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310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 11.00: GENERAL APPLICATION AND ADMINISTRATION ENVIRONMENTAL CODE,
TITLE 1

Section

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11.01: Scope of Application; Effective Date

(1) Application. The State Environmental Code shall apply throughout the Commonwealth unless and to the extent that the provisions of any title are expressly limited.

(2) Effective Date. 310 CMR 11.00 shall be effective and have the force of law upon filing with the Secretary of State. Every other title shall be effective and have the force of law in accordance with the provisions of each. If a title fails to state a date from when it is to be effective, it shall become effective from the day following the date it is filed with the Secretary of State.

11.02: Local Rules and Regulations

Unless otherwise expressly provided in any other title, the legally designated health authority of any city, town, county or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health may, as it considers necessary to promote and protect the health and well being of the particular locality under its jurisdiction, adopt under its own legal power as exists in the General Laws any rules or regulations containing requirements stricter than those contained in this code. Nor should the existence of this code limit or otherwise affect the power of any health authority with respect to any matter for which this code makes no provision.

11.03: Inspection -- Interference

(1) Inspection. In order properly to carry out their respective responsibilities under 310 CMR and properly to protect the health, environment and well-being of the people of the Commonwealth, the board of health and the Department of Environmental Quality Engineering or the authorized agent or representative of either are authorized to enter, examine, or survey at any reasonable time such places as they consider necessary, and otherwise to conduct such examination or survey as is expressly provided in any other title.

(2) Interference. If any owner, occupant, or other person refuses, impedes, inhibits, interferes with, restricts, or obstructs entry and free access to every part of the structure, operation or premise where inspection authorized by 310 CMR is sought, the board of health or the Commissioner of the Department of Environmental Quality Engineering or the authorized agency or representative of either may:

- (a) seek in a court of competent jurisdiction a search warrant so as to apprise the owner, occupant or other person concerning the nature of the inspection and justification for it and may seek the assistance of police authorities in presenting said warrant and/or
- (b) revoke or suspend any license, permit or other permission regulated under this code where inspection of the structure, operation or premises is sought to determine compliance with 310 CMR 11.00.

11.04: Methods of Enforcement by Local Boards of Health

Unless otherwise expressly provided in any title 310 CMR , code, each board of health may enforce 310 CMR by fine in accordance with 310 CMR 11.10, or otherwise at law or in equity in the same manner that local rules and regulations are enforced.

11.05: Emergency

(1) General. Whenever an emergency exists in which the interest of protecting the public health or the environment requires that ordinary procedures be dispensed with, the board of health or its authorized agent, acting in accordance with the provisions of M.G.L. c. 111, § 30, may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as the board of health deems necessary to meet the emergency. Notwithstanding any other provision of 310 CMR, any person to whom such order is directed shall comply therewith within the time specified in the order. Each day's failure to comply with the order shall constitute a separate offense. Upon compliance with the order and within seven days after the day the order has been served, he may file a written petition in the office of the board of health requesting a hearing. He shall be granted a hearing as soon as possible. The procedures for such hearing shall otherwise conform with the hearing requirements which would have existed had the order been issued under non-emergency circumstances.

(2) Emergency Powers of the Department. No provision of 310 CMR 11.00 shall be construed as a limitation on the emergency powers of the Department of Environmental Quality Engineering of the Commonwealth.

11.06: Enforcement by Department of Environmental Quality Engineering of the Commonwealth

(1) General. If as a result of any study, inspection, or survey made under 310 CMR 11.03 or under the provisions of any other title of 310 CMR, the Commissioner of Environmental Quality Engineering or his authorized representative determines that compliance with this code has not been effected, he shall, in writing, notify the appropriate board of health of such determination, allotting a reasonable time in which compliance shall be effected, and requesting that the board of health, in writing, notify the Commissioner of Environmental Quality Engineering of what action it has taken, and what other action has been taken to effect compliance with 310 CMR 11.00. If the Commissioner is not so notified, or if after notification he determines that action sufficient to effect compliance with the provisions of this code has not been taken, the local board of health shall be deemed to have failed to effect compliance with 310 CMR 11.00.

(2) Failure to Enforce Code by Board of Health. Whenever any local board of health has failed after a reasonable length of time to enforce 310 CMR 11.00, the Commissioner of Environmental Quality Engineering of the Commonwealth or his designated representative may act for the Commonwealth in any way that the local board of health is authorized to act to effect compliance.

11.07: Service of Orders

Unless otherwise stated in any title of this code, orders issued under the provisions of 310 CMR 11.00 shall be served on all persons responsible for the violation of regulations. These orders shall be served in the following manner:

- (a) personally, by any person authorized to serve civil process, or
- (b) by any person authorized to serve civil process by leaving a copy of the order at his last and usual place of abode, or
- (c) by sending him a copy of the order by registered or certified mail, return receipt requested, if he is within the Commonwealth, or
- (d) if his last and usual place of abode is unknown or outside the Commonwealth, 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 wherein the building or premises affected is situated.

11.08: Hearing

- (1) Procedure for Requesting and Holding Hearing. Unless otherwise specified in 310 CMR 11.00, the person or persons to whom any order has been served pursuant to any regulation of 310 CMR may request a hearing before the board of health by filing with the board of health within seven days after the day the order was served, a written petition requesting a hearing on the matter. Upon receipt of such petition, the board of health shall set a time and place for such hearing and shall inform the petitioner thereof in writing. The hearing shall be commenced not later than 30 days after the day on which the order was served. The board of health, upon application of the petitioner, may postpone the date of hearing for a reasonable time beyond such 30-day period if in the judgment of the board of health the petitioner has submitted a good and sufficient reason for such postponement.
- (2) Hearing of Petitioner. At the hearing the petitioner shall be given an opportunity to be heard and to show why the order should be modified or withdrawn.
- (3) Procedure by the Board After Hearing. After the hearing the board of health shall sustain, modify, or withdraw the order and shall inform the petitioner in writing of its decision. If the board of health sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.
- (4) Public Record. Every notice, order, or other record prepared by the board of health in connection with the hearing shall be entered as a matter of public record in the office of the clerk of the city or town, or in the office of the board of health.
- (5) Hearing Petition Not Submitted, or Sustaining of Order. If a written petition for a hearing is not filed with the board of health within seven days after the day an order has been served or if after a hearing the order has been sustained in any part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.

11.09: Appeal

Any person aggrieved by the final decision of the board of health with respect to the denial of plan approval, the denial of revocation or failure to renew a license, or with respect to any order issued under the provisions of 310 CMR 11.00 may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this Commonwealth.

11.10: Penalties

- (1) Interference After Search Warrant Presented. Any owner, occupant, or other person who refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to every part of the structure, operation or premises where inspection authorized by 310 CMR 11.00 is sought after a search warrant has been obtained and presented in accordance with 310 CMR 11.03(2) shall be fined not less than \$10 nor more than \$500.
- (2) Failure to Comply With an Order. Any person who shall fail to comply with any order issued pursuant to the provisions of 310 CMR 11.00 shall upon conviction be fined not less than \$10 nor more than \$500. Each day's failure to comply with an order shall constitute a separate violation.
- (3) Penalties Not Otherwise Provided. Any person who shall violate any provision of 310 CMR 11.00 for which penalty is not otherwise provided in any of the General Laws or in any other provision of this code shall upon conviction be fined not less than \$10 nor more than \$500.

11.11: Variance

The board of health may vary the application of any provision of 310 CMR 11.00 with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided, that the decision of the board of health shall not conflict with the spirit of these minimum standards. Any variance granted by the board of health shall be in writing. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the clerk of the city or town, or in the office of the board of health, and notice of the grant of variance shall be filed with the Commissioner of Environmental Quality Engineering of the Commonwealth.

11.12: Variance, Grant of Special Permission: Expiration, Modification, Suspension of

Any variance or other modification authorized to be made by 310 CMR 11.00 may be subject to such qualification, revocation, suspension, or expiration as the board of health or Commissioner of Environmental Quality Engineering expresses in its grant. A variance or other modification authorized to be made by 310 CMR 11.00 may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard, in conformity with the requirements for an order and hearing of 310 CMR 11.07 and 11.08.

11.13: Partial Invalidity

If any Title, regulation, paragraph, sentence, clause, phrase, or word of 310 CMR 11.00 shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of 310 CMR 11.00, which shall remain in full force and effect; and to this end the provisions of 310 CMR 11.00 are hereby declared severable.

REGULATORY AUTHORITY

310 CMR 11.00: M.G.L. c. 21A, § 13.