issued by the court
- Court issues complaint, if clerk decides there is cause
- Defendant answers or files motion to dismiss complaint for lack of cause
- If complaint is not dismissed, case proceeds to trial
- If board prevails at trial, court will “execute judgment”: judge sets fine, prison term, or other penalty.

Boards of health also have recourse to the courts for other actions, such as a petition to establish a rent receivership, to obtain a cease and desist order, to recover expenses incurred in removing a nuisance, or to obtain a search warrant. Persons upon whom the board of health have served an order may appeal, or in certain cases (i.e. those involving a board’s order to abate certain nuisances), “file a petition for review of such order in the district court” as provided in specific statutes (see M.G.L. c. 111 §§125A, and 143). The statute and regulations describe more fully the alternative enforcement methods available to boards of health.

**Community Awareness of Public Health Standards:** Frequent campaigns to remind the public and commercial and industrial establishments about minimum standards for housing, sewage and waste disposal, water, food, and other areas under board of health jurisdiction may help the board reduce the burden of enforcement. Public education, combined with regular inspections and constructive approaches to resolving problems can mobilize community awareness of public health mandates.

The board of health can establish and maintain its credibility and community visibility by sending press releases to the local paper on current activities and on local and state regulations affecting seasonal activities (such as community fairs or bake sales, percolation tests, campgrounds and camps, flu immunizations, etc.). (See Guidebook chapter on media relations). Public hearings and notices about such things as landfill use, availability of recycling, housing conditions, and other problems and concerns will also increase public awareness of the board’s function in town government.

## **LIABILITY ISSUES**

**Liability for Negligence:** The Massachusetts Tort Claims Act (M.G.L. c. 258) makes public employers liable for the negligent acts or omissions of public employees and immunizes those employees from personal liability for negligence. “Public employee” is broadly defined in the Act to include officers and employees of any public employer. “Public employer” includes any county, city, town, public health district or joint district or regional health board established pursuant to the provisions of M.G.L. c. 111 §§27A or 27B.

**Discretionary Acts:** The Tort Claims Act exempts public employers from liability for any claim based on the employer or employee’s performance (or failure to perform) a discretionary function, whether or not the discretion is abused. At the same time, a public employee is immune from personal liability for discretionary decision-making as long as he acts in good faith and without malice or corruption. The courts have defined a discretionary function as one characterized by a high degree of discretion and judgment invoked in weighing alternatives and making choices with respect to public policy and planning. Therefore, health officials will generally not be liable for mistakes or errors of judgment in the performance of duties where they are empowered to exercise judgment or discretion.

**Intentional Torts/Civil Rights Violations:** Under the Tort Claims Act, the public employer does not assume liability for civil rights violations or for intentional torts committed by public employees during the course of their employment. Instead, the employee remains personally liable for civil rights violations and for intentional torts, such as assault, battery, false imprisonment, false arrest, intentional infliction of emotional distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations.

However, an employee will not be liable for an intentional tort arising out of a discretionary act. For instance, a board of health member could not be held liable for slander based on statements made during deliberations over adoption of policy provided that he acted in good faith and without malice or corruption.

It should be noted that although the public employer is not liable for a civil rights violation or an intentional tort committed by a public employee, the employer is authorized by the Tort Claims Act to indemnify the employee in an amount up to \$1 million, except that a public employer is not allowed to indemnify an employee for violation of civil rights if the employee acted in a “grossly negligent, willful, or malicious manner.”

**Medical Treatment of Minors:** As a general rule, parents retain the legal authority to make decisions concerning a minor’s medical care. However, statutes and case law have carved out significant exceptions to the general rule and a few of these exceptions are outlined below:

M.G.L. c. 112 §12F permits emergency examination and treatment, including blood transfusions, when delay will endanger the life, limb or mental well-being of a so-called “emancipated minor,”( i.e. a minor who is married, the parent of a child, pregnant, a member of the armed forces, living apart from his parents and supporting himself financially, or reasonably believes he is suffering from or been in contact with a disease dangerous to the public health).

M.G.L. c. 112 §12E provides that a minor 12 years of age or older may consent to hospital and medical care related to the diagnosis and treatment of drug dependency.

M.G.L. c. 112 §12S authorizes an abortion if the pregnant woman is less than 18 years old and both she and her parents or legal guardian consent. If the minor chooses not to seek parental consent, she can seek authorization in Superior Court.

The courts in Massachusetts have recognized a general right of “mature minors” to make decisions about medical treatment.

As a general rule, physicians have a duty not to disclose medical information about a patient without consent. The sole exception is where there is a serious danger to the patient or others.

**Reporting Child Abuse and Neglect.** M.G.L. c. 119 §51A mandates certain categories of professionals who come in contact with children to report suspected abuse or neglect to the Massachusetts Department of Social Services. Mandated reporters include such individuals as physicians, medical interns, hospital personnel, medical examiners, psychologists, emergency medical technicians, dentists, nurses, chiropractors, podiatrists, public or private school teachers, educational administrators, guidance or family counselors, probation officers, social workers, foster parents, fire fighters, police officers as well as administrators of child centers and licensed family day care providers and all their employees.

A mandated reporter must file a report if he/she has reasonable cause to believe that:

- a child is suffering from physical or emotional injury resulting from abuse, including sexual abuse;
- a child is suffering from neglect, including malnutrition; or
- a child is physically dependent upon an addictive drug at birth.

There is no category of mandated reporter specifically for board of health members or agents. However, board of health members or agents may, because of their professional status, such as nurses, fall within one of these categories. Board of health members or agents may file a report if he/she has reasonable cause to believe that a child is suffering from, or has died as a result of, abuse or neglect.

Information on how and where to report abuse and neglect is included at the end of this chapter.

**THE CONFLICT OF INTEREST LAW** (taken from MHAB Legal Handbook for Boards of Health, June 1995).

The Conflict of Interest Law, M.G.L. c. 268A, sets minimum standards of ethical conduct for all municipal employees and officials. Board of health members are municipal employees and are bound by this law. All municipal employees, whether elected or appointed, full or part-time, paid or unpaid, must abide by the law's restrictions. The purpose of the law is to ensure that a municipal official or employee's private financial interests and relationships do not conflict with his/her official municipal responsibilities. The law is written broadly in order to prevent a municipal official from becoming involved in a situation which could result in a conflict or even give the appearance of a conflict.

Some municipal employees may be designated as special municipal employees.

A municipal employee may be given special employee status by a vote of the board of selectmen or city council, provided that the employee:

- is not paid; or
- holds a part-time position which allows them to work at another job during normal work hours; or
- they were not paid by the city or town for more than 800 working hours during the preceding 365 days.

Certain sections of the law apply less restrictively to special employees. It should be noted that a municipal position is designated as having a special status, not an individual. Therefore, all employees holding the same office or position must have the same classification as special municipal employees.

**Activities Covered by the Law:** The Conflict of Interest Law applies to a variety of activities. For example, Section 2 prohibits bribes. If a board member seeks payment to perform or not perform official duties in a certain manner, the law imposes penalties upon the member seeking to receive the payment as well as the party who offers the payment.

**Section 3 of the law applies to the acceptance of gifts.** You may not accept a gift or anything of substantial value (\$50 or more) given to you because of the position you hold on the board, or in return for work you performed that was part of your job responsibilities. Even if a person gives you this gift simply to thank you for doing a good job, you as a board member may not accept the gift. You may accept a gift valued at less than \$50 provided that it is not intended as a

bribe. **Any bribe**, however, no matter how little its value, will violate the conflict of interest law.

**Section 17 pertains to outside activities of municipal officials.** Generally, a regular municipal employee cannot be compensated by anyone other than the municipality in relation to any particular matter in which the municipality is a party or has a direct and substantial interest. Even if the interest is held by another agency in the municipality, other than the board of health, you cannot be compensated by another party in relation to the issue. If you are a regular municipal employee, you may not act as an agent or attorney for a private party before city or town boards. This restriction applies whether you are paid or not.

If you are a “special” municipal employee, you may represent private parties before town boards other than the board of health, unless your representation pertains to a matter in which you participated or which is now or within the past year was within your official responsibility as a member of the board of health. If your representation would involve matters reviewed by the board of health, you cannot represent a private party before any municipal board.

**Section 18 deals with the activities of former municipal employees.** It prohibits a former municipal employee from using the relationships which they develop during their employment, and the confidential information which they were privy to, to gain unfair advantages. If you participated in a particular matter as a municipal employee, you can never become involved in that same particular matter after you leave municipal service. Partners of a former municipal employee are bound by the same restriction for one year. If you had official responsibility for a particular matter as a member of the board, you may not appear personally before any agency of your city or town on behalf of a private party in connection with this matter, for a period of one year after leaving the municipal position.

**Under Section 19, you may not act as a board of health member on a matter that affects your own financial interest or that of your immediate family, or that of a business or organization in which you serve as an officer, director, partner or trustee.** You must also refrain from acting on matters that affect your business competitors.

This section is also referred to as the “anti-nepotism” provision. As a member of the board of health, you may not have any significant involvement in the hiring of an immediate family member, or in decisions relating to pay raises, promotions, etc. You also may not have day-to-day supervision of an immediate family member.

There are two possible exceptions to this rule.

Appointed board members may act on matters involving their financial interest if they obtain prior written permission from their appointing authority.

The second exception allows members of the board to act on any matter of general policy that affects a substantial segment of the community’s population in the same way.

In addition, the rule of necessity allows a member with a conflict to act if the board cannot otherwise obtain a quorum. You should obtain advice from counsel or the State Ethics Commission prior to invoking the rule of necessity.

**Section 20 concerns municipal contracts.** A member of the board of health is prohibited from having a direct or indirect financial interest in a contract made by any municipal agency. If you discover that you have a financial interest in a contract made by a municipal agency, you must fully disclose your financial interest to the agency and terminate or dispose of your interest within 30 days. There are a number of exceptions which allow you to contract with **other** town



agencies, such as where it is publicly bid. There are very few instances where you may contract with the board of health, however. You should consult with your city solicitor or town counsel, or the State Ethics Commission for specific questions.

A contract includes a salary from the city or town. Accordingly, holding more than one position where at least one is paid could be a conflict of interest. There are numerous exceptions to this rule, also, which are beyond the scope of this book. Consult with your city solicitor or town counsel or the State Ethics Commission for specifics.

**Section 23 provides the general standards of conduct that are required of municipal employees.** A municipal employee may not:

- accept other employment involving compensation of substantial value if the responsibilities of the other employment conflict directly with the responsibilities of his public office;
- use his public position to obtain unfair privileges and advantages that are of substantial value and not available to others;
- act in such a way that reasonable people would believe that he could be improperly influenced or act in violation of his public duties.

A municipal employee can avoid the appearance of a conflict by disclosing, in writing, to his appointing authority, or if an elected official, by disclosing in writing and filing this disclosure with the city or town clerk, any facts or information which might cause a reasonable person to believe that he was being unduly influenced or might be obtaining unfair privileges for himself or others.

**Enforcement:** The State Ethics Commission was established by the Legislature to enforce the conflict of interest law. District attorneys and municipal officials also have a responsibility to enforce the law at the municipal level. Anyone can file a complaint if they have reason to believe that the conflict of interest law has been violated. You may file a complaint by writing, calling or visiting the State Ethics Commission, 617-727-0060. The commission is required by law to keep the identity of all complainants confidential ( M.G.L. c. 268B §4). Also, M.G.L. c. 268B §8 shields complainants from retribution if they file a complaint with the Commission.

Board members may call the State Ethics Commission Legal Division for informal advice regarding the Conflict of Interest Law. You may also seek written advisory opinions from your town counsel, city solicitor or the State Ethics Commission if you have any questions about the law or about any of your own actions. It is extremely important that you, as a member of the board of health, become familiar with this law, and that you seek advice prior to committing any actions which may be a violation of the law.

## **PRECEDENCE OF LAW**

The various written (or statutory) laws in this country are in order of diminishing precedence as follows:

- The Federal Constitution
- Acts of Congress and treaties
- Rules and regulations of certain executive departments
- State Constitutions
- Laws enacted by state legislatures
- Rules and regulations of state agencies
- Municipal charters granted by states

Municipal legislation  
Rules and regulations of local boards of health.

### **AREAS OF JURISDICTION: STATE, LOCAL, FEDERAL**

In general, local board of health responsibilities for enforcement of state and local regulations extend to privately owned or municipally owned or operated facilities, buildings, or programs, within the boundaries of the municipality. Privately owned or operated concessions, camps, schools or other facilities are subject to applicable local licenses and inspections whether located on public or private land. For example, ice cream vendors on public beaches, private day camps in state parks, private concession snack bars in federal office buildings and other such program and services must obtain local licenses and comply with state and local minimum standards and regulations.

When programs, facilities or services involve more than one town (such as recreational camps, beaches or private schools on land in two adjoining towns), statutes and regulations usually specify that the boards of health of the towns involved “may coordinate activities in effecting compliance” with regulations. In practice, there may be a division of responsibility according to where the structures, headquarters or facilities are in fact located. For instance, a camp whose buildings are in one town will probably seek its camp license from that town, but if its swimming pool is in another town’s boundaries, it may seek its swimming pool permit from the town in which the pool is located. In any case, it is important that each town be sure that the camp is appropriately licensed and inspected and that state officials check water sources and sewage disposal facilities.

Homeowners and others who happen to be located on town lines do frequently have to obtain permits from both towns for such things as individual sewage disposal system and private wells. If local regulations in the towns differ, the owner/operator will typically be requested to comply with the more stringent regulations.

When sanitary or health problems arise in state or federally owned facilities over which the board of health has little or no jurisdiction, the board may wish to send a formal notice or complaint to the responsible agency, and investigate various alternatives for obtaining proper enforcement of the Sanitary or Environmental Codes or other regulations. For example, a board of health may receive a complaint regarding conditions in state-owned housing units at a state college or university, or the board might be aware of unsanitary conditions in a state-operated food service establishment. If a direct complaint to the agency involved does not get results, the local board of health should request advice and assistance from DPH or DEP, as appropriate. The board of health may also assist tenants and other affected persons in determining their rights to petition state agencies or the courts to seek enforcement of minimum standards. Checking with DPH or DEP regional offices, legal departments, and with town counsel may provide the board with a sound basis for following a particular course of action. In some cases, however, where jurisdictional boundaries are unclear, the board of health may find that a court test is the most satisfactory way to obtain clarification.

When the source of a problem affecting a town is located in a different town, the board of health may seek to have the board of health in the town where the source is located take necessary action to remedy the situation. If the matter cannot be resolved locally, the town may request DPH or DEP to take action, especially if violation of state regulations is involved. Regional authorities may also be involved, especially if air or water pollution or other problems dealt with on a regional basis are the cause of concern.

State and federal authorities regulate intrastate and interstate commerce, respectively, and provide or help to finance a wide variety of programs to promote the general health and welfare. State or federally funded programs may finance, through grants or contracts, services and facilities that are subject to local inspections and permit requirements. Unless the state specifically provides for enforcement of the Sanitary and Environmental Codes by a state agency in such facilities as halfway houses for de-institutionalized patients, the local board of health should assume that it has the same authority and responsibility as it has over any other private facility. The board may wish to notify the state contracting agency as well as the facility itself of any problems or violations or regulations. The board may find that a constructive approach to follow with any program for special population groups is to inform the program about board of health services and responsibilities, and request that the program provide the board with a full description of its services, clientele, special needs, problems and administration. The board of health may also initiate communications with relevant state agencies to be kept informed so that it can anticipate and plan for substantial changes that have an impact on need for nursing services, sanitarian's services or other board of health involvement.

Checking the sanitary conditions of jails, lockups, prisons, houses of correction and reformatories is the explicit responsibility of the Department of Public Health, as specified in M.G.L. c. 111 §§20 and 21. If any problems come to the attention of the local board of health, it should notify the Regional Office of DPH so that the district health officer can investigate.

# Appendices

## Legal Authority and Procedures

### Examples:

Local Regulation	Dumpster Regulation	A
Local Permit	Application for a Dumpster Permit	B
Local Permit	Application for permit to operate dumpster service	C

## APPENDIX A            EXAMPLE OF LOCAL REGULATION

### TOWN SEAL BOARD OF HEALTH NOTICE

The Board of Health, Town of \_\_\_\_\_ Massachusetts in accordance with, and under the authority granted by Sections 31 A and 31 B of Chapter 111 of the General Laws of the Commonwealth of Massachusetts hereby adopted the following rules and regulations at a meeting of the Board held on September 17, 1979.

All other regulations of the Board of Health inconsistent with these regulations are repealed as of October 15, 1979.

Effective date: These regulations shall take effect on \_\_\_\_\_

#### DUMPSTER REGULATIONS AND FOR THE REMOVAL AND TRANSPORTATION OF GARBAGE, RUBBISH, OFFAL OR OTHER OFFENSIVE SUBSTANCES.

- I.        Each dumpster must be located at a distance from the lot line as not to interfere with the safety, convenience or health of abutters or residents. Dumpster location must be approved by the Board of Health.
2.        When deemed necessary by the Board of Health, it may be required that a dumpster site be enclosed or screened by the property owner or authorized agent.
3.        Dumpster is not to be filled between the hours of 11:00p.m. and 7:00 a.m. for residential property and at the close of the business day for commercial property, at which time the lids are to be locked. The lids must be closed when dumpster is not in use during all other times.
4.        Each dumpster must be of sufficient size and capacity to eliminate overflowing, and the property owner or authorized agent of the premises utilizing the service must take appropriate action immediately to empty contents when full.
5.        Each dumpster must be situated so as not to obstruct the view of flowing traffic.
6.        It shall be the responsibility of the property owner or agent being serviced to maintain the dumpster area free of odors, scattered debris, overflowing, and all other nuisances.
7.        The property owner or authorized agent responsible for maintaining the dumpster service is required to have a permit from the Board of Health foreach dumpster. All permits shall expire at the end of the calendar year in which they are issued, but may be renewed annually on application as herein provided. There shall be a fee of \$10.00 for each dumpster payable yearly for said permit.
8.        No contractor, firm or person shall supply a dumpster service in the Town of \_\_\_\_\_ , for the purpose of storage, removal or transporting of garbage, rubbish, offal or other offensive substances without first obtaining a permit from the Board of Health. All permits shall expire at the end of the calendar year in which they are issued, but may be renewed annually on application as herein provided. There shall he a fee of \$10.00 payable for said permit.

9. Temporary dumpster permits (roll-off or gondola type) will be issued to a property owner or authorized agent for a period of time not to exceed 30 days, in connection with construction, demolition, fairs, carnivals or for other similar temporary needs. Said permit may be renewed for additional 30 days upon application. The property owner or authorized agent shall comply with all the provisions of these regulations which are applicable to the operation of the dumpster. There shall be a fee of \$5.00 payable for each temporary dumpster permit.
10. The contractor shall have his/her name and business telephone number conspicuously displayed on the dumpster.
11. The emptying of the dumpster contents by the contractor shall not commence before 7:00 a.m. and not continue after 11:00 p.m.
12. The dumpster contractor shall have the dumpster deodorized when emptied or if necessary, washed or sanitized as directed by order of the Board of Health.
13. These regulations apply to all dumpsters in the Town of\_\_\_\_\_ whether for residential, commercial or industrial use.
14. Permits may be suspended or revoked by the Board of Health for failure of the dumpster contractor or the property owner/his authorized agent to comply with the requirements of these regulations.

By the Board of Health

## APPENDIX B

### EXAMPLE OF LOCAL PERMIT

#### APPLICATION FOR DUMPSTER PERMIT

(Pursuant to Section 31 A, Chapter 111 of the General Laws, and  
Rules and Regulations  
of the \_\_\_\_\_ Board of Health)

Print in ink or type

TO BOARD OF HEALTH,

Application is hereby made for a permit to maintain a dumpster on property, as listed below, in accordance with the Rules and Regulations of the Board of Health.

Check whether permit is for:

Residential use       Commercial use       30 day temporary       1 year

Name and residence of:

Owner of property

Applicant for dumpster permit      Tel. No.

On bottom half of this form, please sketch an outline of property, showing thereon the proposed location of dumpster. Give distance from dumpster to other buildings and lot lines or boundaries. Use back side of this application if additional space is needed.

Return this application with fee of \$10.00 to: Board of Health,  
Town Hall.

**C EXAMPLE OF LOCAL PERMIT**

**APPLICATION FOR PERMIT TO OPERATE DUMPSTER SERVICE, ETC.**

(Pursuant to Section 31 A, Chapter 111 of the General Laws, and  
Rules and Regulations  
of the Board of the \_\_\_\_\_Health)

Print in ink or type

TO BOARD OF HEALTH:

Application is hereby made for a permit to operate a DUMPSTER  
SERVICE and for the REMOVAL OR  
TRANSPORTATION OF GARBAGE, RUBBISH, OFFAL OR OTHER OFFENSIVE  
SUBSTANCES in the Town of \_\_\_\_\_ in accordance with  
Section 31 A, Chapter 111 of  
the General Laws of the Commonwealth of Massachusetts and the  
Rules and Regulations of the Board of  
Health.

Check whether applicant is:

individual  Corporation  Partnership  Other

Print complete name of organization\_\_\_\_\_

Address of main office Tel. No.

Names of partners or officers of organization:\_\_\_\_\_

I			
Name_____	Title_____	Address_____	Tel. No.
Name_____	Title_____	Address_____	Tel. No.
Name_____	Title_____	Address_____	Tel. No.

Signature of applicant or authorized officer

Address

Please list, on the attached form, the names and addresses of locations (residential or commercial) that are  
serviced by you in \_\_\_\_\_

Return this application and attached form with fee of \$10.00 to:  
Board of Health.