

974 CMR 8.00: PUBLIC HEALTH

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8.01: Overview

The DEC is charged with protecting the public health at Devens (St. 1993, c. 498, § 11 and Article II Section C of the By-laws). The DEC may establish a health department with a commissioner and an advisory council, and/or delegate the powers and duties delineated in 974 CMR 8.00 to a duly authorized and licensed public health services provider, and/or contract for required professional services with a provider or consultant.

8.02: General Requirements

The DEC accepts the following statutes (or sections thereof) and any regulations promulgated pursuant to these statutes:

- (1) M.G.L. c. 111, with the exception of the sections noted below:
 - (a) Section 26F, Annual Hazardous Chemicals In Water Supply List;
 - (b) Sections 15, 16, 154, Public Health Issues Involving Animals.
- (2) All of the following sections of statutes:
 - (a) M.G.L. c. 34, § 305c (fresh produce);
 - (b) M.G.L. c. 94, § 40, 41, 48A, 65H, and 328 (dairy products, frozen desserts, and non-profit organization food preparation);
 - (c) M.G.L. c. 140, 32B (camps and lodging).
- (3) All of the following statutes:
 - (a) M.G.L. c. 21;
 - (b) M.G.L. c. 42 through 46A;
 - (c) M.G.L. c. 51;
 - (d) M.G.L. c. 52A;
 - (e) M.G.L. c. 53.

8.03: Unexploded Ordnance (UXO) and Soil Management

Prior to commencing any earth work within Devens, the Applicant shall ensure all personnel to be on-site comply with the requirements of MassDevelopment's Devens Soil Management Policy and Devens UXO Protocol and Procedures, (the Policy). Prior to removing earth on the project site, the Applicant shall contact the Devens Public Safety Officer and complete the UXO training required in accordance with the Policy (*see 974 CMR 4.07: Earth Removal for additional earth removal requirements*).

8.04: Site Assignments for Solid Waste Facilities

The requirements listed below are in addition to those set forth in 310 CMR 16.00: *Site Assignment Regulations for Solid Waste Facilities*.

- (1) Submission Requirements. As part of an application for a site assignment for a solid waste facility, the DEC may require the Applicant to submit:

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- (a) Information concerning the construction, operation and/or maintenance of similar facilities owned and/or operated by the Applicant in other locations, including the latest available regulatory and monitoring data involved in the permitting or licensing of similar facilities owned by the Applicant, as applicable to the monitoring of the facility at Devens.
- (b) A list and description of all required permits (state and federal) and if requested by the Director, full copies of any permits and any modifications thereto.

(2) Siting Criteria:

- (a) If the DEC finds that topography, vegetation or other natural features, or existing structures do not produce sufficiently protective conditions, including visual screening and/or necessary environmental mitigation, the DEC may require that the Solid Waste Facility be located a certain distance from Sensitive Receptors or other dimensional requirements that are more stringent than those set forth in 310 CMR 16.00: *Site Assignment Regulations for Solid Waste Facilities*.
- (b) Minimum separation or other dimensional requirements shall be measured from the closest edge of a waste deposition area, in the case of a landfill, to the closest point of the Sensitive Receptor. In the case of a processing or combustion facility, the measurement shall be from the closest edge of the principal structure to the closest point of the Sensitive Receptor.
- (c) The DEC may apply the criteria set forth on M.G.L. c. 111, § 150A½, as they are appropriate and applicable to the site assignment.

(3) Operations and Maintenance.

- (a) The Director may:
 1. Enter the premises where records required by a site assignment are maintained;
 2. Have access to and the right to copy at all reasonable times, any records required by the Conditions of the Site Assignment;
 3. Inspect at reasonable times any facilities and equipment or operational practices relevant to proper facility performance; and
 4. Monitor or sample any waste processing material or operation that can help to determine compliance with the Conditions of the Site Assignment.
- (b) For all Solid Waste Facilities, the Applicant shall:
 1. Notify the DEC in writing of any change of owner/operator of the facility and/or the site or other basic contact information within 30 days of the change.
 2. Ensure that:
 - a. Trained personnel in adequate number are present on-site during all operating hours to manage traffic and handling of materials and other operational activities, including all unloading and loading of materials.
 - b. Vehicular traffic involving unloading or tipping of disposal materials is controlled at all times to prevent the queuing of vehicles beyond the bounds of the site and the idling of vehicles within the site for longer than allowed by the Massachusetts Anti-idling Law. This law provides that subject to certain exceptions, no vehicle may idle for more than five minutes. The DEC may require that vehicular use is staggered over time throughout the permitted hours of operation.
 - c. Demurrage of trucks, automobiles or train cars serving the facility in any capacity is limited to:
 - i. Massachusetts Anti-idling Law; or
 - ii. the duration of process upsets (in the case of processing or combustion facilities) in a non-idling state.

The Director shall be notified in a timely manner of demurrage in order to facilitate necessary monitoring.
 - d. Odorous wastes of any type is not stored outdoors.
 - e. Unloading/loading areas are swept and otherwise maintained daily to remove all manner of debris and waste, including but not limited to: litter, ash, dust, residue from value-added products and small petroleum-related spills.
 - f. Trucks leaving the site do not drag waste or debris onto public ways or any off-site locations.

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- g. A comprehensive program of preventive maintenance for all equipment and machinery used for processing or combustion activities is established. Routine inspection and maintenance shall be fully documented on a regular basis and records shall be made available to the Director upon request or by means of a regular monitoring schedule.
- h. Tipping bay doors (as a part of processing or combustion facilities) are open for the minimum time required for vehicles to enter the facility and shall be kept closed to the maximum extent feasible given that the normal operations of these facilities require consistent entrance, unloading and exiting of trucks.
- (c) For all process or combustion facilities, the Applicant shall:
 - 1. Submit a written plan for responding to negative conditions such as process upsets, receipt of unauthorized waste, *force majeure*, interruption of power or any utilities, personnel shortages or other factors which jeopardize normal operations or could create public nuisance or potential health risks. The plan shall be reviewed annually and, if necessary, updated to reflect revised practices. One copy of the most recent plan shall be kept at the facility and made available for public examination and one shall be sent to the DEC. The plan shall include the following:
 - a. Names, addresses, telephone numbers (and/or other electronic contact) of responsible emergency personnel
 - b. Provisions for interrupting waste shipments in transit to the site.
 - c. Provisions for processing wastes already on-line at the facility, or, in the absence of that, for removing them from the premises.
 - d. Provisions for containing potential contamination of air and water.
 - 2. Provide appropriate staff training, with refresher courses offered as often as necessary to encompass changes in practice.

8.05: Event Permits

- (1) The Commission may grant an event permit to authorize a short-term activity within Devens, for an event not to exceed 14 consecutive days in length, such as participatory sports, family entertainment, outdoor markets, concerts, and special events.
- (2) Any application for an event permit shall include the following information:
 - (a) Completed Level 1 Permit Application and associated fee;
 - (b) Layout/location of proposed event;
 - (c) Written approval of property owner;
 - (d) Police and Fire detail notification;
 - (e) Frequency, Duration and Hours of event;
 - (f) Number of people expected;
 - (g) Parking arrangements/traffic control;
 - (h) Food Service arrangements (additional food preparation and vending license may be required);
 - (i) Sanitary arrangements (restrooms, trash control);
 - (j) Tents (additional permit requirements) \$50.00 per tent - the certificate of flammability is needed, usually this certificate is sewn into the tent if not, a copy of the certificate will be needed.
 - (k) Confirmation of compliance with Devens Industrial Performance Standards (974 CMR 4.00: *Industrial Performance Standards*).
- (3) An event permit shall not be deemed necessary if a property owner or business intends to hold a one day promotional event on its land within Devens.
- (4) The DEC reserves the right to anticipate potential nuisance conditions at the time the event is proposed and to require assurance of non-impact or reasonable mitigation commitments (including demonstration that the convener of the event has adequate insurance) at the time the Event Permit is issued. The DEC may also impose protective measures with respect to the active use (*i.e.*, boating, swimming, or fishing) of a surface water resource.

8.06: Recycling

The DEC acknowledges the full applicability within Devens of 310 CMR 19.017(3): *Waste Specific Restrictions*, subject however to the right reserved by the DEC to adopt more restrictive rules and regulations at a later time. A list of those materials that cannot be incinerated or go into landfills can be found at 310 CMR 19.017(3). A list of locations to recycle waste is on the DEC's website at <http://www.devensec.com/sustain.html>

8.07: Underground Fuel Storage Systems (Tanks)

For the purposes of 974 CMR 8.00, Underground Fuel Storage Systems or Tanks shall mean any system where a minimum of 20% of the mass of tanks, piping, valves or other components is buried below the surface of the ground, including gasoline tanks for commercial sales purposes. Fuel is defined by 42 U.S.C. §§ 6901 through 6922i, M.G.L. c. 148, and 527 CMR 9.00: *Tanks and Containers*.

No Underground Fuel Storage Tanks are permitted within Zone 2 Water Resources Protection District areas.

(2) Underground Fuel Storage Systems shall comply with the By-laws and shall be licensed by and in accordance with the requirements of the Devens Fire Chief. Underground storage of Fuel in excess of quantities listed in 527 CMR 14.03: *Storage* requires a license in accordance with the DEC Licensing and Registering the Storage of Flammables, Combustibles and Explosives Requirements, Policies and Procedures.

8.08: Facilities with Existing Floor Drains

The owner of a commercial, industrial, petroleum, toxics and/or Hazardous Waste storage area/facility in operation prior to the effective date of these regulations with a floor drain system that discharges, with or without pretreatment (such as an oil/water separator), to the ground, a leaching structure, or septic system, shall:

- (1) disconnect and plug all applicable inlets to and outlets from (where possible) applicable leaching structures, oil/water separators, and/or septic systems;
- (2) remove all existing sludge in oil/water separators, septic systems, and where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with 310 CMR 30.000: *Hazardous Waste*. Remedial activity involving any excavation and/or soil or groundwater sampling shall be performed in accordance with applicable MA DEP laws, regulations or policies;
- (3) Alter the floor drain system so that the floor drain shall be either:
 - (a) connected to a holding tank that meets all applicable requirements of MA DEP laws, regulations or policies, with hauling records submitted to the DEC at the time of hauling;
 - (b) connected to a municipal sanitary sewer line, if available, with all applicable MA DEP laws, regulations or policies and local permits; or
 - (c) permanently sealed. Any facility sealing a drain shall to submit for approval to the DEC a Hazardous Waste management plan detailing the means of collecting, storing, and disposing any Hazardous Waste generated by the facility, including any spill or other discharge of Hazardous Materials or Wastes.

8.09: Outdoor Water Use Restrictions

(1) Purpose. To protect, preserve and maintain the public health, safety, welfare and the environment by declaring a "State of Water Supply Conservation" or a "State of Water Supply Emergency" to ensure an adequate supply of water for drinking and fire protection purposes and to protect the quantity of water in local aquatic habitats such as ponds, rivers and wetlands and to ensure compliance with the MA Water Management Act.

(2) Applicability. All Water Users shall comply with a "State of Water Supply Conservation" (SWSC) and a "State of Water Supply Emergency" (SWSE).

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(3) Definitions. For the purpose of 974 CMR 8.09 the following terms shall mean:

Nonessential Outdoor Water Use: Those uses that are not required:

- (a) for health or safety reasons;
- (b) by regulation;
- (c) for the production of food and fiber;
- (d) for the maintenance of livestock; or
- (e) to meet the core functions of a business (for example, irrigation by golf courses is necessary to maintain tees and greens, and limited fairway watering, or irrigation by plant nurseries or agricultural operations is necessary to maintain stock or establish new plantings, wash equipment to prevent damage and/or maintain performance, pest management and plant cooling).

Nonessential Outdoor Water Uses subject to a SWCE and an SWSE include the following:

- (a) irrigation of lawns via sprinklers or automatic irrigation systems;
- (b) washing of vehicles, except in a commercial car wash or as necessary for operator safety or to prevent damage and/or maintain performance of agricultural or construction vehicles or equipment;
- (c) washing of exterior building surfaces, parking lots, driveways or sidewalks, except as necessary to apply paint, preservatives, stucco, pavement or cement;
- (d) irrigation of public parks and recreation fields between 9:00 A.M. to 5:00 P.M.;
- (e) irrigation of lawns, gardens, flowers and ornamental plants by means of a hand-held hose from 9:00 A.M. to 5:00 P.M.; and
- (f) Irrigation from 9:00 A.M. to 5:00 P.M. with harvested and stored stormwater runoff and/or rainwater.

Nonessential Outdoor Water Uses not subject to a SWCE and/or a SWSE include:

- (a) irrigation of public parks and recreation fields outside the hours of 9:00 A.M. to 5:00 P.M.;
- (b) irrigation of lawns, gardens, flowers and ornamental plants by means of a hand-held hose outside the hours of 9:00 A.M. to 5:00 P.M.;
- (c) irrigation outside the hours of 9:00 A.M. to 5:00 P.M. with harvested and stored stormwater runoff and/or rainwater;
- (d) irrigation to establish replanted or re-sodded lawn or plantings during the months of May and September;
- (e) irrigation of newly planted lawns (seeded or sodded) in the current calendar year for homes or businesses newly constructed in the previous 12 months.

Water Users shall mean all persons using water within Devens (public supply and/or private wells).

(4) Declaration of a SWSC. Devens Utilities, or its designee, may declare a SWSC upon a determination that conservation measures are necessary to ensure an adequate supply of water for drinking and fire protection purposes, for protecting the quantity of water in local aquatic habitats such as ponds, rivers and wetlands and for ensuring compliance with the Water Management Act. Upon notification to the public of a SWSC, no Water User shall violate the SWSC. Public notice of an SWSC shall be given by Devens Utilities in accordance with 974 CMR 8.09(g) before it may be enforced.

(5) Declaration of a SWSE. Upon notification to the public that MA DEP has declared a SWSE, no Water User shall violate any provision, restriction, requirement, or condition of any order approved or issued by MA DEP for the purpose of ending the conditions that led to the declaration of the SWSE.

(6) Restricted Water Uses. When a SWSC and/or a SWSE is declared, Nonessential Outdoor Water Uses shall be restricted to one or more of the following:

- (a) Permitted only on two or fewer days per week and only on the days of the week specified in the SWSE or SWSC.
- (b) Permitted only during the hourly periods specified in the SWSC and/or SWCE. At a minimum, prohibited from 9:00 A.M. to 5:00 P.M.

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- (c) Application by bucket or hand-held hose controlled by a nozzle.
- (d) Nonessential Outdoor Water use is prohibited at all times.
- (e) The use of automatic sprinkler systems is prohibited.

Water uses restricted pursuant to a SWCE or a SWSC shall be included in the public notice required under 974 CMR 8.09(7).

(7) Public Notification of a SWSC or SWSE. Upon declaration of a SWSC and/or SWSE, Devens Utilities shall provide notice of a SWSC and/or SWCE in a newspaper of general circulation within Devens. Signage on major roadways and intersections shall be erected no later than 48 hours following the declaration of a SWSC or notice from MA DEP of the declaration of a SWSE. Devens Utilities shall also notify the public using in writing and via public e-mail announcements to reach and inform all Water Users.

(a) Notice as required above is a prerequisite to enforcement of SWSE and/or SWSC restrictions.

(b) Within 14 days of the effective date of any SWSE and/or SWSC, Devens Utilities shall submit a "Notification of Water Use Restriction" form to MA DEP in accordance with 310 CMR 22.15(8).

(8) Termination of an SWSC; Notice. Devens Utilities may terminate a SWSC upon its determination that the conditions requiring the SWSC no longer exist. Public notification of the termination of a SWSC shall be given in the same manner as is required in 974 CMR 8.09(7) for notice of its imposition.

(9) Termination of an SWSE; Notice. Upon notification to Devens Utilities that MA DEP has terminated the SWSE, public notification of the termination shall be given in the same manner as is required in 974 CMR 8.09(7) for notice of its imposition.

(10) Penalties. If a Water User does not comply with one or more Nonessential Outdoor Water Use restrictions imposed pursuant to a SWSE or a SWCE:

(a) Devens Utilities may impose a *per diem* fine (each day of violation is a separate offense) as follows:

1. First violation: Written warning
2. Second violation: \$100.00
3. Third and subsequent violations: \$300

(b) Devens Utilities may, if a SWSE has been declared, shut off the water at the meter or the curb stop upon notification to the Water User.

(11) Controls on In-ground Irrigation Systems.

(a) Installation.

1. All new in-ground irrigation systems shall be subject to approval by the DEC.
2. All in-ground irrigation systems shall be equipped with a timing device that can be set to make the system conform to the Devens Nonessential Outdoor Water Use Restrictions. During a SWSE or SWSC the timing device shall be set to conform to any daily/ hourly Nonessential Outdoor Water Use Restriction(s).
3. All in-ground irrigation systems shall be plumbed so that a shutoff valve is located outside the building.

(b) Soil Moisture-sensor Devices. All in-ground irrigation systems installed in Devens after November 1, 2011 shall be equipped with a soil moisture-sensor device to prevent the system from operating when not needed. Any service or repair to an existing in-ground irrigation system shall include the installation of a moisture-sensor device, if the same is not already installed and in good working condition. Proof of this installation shall be provided to Devens Utilities at the time of installation.

(c) Backflow Prevention. All in-ground irrigation systems connected to the water system in Devens shall be protected from backflow events by the installation of a backflow prevention device. Each backflow prevention device shall be installed in accordance with 310 CMR 22.22: *Cross Connections Distribution System Protection* and the manufacturer's instructions. Each device shall be tested upon its installation and annually thereafter. A Massachusetts Certified Backflow Device Tester shall perform all testing. Copies of results of all testing shall be filed with Devens Utilities.

974 CMR: DEVENS ENTERPRISE COMMISSION

8.10: Severability

If any provision of 974 CMR 8.00 is held unconstitutional, invalid or void, it shall not effect any other provision of 974 CMR 8.00 or the administration thereof.

REGULATORY AUTHORITY

974 CMR 8.00: St. 1993, c. 498.

NON-TEXT PAGE