

EARTH REMOVAL PERMIT APPLICANT INFORMATION

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|--------------|---|
| PURPOSE: | To regulate the removal of earth in excess of 1,000 cubic yards |
| TOWN BY-LAW: | Chapter 144-1 through 144-2 (attached) |
| FEE: | 25-cents per cubic yard or more |
| EXPIRATION: | Permits cannot be issued for more than one year. They can be renewed in accordance with the procedure outlined in the By-Law. |

The application process is broken into two areas:

- Procedures (including the application information)
- Conditions (what will be included in the Permit unless changed by Selectmen)

The Applicant must:

- follow the instructions under 144-2-C Procedures with regard to the information to be submitted in the application (listed below).
- submit with the application any waivers he/she may be requesting under Procedures and/or Conditions (listed below).
- Attached is a checklist for the Applicant.

§ 144-2

SOIL REMOVAL

§ 144-2

C. Procedures.

(1) The application for a permit shall be accompanied by an original plan and nine copies to the Board of Selectmen, who shall give the applicant a dated receipt. Within four days, the Board of Selectmen shall transmit one copy to the Board of Health, the Building Inspector, the Conservation Commission, the Highway Department, the Police Chief, the Town Clerk and the Water Department. The review boards shall review the application and, within (21) days after receipt, signify approval or objection, in writing, to the Board of Selectmen. The plan shall demonstrate the need to remove the amount of earth requested.
[Amended 5-10-2004 ATM, Art. 41]

(2) Application information.

(a) The application shall include the following:

[1] A fee, as determined by the Board to cover advertising costs and expenses, shall be paid by the applicant upon demand for payment.
[Amended 5-10-2004 ATM, Art. 41]

- [2] The precise location of the proposed excavation as a part of the subject property.
 - [3] The legal name and address of the owner of the property involved.
 - [4] The legal name and address of the petitioner or applicant.
 - [5] Names and addresses of all abutting property owners within three hundred (300) feet, including those across any streets, as taken from the most recent tax list, as certified by the assessors.
 - [6] A plan of the land involved, prepared by a registered land surveyor or professional engineer, showing all man-made features, property lines, vegetative cover and the topography by two-foot contours 100 feet beyond the limits of the property where the excavation is to take place.
[Amended 5-13-2002 ATM, Art. 34]
 - [7] A plan of the land showing two-foot contours of the site after completion of the proposed excavation, prepared by a registered land surveyor or professional engineer.
[Amended 5-13-2002 ATM, Art. 34]
 - [8] An estimate of the quantity of material to be removed and topsoil to be replaced and the method to be used, verified by a registered land surveyor or professional engineer.
 - [9] Reserved. **[Editor's Note: Former subdivisions C(2)(a)[9], requiring security for the application, was repealed 5-13-2002 ATM, Art. 34]**
 - [10] Written proof from the Town Collector that there are no unpaid local taxes, fees, assessments, betterments or other municipal charges for more than a twelve-month period.
- (b) The applicant shall indicate on a road map provided with the application the routes to be used to transport the earth removed, including any driveways to and from the subject property. The applicant shall also furnish the approximate number and size of the truckloads of earth to be removed from the subject property each day.
- (3) Prohibited earth removal. **[Amended 5-10-2004 ATM, Art. 41]**
- (a) No earth removal permit shall be issued for earth removal projects which:
 - [1] In the opinion of the Board of Selectmen, will endanger the general health or safety or constitute a nuisance; or
 - [2] In the opinion of the Board of Selectmen, will result in detriment to the normal use of adjacent property by reason of noise, dust or vibration.
 - (b) The Board of Selectmen shall not issue an earth removal permit until a public hearing has been held upon the application for a permit to remove earth materials. Within 45 days after the receipt of an such application the Selectmen shall cause a notice of the time and the place of such hearing thereof and of the subject matter sufficient for an identification to be published in a newspaper of general circulation in the Town at least once, the first publication to be not less than 14 days before the day of such hearing. Proof of notice to the abutters must be provided by the applicant at the time of the hearing.

- (4) The Board shall have the authority to waive any and all procedures under (1) and (2) when, in the discretion of the Board, said waiver shall be in the public interest.

[Added 10-17-1994 STM, Art. 2; amended 5-10-2004 ATM, Art. 41]

D. Conditions. The permit issued by the Board shall state all the conditions imposed, including but not limited to the following:

- (1) No processing of earth and no operation involving earth materials other than the permitted removal shall take place on the subject premises during the period of time of the permit unless specifically permitted by law.
- (2) No earth or other materials foreign to the subject premises, including but not limited to boulders, asphalt, cement, road construction debris, demolition debris and tree stumps, shall be brought onto and deposited on the subject premises during the time period of the permit, except topsoil and living plant material for reclamation use. All stumps and debris shall be removed and disposed of in an approved location.
- (3) Earth removal shall be performed in phases on land areas of not more than five (5) acres each, hereinafter referred to as "phase areas." Work of any sort connected with earth removal shall not be performed on more than one (1) phase area at a time. Work in a subsequent area shall not commence until all work, including restoration of the previous phase area, has been completed to the satisfaction of the Board or its representative.
- (4) The permit grantee shall, to the satisfaction of the Board, stake or mark clearly all phase areas and buffer zones with Schedule No. 40 two-inch PVC pipe at one-hundred-foot intervals. These boundary markers shall be maintained at all times during the time period of the original and any renewed permits.
[Amended 7-19-1994 STM, Art. 7]
- (5) Before excavation commences and at the expense of the permit grantee, monitoring wells shall be drilled at locations and in numbers determined by consulting engineers of the Halifax Water Department who will conduct initial tests to determine ground and well elevations. All excavation shall be at least seven (7) feet above the groundwater elevation as determined by the Halifax Water Department, except for permitted agricultural uses and excavation of areas for drainage as permitted by town boards.
[Amended 7-19-1994 STM, Art. 7]
- (6) No excavation below the natural grade of any boundary line shall be permitted closer than fifty (50) feet to such boundary unless written consent is given to the permit grantee by the issuing authority and the owner of the property abutting such boundary.
- (7) No topsoil shall be removed from subject premises, unless it is determined by the Board to be excess, until reclamation of all disturbed areas is completed. Reclamation requires replacing of topsoil to a depth of not less than four (4) inches, seeding, planting, fertilizing, watering and attending in keeping with the best professional standards.
- (8) The finished level and grading shall leave no slope exceeding a grade of three (3) feet horizontal and one (1) foot vertical. In all cases leveling and grading shall be performed so that the natural contours of the land shall be preserved to the extent possible. Excavating to a lower elevation than required by the plan

for which the permit was granted is strictly prohibited and punishable by a fine of one hundred dollars (\$100.) per cubic foot, revocation of permit and/or other penalties as determined by the Board.

[Amended 7-19-1994 STM, Art. 7]

- (9) The subject premises shall be kept free of any debris, including tree stumps. No debris generated on site shall be buried or otherwise disposed of on site without the prior written consent of the Board and the Board of Health.
- (10) Records showing the amount of earth removed shall be provided monthly by the permit grantee, and quarterly reports certified by a registered professional engineer shall also be submitted to the Board. The method of measurement of materials removed shall be determined by the Board's engineer. The Board may require more frequent reports if it deems that circumstances warrant them. Reports to the Board by said engineer shall bear the permit grantee's expense.
- (11) No earth removal or related operations shall take place except between 7:00 a.m. and 5:00 p.m. Monday through Saturday and in no case on a legal holiday. Included among related operations are the starting of engines, loading and unloading of trucks and preparations for commencing of work which are audible over a distance. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.
- (12) The preservation of trees, bushes and other vegetation and the erecting of fencing may be required to muffle objectionable noise and vibration.
- (13) This permit is subject to a fee of twenty five cents (\$0.25) per yard or more, as determined by the Board, payable to the Town of Halifax. Any inspections by an engineer of the town's choice to ensure that the work being done follows the approved plans and this section shall be paid by the applicant.
Amended 7-19-1994 STM, Art. 7]
- (14) The earth removal permit is not transferable without approval of the Board. transfer of equity ownership or legal interest in the subject property shall be considered a transfer; however, the pledging of such to secure a mortgage or other loan shall not be considered a transfer, but if the lender should acquire ownership or interest by foreclosure, it shall be deemed a transfer.
- (15) The permit grantee shall notify the Board, in writing, within forty-eight (48) hours of any material change in his circumstances and or plans as represented in his application, including change of ownership, general/operational contractors or purpose for removing earth.
- (16) Reserved. **[Editor's Note: Former Subsection D(16), which provide for applications for renewal of permits, was redesignated as Subsection D(19.1) by 5-10-2004 ATM, Art. 41]**
- (17) The applicant agrees by acceptance of the permit to allow the Board or its representative free access to the site to conduct inspections to determine compliance with the conditions of the permit at anytime without prior notice.
- (18) No permit will be issued until a performance bond, letter of credit or assignment of account has been posted with the town in an amount deemed by the Board to be sufficient to repair and restore the land for future use as set forth in Subsection D(7) above, either by the permit grantee, after which the bond will be released or, if not, by the town, using the proceeds from the forfeited bond for that purpose.

(19) Any permit issued by the Board shall automatically expire upon the termination date stated therein. A special permit for any earth removal shall not be issued for more than one (1) year's duration and may be renewed thereafter with a public hearing legally advertised fourteen (14) days prior to the hearing.

(19.1) Applications for renewal permits must be made 45 days or more before expiration of the current permit. Applications shall include a current topographical plan detailing current status and restoration progress. The renewal, if granted, shall date from the day the current permit expires. Renewal shall not be granted if work and restoration under the current permit is unsatisfactory to the Board or its agent.

[Amended 5-10-2004 ATM, Art. 41]

(20) The Board shall have the authority to waive any and all conditions when, in the discretion of the Board, said waiver shall be in the public interest and not inconsistent with the general intent of this chapter.

[Amended 7-19-1994 STM, Art. 7]

E. (Reserved)

[Editor's Note: Former Subsection #. Prohibited earth removal, was redesignated as Subsection C (3) by 5-10-2004 ATM, Art. 41]

F. Validity. The invalidity of any section or provision of this section shall not invalidate any other section or provision thereof.

G. Penalty. Penalties shall be in accordance with MGL C. 40, § 21D. A person, firm or corporation violating any provision of this chapter shall be fined \$20 for each offense. Each cubic yard removed shall constitute a separate offense. Each day that Such offense or violation occurs shall constitute a separate offense.

[Added 1-25-1993 STM, Art. 10]

§ 144-3. Deleted. [Editor's Note: Former § 144-3, Removal outside Town, which immediately followed, was repealed by 5-10-2004 ATM, Art. 41]

EARTH REMOVAL PERMIT APPLICATION CHECKLIST FOR APPLICANT

| PROJECT INFORMATION | |
|--|--|
| NAME/ADDRESS OF APPLICANT | |
| LOCATION | |
| REASON | |
| SIZE | |
| APPLICATION - DOCUMENTS REQUIRED | |
| Pre Two-Foot Contour Map | |
| Post Two-Foot Contour Map | |
| Truck Route Map including any driveways to and from the property | |
| Size of Trucks | |
| Estimated Number of Truckloads | |
| NOTICE AND RESPONSE | |
| Public Hearing Scheduled (SELECTMEN'S OFFICE WILL LET APPLICANT KNOW OF DATE) | |
| Public Hearing Notice NOTICE OF HEARING MUST BE PUBLISHED IN THE NEWSPAPER WITHIN 45 DAYS OF RECEIPT - PUBLISHED ONCE - NOT LESS THAN 14 DAYS BEFORE HEARING DATE | |
| Proof of Abutter Notification by Applicant 300 FEET ALL AROUND | |
| OTHER | |
| Earth Removal Permit Fee (25-CENTS PER CUBIC YARD OR MORE) | |
| Attestation (attached) | |
| Workers Compensation Affidavit (attached) | |
| Current Earth Removal By-Law (attached) | |
| BOARD ACTION / OTHER REQUIREMENTS | |
| Bond Required | |
| Waivers Requested under 144-2-C-2-a (Procedures - Application Information) | |
| Waivers Requested under 144-2-D (conditions) | |

ONCE COMPLETED - RETURN TO THE SELECTMEN'S OFFICE

MASSACHUSETTS DEPARTMENT OF REVENUE
REVENUE ENFORCEMENT AND PROTECTION (REAP) ATTESTATION

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

*Signature of Individual or Corporate Name (Mandatory)

By: Corporate Officer (Mandatory, If Applicable)

**Social Security # (Voluntary) or Federal Identification Number

* This license will not be issued unless this certification clause is signed by the applicant

** Will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Licensees who fail to correct their non-filing or delinquency will be subject to license suspension or revocation. This request is made under the authority of Massachusetts General Laws Chapter 62C Section 49A.



The Commonwealth of Massachusetts
Department of Industrial Accidents
Office of Investigations
1 Congress Street, Suite 100
Boston, MA 02114-2017
www.mass.gov/dia

Workers' Compensation Insurance Affidavit: General Businesses

Applicant Information

Please Print Legibly

Business/Organization Name: _____

Address: _____

City/State/Zip: _____ Phone #: _____

Are you an employer? Check the appropriate box:

1. ☐ I am an employer with _____ employees (full and/or part-time).*
2. ☐ I am a sole proprietor or partnership and have no employees working for me in any capacity. [No workers' comp. insurance required]
3. ☐ We are a corporation and its officers have exercised their right of exemption per c. 152, §1(4), and we have no employees. [No workers' comp. insurance required]**
4. ☐ We are a non-profit organization, staffed by volunteers, with no employees. [No workers' comp. insurance req.]

Business Type (required):

5. ☐ Retail
6. ☐ Restaurant/Bar/Eating Establishment
7. ☐ Office and/or Sales (incl. real estate, auto, etc.)
8. ☐ Non-profit
9. ☐ Entertainment
10. ☐ Manufacturing
11. ☐ Health Care
12. ☐ Other _____

*Any applicant that checks box #1 must also fill out the section below showing their workers' compensation policy information.

**If the corporate officers have exempted themselves, but the corporation has other employees, a workers' compensation policy is required and such an organization should check box #1.

I am an employer that is providing workers' compensation insurance for my employees. Below is the policy information.

Insurance Company Name: _____

Insurer's Address: _____

City/State/Zip: _____

Policy # or Self-ins. Lic. # _____ Expiration Date: _____

Attach a copy of the workers' compensation policy declaration page (showing the policy number and expiration date).

Failure to secure coverage as required under Section 25A of MGL c. 152 can lead to the imposition of criminal penalties of a fine up to \$1,500.00 and/or one-year imprisonment, as well as civil penalties in the form of a STOP WORK ORDER and a fine of up to \$250.00 a day against the violator. Be advised that a copy of this statement may be forwarded to the Office of Investigations of the DIA for insurance coverage verification.

I do hereby certify, under the pains and penalties of perjury that the information provided above is true and correct.

Signature: _____ Date: _____

Phone #: _____

Official use only. Do not write in this area, to be completed by city or town official.

City or Town: _____ Permit/License # _____

Issuing Authority (circle one):

1. Board of Health 2. Building Department 3. City/Town Clerk 4. Licensing Board 5. Selectmen's Office
6. Other _____

Contact Person: _____ Phone #: _____

Information and Instructions

Massachusetts General Laws chapter 152 requires all employers to provide workers' compensation for their employees. Pursuant to this statute, an *employee* is defined as "...every person in the service of another under any contract of hire, express or implied, oral or written."

An *employer* is defined as "an individual, partnership, association, corporation or other legal entity, or any two or more of the foregoing engaged in a joint enterprise, and including the legal representatives of a deceased employer, or the receiver or trustee of an individual, partnership, association or other legal entity, employing employees. However, the owner of a dwelling house having not more than three apartments and who resides therein, or the occupant of the dwelling house of another who employs persons to do maintenance, construction or repair work on such dwelling house or on the grounds or building appurtenant thereto shall not because of such employment be deemed to be an employer."

MGL chapter 152, §25C(6) also states that **"every state or local licensing agency shall withhold the issuance or renewal of a license or permit to operate a business or to construct buildings in the commonwealth for any applicant who has not produced acceptable evidence of compliance with the insurance coverage required."** Additionally, MGL chapter 152, §25C(7) states "Neither the commonwealth nor any of its political subdivisions shall enter into any contract for the performance of public work until acceptable evidence of compliance with the insurance requirements of this chapter have been presented to the contracting authority."

Applicants

Please fill out the workers' compensation affidavit completely, by checking the boxes that apply to your situation and, if necessary, supply your insurance company's name, address and phone number along with a certificate of insurance. Limited Liability Companies (LLC) or Limited Liability Partnerships (LLP) with no employees other than the members or partners, are not required to carry workers' compensation insurance. If an LLC or LLP does have employees, a policy is required. Be advised that this affidavit may be submitted to the Department of Industrial Accidents for confirmation of insurance coverage. **Also be sure to sign and date the affidavit.** The affidavit should be returned to the city or town that the application for the permit or license is being requested, **not** the Department of Industrial Accidents. Should you have any questions regarding the law or if you are required to obtain a workers' compensation policy, please call the Department at the number listed below. Self-insured companies should enter their self-insurance license number on the appropriate line.

City or Town Officials

Please be sure that the affidavit is complete and printed legibly. The Department has provided a space at the bottom of the affidavit for you to fill out in the event the Office of Investigations has to contact you regarding the applicant. Please be sure to fill in the permit/license number which will be used as a reference number. In addition, an applicant that must submit multiple permit/license applications in any given year, need only submit one affidavit indicating current policy information (if necessary). A copy of the affidavit that has been officially stamped or marked by the city or town may be provided to the applicant as proof that a valid affidavit is on file for future permits or licenses. A new affidavit must be filled out each year. Where a home owner or citizen is obtaining a license or permit not related to any business or commercial venture (i.e. a dog license or permit to burn leaves etc.) said person is NOT required to complete this affidavit.

The Office of Investigations would like to thank you in advance for your cooperation and should you have any questions, please do not hesitate to give us a call.

The Department's address, telephone and fax number:

The Commonwealth of Massachusetts
Department of Industrial Accidents
Office of Investigations
1 Congress Street, Suite 100
Boston, MA 02114-2017
Tel. # 617-727-4900 ext 406 or 1-877-MASSAFE
Fax # 617-727-7749
www.mass.gov/dia