



**Regulation passed by the  
Boston Public Health Commission**

*This regulation was promulgated on December 17, 1998*

**Waste Container Lot, Junk Yard, and Recycling Facilities**

Preamble

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**Preamble.** The unregulated establishment, maintenance and operation of container storage lots, junk yards and recycling facilities within the City of Boston may present a threat to the public health and safety for the following reasons:

- Site assignment pursuant to M.G.L. c. 111, § 150A is the means by which local boards of health regulate solid waste facilities and their impacts.
- Certain container storage lots, junk yards, and recycling facilities have been exempted by the Massachusetts Department of Environmental Protection from site assignment as solid waste facilities, and thereby from local control by means of M.G.L. c. 111, § 150A.
- Unregulated container storage lots, junk yards, and recycling facilities in Boston may create hazardous waste, dust, adverse nuisance, public health, and environmental impacts, and facilitate breeding of insects and rodents, resulting in hazardous health conditions and complaints from nearby neighborhoods.
- The Police Department and Fire Department require permits to operate junk yards, however such permits only protect the public safety from fire hazards and the sale of stolen cars, car parts, and building materials, not the public health.

- No board of health permits are currently required to operate container storage lots, junk yards, or recycling facilities in Boston leaving such facilities unregulated with respect to public health impacts.

**Section 2.01. Definitions and Guidelines.** The Boston Public Health Commission (BPHC) may issue guidelines for the implementation of these regulations, including but not limited to definitions of terms as used in these regulations and in the guidelines. Applicants and permit holders are presumed to have knowledge of these regulations and guidelines. In the event of a conflict between these regulations and the guidelines, as either may be amended, the regulations shall control.

**Section 2.02. Scope and Exceptions.**

**Scope.** These regulations are applicable in Boston to all proposed and existing waste or recyclable materials container storage lots, junk yards, and recycling facilities.

**Exceptions.** These regulations do not apply to facility activities regulated by the Commission through a site assignment pursuant to M.G.L. c. 111, §§ 150A & 150B. The following activities also do not require Installation and Operation Permits, provided that the activities do not allow unpermitted discharge of pollutants, and incorporate good management practices that result in no public nuisance or other threat to public health or safety:

- a. Containers at Department of Public Works sites.
- b. Containers at the location of waste generation.
- c. Containers in hospitals, health centers and laboratory infectious waste storage areas.
- d. Residential disposal of wood wastes.
- e. Wood chipping and shredding operations.
- f. Hazardous Waste Facilities governed by 310 CMR 30.000.
- g. Waste Water Treatment Residuals Facilities governed by M.G.L. c. 83, § 6 and 314 CMR 12.00.
- h. Temporary solid waste or recyclable materials vehicle layovers for refueling or emergency repairs.
- i. Manufacturing and industrial operations which temporarily store and/or utilize pre-sorted recyclable materials
- j. Bottle Bill drop-off centers.
- k. Recycling operations at the location of generation.
- l. Backyard composting or agricultural waste composting if related to “agriculture” or “farming” as defined by M.G.L. c. 128, § 1A.
- m. Lots for the storage of emptied containers associated with facilities or activities exempted pursuant to this section; provided, however, that any such lot also 1) has a valid use and occupancy permit issued by the Inspectional Services Department and otherwise is a lawful use under the Boston Zoning Code and all other applicable state or local laws and regulations 2) is under common ownership or substantial control of the owner or operator of the exempted facility, and 3) is included within the existing property line of the exempted facility.
- n. Sealed containers in actual shipment at rail yards.

**Section 2.03. Design, Operation Plan, Installation Permit and Operation Permit Approval.** No person shall construct or significantly modify a container storage lot, junk yard or recycling facility without an Installation Permit, issued by the BPHC. No person shall operate, use or maintain a container storage lot, junk yard or recycling facility without a valid Operation Permit. An Installation Permit is transferable with prior written approval of the BPHC. An Operation Permit is operator specific and non-transferable. The BPHC may issue temporary permits for community recycling events.

**Section 2.04. Application for Installation Permit and Site Suitability Criteria.** Application for an Installation Permit shall be on a form determined by the BPHC and shall state that the applicant consents to reasonable compliance and records inspections as described in Section 2.11. The Installation Permit application shall include the facility’s written design and Proposed Operation Plan. The BPHC shall grant

an Installation Permit if the BPHC determines that the facility complies with these regulations and guidelines and that the facility will not result in an adverse impact on the public health and safety. In so determining, the BPHC shall consider the following site suitability criteria:

- a. Proximity to agricultural lands.
- b. Traffic and access to the site.
- c. Potential air quality impact.
- d. Potential for creation of nuisances.
- e. Facility size.
- f. Proximity to sensitive receptors including, but not limited to, schools, community gardens, parks, playgrounds, day care facilities, health care facilities, nursing homes, and residences.
- g. Presence of other potential nuisance sources and evaluation of the cumulative impacts on public health and safety.

**2.05. Proposed Operation Plan.** The applicant shall include as part of the Installation Permit Application the proposed operation plan, which shall include but not be limited to information regarding:

- a. Equipment appropriateness and adequacy.
- b. Weighing facilities.
- c. Fire protection.
- d. Traffic and access.
- e. Unloading procedures and container emptying process.
- f. Control of wind-blown litter.
- g. Screening and/or fencing.
- h. Prohibition of open burning.
- i. Handling of solid wastes, special wastes, hazardous wastes, recyclable materials, junk and hazardous materials recycling, including storage, location and volume limitations.
- j. Processing of bulky recyclables.
- k. Dust, noise, and odor control.
- l. Insect and rodent control.
- m. Presence of nearby sensitive land uses.
- n. Presence on the site of other potential nuisance sources and evaluation of cumulative impacts from the site on public health and safety.
- o. Accident prevention.
- p. Supervision of operations.
- q. Operational recordkeeping.
- r. Emergency contingency plans.
- s. Other measures to reduce the adverse impact on public health and safety.
- t. Temporary solid waste or recyclable materials vehicle or container layovers for transportation the next day to a processing or disposal facility. Such layovers shall be permitted provided the following conditions are met: (1) solid wastes or recyclable materials shall remain inside the vehicle or in a covered container, shall not be handled, in any way, and shall not be released to the environment during the temporary layover; (2) layover vehicles or containers shall not be on site between 9:00 A.M. and 3:00 P.M. of any business day; (3) the owner or operator of the facility shall maintain a daily log available for inspection by the BPHC documenting the entry time and departure time of each vehicle and container by number; (4) vehicle or container layovers shall occur only on paved areas of the facility or inside buildings on site; (5) the facility is enclosed by a fence providing shielded view from the street of at least eight (8) feet in height, with a gated entrance closed and locked during non-business hours; and (6) the owner or operator of the facility shall designate an area on site for the temporary layover of vehicles and containers which area shall not be within 250 feet of sensitive receptors.

**2.06. Installation Permits - Miscellaneous.** Installation Permits shall be maintained on site at all times. An Installation Permit shall expire one (1) year from the date of issuance unless extended for an additional six (6) months. Any six (6) month extension may be granted for good cause shown by the

applicant, upon application to the BPHC and its approval, but the BPHC shall not grant more than two (2) six (6) month extensions for any permit.

#### **2.07. Application for Operation Permit.**

- A. Application for an Operation Permit shall be made by existing and proposed waste container lots, junk yards, and recycling facilities on a form determined by the BPHC and shall state that the applicant consents to reasonable compliance and records inspections as described in Section 2.11. The Operation Permit application shall include the facility's Proposed Operation Plan.
- B. The Operation Permit application shall also include evidence of an existing insurance policy, bond or other financial instrument or means approved by the BPHC, in a form acceptable to the BPHC, to provide financial assurance to pay the cost of closure of the entire facility. The cost of closure shall be based on a current closure cost estimate, to be submitted by the applicant and approved, rejected or amended by the BPHC upon inspection of the proposed or existing facility.
- C. The BPHC shall grant an Operation Permit, after a site inspection, if the BPHC determines that the existing or proposed facility complies with these regulations, guidelines and proposed Operation Plan and will not be injurious to public health and safety. The BPHC may impose reasonable conditions on an Operation Permit, including reasonable modifications on a proposed Operation Plan, to mitigate any potential adverse impact on public health and safety.

**2.08. Operation Permits - Miscellaneous.** Operation Permits shall be maintained on site at all times. An Operation Permit shall expire one (1) year from date of issuance. An Operation Permit shall be renewed, upon timely completion of a Renewal Application on a form determined by the BPHC, unless the BPHC finds that the facility: has operated or is operating in violation of its Operation Plan ; is or has been in violation of these regulations or guidelines; is creating a nuisance and constitutes a threat to the public health; or, is or has been in violation of any state or local laws or regulations. The BPHC may consider all relevant and credible information on file, including pending complaints, in making such determination. The BPHC may temporarily renew an Operation Permit pending determination of the finding.

**2.09. Operations, General Requirements.** Waste container lots, junk yards, and recycling facilities shall be operated in compliance with these regulations, guidelines, the Operation Plan and Operation Permit at all times. All such permits shall contain the following conditions:

- a. All containers and enclosed areas used for storage of waste or recyclable materials, and surrounding areas, shall be clearly identified and maintained in a sanitary condition.
- b. Accumulated waste or recyclable materials shall be maintained in accordance with the facility's Operation Plan.
- c. Waste or recyclable materials shall not be processed or stored at locations other than those specified in the approved Operation Plan and shall not exceed the plan-specified storage limits.
- d. Incidental refuse shall not be accumulated.
- e. Solid waste and recyclable containers shall be emptied of waste residues and recyclable materials prior to being placed into storage. Cleaning shall be performed in accordance with the Operation Plans. "Emptied" means that, as to any type of container, regardless of the contents, the contents has been dumped out and there is no visible, odoriferous or putrescent material remaining.

**2.10. Closure.** A facility planning to cease operations must submit and receive approval for an Operation and Closure Plan at least six months prior to the date the facility will stop accepting materials; in the case of an unplanned closure with less than six months notice, the facility must immediately stop accepting materials and submit a Closure Plan within ten (10) days.

**2.11. Right of Entry.** To the extent permitted by law, including but not limited to 105 CMR 400.100, owners or operators shall authorize Boston Public Health Commission, Inspectional Services Department, Fire Department, Police Department, Code Enforcement, and the Boston Water and Sewer Commission agents and employees, to enter, examine or survey the premises at any reasonable time for the purpose of compliance inspections, whether or not there is prior evidence of non-compliance. Agents may examine any records related to the installation, maintenance, operation and testing of the facility.

**2.12. General Enforcement.**

A. Non-Emergency Orders to Show Cause

1. These regulations may be enforced by the Boston Public Health Commission, Inspectional Services Department, Fire Department, Police Department, Code Enforcement, and the Boston Water and Sewer Commission, except that only the Boston Public Health Commission may grant, deny, revoke, suspend or modify permits or variances of these regulations.
2. The grounds on which the BPHC may deny renewal, revoke, suspend, or modify any permit issued pursuant to these regulations include, but are not limited to:
  - a. Refusal to permit an agent of the BPHC or other government official to reasonably inspect the facility and any records pertaining to the operation of the facility;
  - b. Interference with an agent of the BPHC or other government official in the performance of his or her duty, directly or indirectly related to these regulations;
  - c. A criminal conviction of the permit holder relating to the operation of the facility;
  - d. Failure of the permit holder to submit any required documents within the time specified.
  - e. Failure to pay the required permit fees or assessed fines or penalties;
  - f. A determination that the facility presents a nuisance or may cause an adverse impact on the public health or safety;
  - g. The owner and/or operator's substantial failure to comply with these regulations; Otherwise constructing or operating the facility so as to cause a threat to the public health or safety.
3. Such action by the BPHC may include ordering other appropriate relief, including but not limited to ordering submission of a Closure Plan.
4. The BPHC may initiate an action under this section by issuing an Order to Show Cause. The BPHC shall provide notice and an opportunity to be heard in accordance with its Standard Hearing Procedure.
5. These regulations may be enforced through appropriate criminal or civil process, including but not limited to that specified at M.G.L. c. 40, § 21D and M.G.L. c. 111, § 187, in any court of competent jurisdiction.

B. Emergency Suspensions and Orders

1. The BPHC may, without prior notice or hearing, suspend any permit or otherwise issue a cease and desist order, if any person or entity is constructing, maintaining or operating a facility in a manner which constitutes an immediate and substantial threat to public health or safety.
2. The person or entity named in the suspension or order may appeal the issuance of such order to the Executive Director or his designee. If such appeal is to a designee, then the designee shall make a recommended decision to the Executive Director within ten (10) days of the receipt of all evidence. The Executive Director shall make a final determination in such appeal within ten (10) days of receipt of the recommended decision.
3. Upon the Executive Director's affirmation of all or part of a suspension or order, the person or entity named therein may appeal further to any court of competent jurisdiction.

4. Pendency of any appeal shall not stay the emergency suspension or order unless otherwise determined by a court of competent jurisdiction.

#### C. Fines for Violations of Orders and Suspensions

Any person or entity violating any term or condition of these regulations, or any BPHC suspension or order enforcing these regulations, shall be subject to a fine for each violation of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) for each day that such violation continues.

**2.13. Application and Permit Fees.** No application or permit shall be valid or issued without payment of the following fees:

Installation Permit Application \$600  
Installation Permit \$600 (per calendar year)  
Installation Permit Renewal \$600  
Operation Permit Application \$600  
Operation Permit \$600 (per calendar year)  
Operation Permit Renewal \$600  
Application for Variance \$1200  
Variance Permit \$1200 (per calendar year)

#### **Section 2.14. Variance.**

- A. The BPHC may, after a hearing pursuant to its Standard Hearing Procedure, grant a variance as to these regulations or related guidelines if the enforcement thereof would do manifest injustice; provided, however, the variance shall be granted only if there is no substantial detriment to the public health and safety and without nullifying or substantially derogating from the intent or purpose of these regulations. Any variance granted shall be in writing. Any variance may be subject to such qualification, revocation, suspension, or expiration as the BPHC expresses in its grant. No variance granted shall be construed to authorize non-compliance with any other law, ordinance, or regulation. Unless otherwise provided by the BPHC, facility closure or failure to maintain any necessary permit for six (6) months shall extinguish the variance.
- B. A variance application shall be in writing and shall state the specific variance sought and the reasons therefor, and it shall include the requisite fee. The applicant shall submit evidence that copies of the request for a variance have been submitted to the Inspectional Services Department and the Boston Water and Sewer Commission. The request shall contain all the information needed to assure the BPHC that, despite the issuance of a variance, the public health and safety will be protected. Notice of the hearing shall be given by the BPHC, at the applicant's expense (prepaid), at least ten (10) days prior thereto, by certified mail to all abutters of the property upon which the facility is located and by publication in a newspaper of general circulation. The notice shall include a statement of the variance sought and the reasons therefor. Any grant or denial of a variance shall be in writing and shall contain a brief statement of the reasons for approving or denying the variance. No work shall be done under any variance for an Installation Permit until thirty (30) days elapse after its issuance, unless the BPHC certifies in writing that an emergency exists.
- C. A variance 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 (except for an emergency order or suspension), pursuant to these regulations.

#### **2.15. Public Hearings**

- A. Installation Permits and Variances: The BPHC shall conduct a public hearing prior to issuance of an Installation Permit or a Variance. No application for an Installation Permit or a Variance shall be deemed complete until the applicant provides notice of such application (in a form approved in advance by the BPHC) to abutters and the applicant publishes such notice in a newspaper of general circulation and a neighborhood newspaper, as specified by the BPHC.
- B. Operation Permits: The BPHC shall conduct a public hearing prior to issuance or renewal of an Operation Permit if a facility has had five (5) or more citations in the one (1) year immediately preceding the renewal application.
- C. Notice of Public Hearing: Not more than twenty (20) days and not less than ten (10) days prior to the public hearing, the applicant shall provide notice of the hearing (in a form approved in advance by the BPHC) to abutters and shall publish the notice in a newspaper of general circulation and a neighborhood newspaper, as specified by the BPHC. The BPHC shall also provide notice of such application and such public hearing to any individual or entity which has requested receipt of such notice within the calendar year of the hearing.

**Section 2.16. Permit Denial - Administrative Appeal.** Any appeal of denial of a permit, or appeal of conditions attached thereto, shall be in writing and filed within thirty (30) days of the date of the BPHC action appealed. The BPHC shall adjudicate such appeal through its Standard Hearing Procedure.

**Section 2.17. Severability.** If any chapter, section, paragraph, sentence, clause, phrase, or word of these regulations shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of these regulations, which shall remain in full force and effect; and to this end the provisions of these regulations are hereby declared severable.

**Section 2.18. Transitional Rule.** An "existing facility" is a facility operating in compliance with all applicable site use laws, regulations and ordinances on August 20, 1998 and not substantially modified thereafter. No later than three (3) months after the effective date of these regulations, existing facilities shall file a complete application for an Operation Permit. No later than six (6) months after the effective date of these regulations, existing facilities shall be in full compliance therewith, unless otherwise ordered by the BPHC for good cause shown by the applicant. Not later than three (3) months after granting of an Operation Permit, an existing facility shall operate in full compliance with its Operation Plan and Operation Permit. An existing facility shall be deemed to have an Installation Permit.

**Section 2.19. Effective Date.** These regulations are effective as of December 17, 1998.

*Authority.* These regulations are promulgated pursuant to M.G.L. c. 111, §§ 31, 122-127, 143 and App. §§ 2-6(b), 2-7(a)(1) and 2-7(a)(15).