Appendix B: Highlights of Revised Beach Regulations

1) 445.010: Definitions – Semi-Public definition – Language was added to clarify the definition of a semi-public beach, including inserting neighborhood and residential associations into the list of potential semi-public operators. The added language will reduce confusion for both local health officials and operators and help enforce the bathing beach regulations at semi-public beaches.
2) 445.020: Operation - Signage is required to be placed at access point(s) at every public and semi-public beach. The signage must provide information on the dates of operation, name of beach operator, and states that the beach is not monitored for bacteria outside the dates of operation. This signage will inform the beach goers when the beach is operational and being sampled for water quality.
3) 445.032 Collection of Bathing Water Samples –
    a. 445.032(A)(5) - Communities and/or beach operators are allowed to combine sampling locations where conditions warrant. This will reduce both redundancies and costs.
    b. 445.032(C)(1)(a) – Language was added to clarify that the first test of the season must be collected within the 5 days immediately preceding the opening of the beach.
    c. 445.032(C)(1)(c) - Language was added to clarify that bacterial testing is required to reopen a beach only if there was a bacterial exceedance of beach water quality standards.
4) 445.033: Laboratory Analysis and Reporting - Routine Reporting by Operators – The time required before beach operators contact the Board of Health (BOH) after bacterial results are validated by a laboratory was reduced to 12 hours.

5) 445.040: Posting and Reopening Notifications –

a. 445.040(A) –

i. A reference to section 445.032 was added to the conditions that require posting a notification at the beach. This reference requires the beach to be posted when sampling isn't conducted as required in 445.032. Currently the regulations only require posting when there is a bacteriological, physical, or other imminent threat.

ii. Language was added to modify the required posting notification language when there is a posting due to physical hazards (e.g. riptides, jellyfish). In these cases, the word "injury" can be substituted for "illness" on the posting notification sign.

b. 445.040(B) - Language was added to specify that before a beach is reopened, analytic testing must be conducted or there must be verification that conditions no longer constitute a threat to human health or safety

6) 445.300: Permit Required to Operate – This new language adds a permitting component to the beaches regulations, which requires that beach operators obtain a permit, granted by the BOH by May 28, 2010, in order to operate a bathing beach. It is our hope that this requirement addresses several concerns expressed by some local health officials, among them a local revenue source. The license may be revoked by the BOH or MDPH if the operator fails to comply with the regulations. We have consulted with communities in Massachusetts and other New England states that already permit beaches and the average permit fee is approximately $150 per beach.

7) 445.500: General Administration - Language was added that references the state sanitary code for enforcement and other provisions as needed by the BOH.

Appendix A:

105 CMR 445.000: MINIMUM STANDARDS FOR BATHING BEACHES (STATE SANITARY CODE, CHAPTER VII)

Section

445.001: Purpose
445.002: Authority
445.003: Citation
445.004: Scope
445.010: Definitions
445.020: Operation
445.030: Bathing Water Quality
445.031: Indicator Organisms
445.032: Collection of Bathing Water Samples
445.033: Laboratory Analysis and Reporting
445.034: Bathing Beaches Operated by the Commonwealth
445.035: Sampling and Analysis at Semi-Public Beaches
445.036: Public Request for Testing
445.040: Posting and Reopening Notifications
445.100: Variance
445.101: Variance to be in Writing
445.300: Permit Required to Operate
445.400: General Administration
445.500: Severability

445.001: Purpose

The purpose of 105 CMR 445.000 is to protect the health, safety and well-being of the users of bathing beaches, to establish acceptable standards for the operation of bathing water and to establish a procedure for informing the public of any bathing water closures.

445.002: Authority

105 CMR 445.000 is adopted under the authority of M.G.L. c. 111, ss. 3,5S and 127A.

445.003: Citation

105 CMR 445.000 shall be known and may be cited as 105 CMR 445.000: Minimum Standards for Bathing Beaches (State Sanitary Code, Chapter VII).

445.004: Scope

These regulations shall apply to all public and semi-public bathing beaches.

445.010: Definitions

The words, terms or phrases listed below, for the purpose of 105 CMR 445.000, shall be defined and interpreted as follows:

Bathing Beach means the land where access to the bathing water is provided. It shall not mean a swimming pool as defined in 105 CMR 435.000: Minimum Standards for Swimming Pools (State Sanitary Code, Chapter V).

Bathing Water means fresh or salt water adjacent to any public bathing beach or semi- public bathing beach at the location where it is used for bathing and swimming purposes.

Board of Health means the appropriate and legally designated health authority of the community, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town, or its authorized agent or representative.

Department means the Department of Public Health.

Operator means any person who

(a) alone or jointly or severally with others has legal title to a bathing beach whether or not that person has legal title or control of the bathing water; or

(b) has care, charge or control of such bathing beach as agent or lessee of the owner or an independent contractor.

Person means any individual or any partnership, corporation, firm, association or group, or the Commonwealth, or any of its agencies, authorities or departments or any political subdivisions of the Commonwealth, including municipalities or other legal entity.

Public Bathing Beach means any bathing beach open to the general public, whether or not any entry fee is charged, that permits access to bathing waters.

Semi-Public Bathing Beach means any bathing beach that has common access and/or common use by a group or organization, which includes

(a) any bathing beach used in connection with a hotel, motel, a manufactured home park, campground, apartment house, condominium, country club, youth club, school, camp or other similar establishment where the primary purpose of the establishment is not the operation of the bathing beach, and where admission to the use of the bathing beach is included in the fee or consideration paid or given for the primary use of the premises.

(b) any bathing beach used in connection with a neighborhood or residential association

(c) any bathing beach operated solely for the use of members and guests of an organization that maintains such a bathing beach.

Private Bathing Beach means any bathing beach not considered to be a public or semi-public bathing beach.

Sanitary Survey means a written report, conducted by a Massachusetts Registered Sanitary Engineer, Certified Health Officer or Registered Sanitarian, documenting an examination of the bathing water and contiguous land masses for the purpose of identifying actual or potential sources of microbiological or chemical contamination. The sanitary survey shall also include a description of the water circulation associated with the bathing area, the impact of bather load on the bathing beach area and any natural or artificial physical hazards.

445.020: Operation

No operator shall allow bathing or swimming in bathing water whenever in the opinion of the Board of Health or the Department the bathing water is or may be hazardous or unsafe for bathing or swimming. Bathing and swimming at public and semi-public beaches shall be limited to water areas that meet the requirements of 105 CMR 445.030. Any operator of a public or semi-public bathing beach shall comply with the requirements of 105 CMR 445.000.

(A) After May 15, 2010 no bathing beach shall be operated without a permanent sign posted at the entrance to each parking lot and/or each entrance to the beach. At minimum, the sign must state the dates of operation, the name and telephone number for the beach operator, permit number, and note that the beach is not monitored for bacteria outside of the specified date range.

(B) The bathing beach operator is responsible for providing and maintaining the sign required in 105 CMR 445.020 (A).

445.030: Bathing Water Quality

Bathing or swimming shall not be permitted in any bathing water where the quality of the water does not meet the standards established in 105 CMR 445.030(A), 445.030(B), or 445.030(C), and no bathing or swimming shall be allowed when the bathing water is determined by the Board of Health or the Department to be unfit or so subject to contamination as to constitute a menace to health. Bathing or swimming shall not be permitted in bathing waters when:

(A) Physical Quality.

(1) Sludge deposits, solid refuse, floating waste solids, oils, grease or scum are present; or

(2) There are safety hazards including, but not limited to, fast currents, sharp drop-offs or an unstable bottom in the wading area(s) or lack of water clarity.

(B) Bacteriological Quality.

(1) The results of a sanitary survey or other information indicates that sewage or other hazardous substances may be discharged into the bathing water to a degree considered by the Board of Health or the Department to be of public health significance; or

(2) Epidemiological evidence discloses the prevalence of an infectious disease or other health condition which is considered to be related to the use of the bathing water and is considered by the Board of Health or the Department to be of public health significance; or

(3) The bacteriological quality of the bathing water is unacceptable as determined by laboratory analysis for the appropriate indicator organisms specified in 105 CMR 445.031 and exceeds the standards established therein.

(C) Oil, Hazardous Materials, or Heavy Metals.

(1) Oil, hazardous materials, or heavy metals are present in excess of surface water quality standards or guidelines established by the United States Environmental Protection Agency or the Massachusetts Department of Environmental Protection.

445.031: Indicator Organisms

(A) For marine water, the indicator organism shall be Enterococci.

(1) No single Enterococci sample shall exceed 104 colonies per 100 ml. and the geometric mean of the most recent five (5) Enterococci levels within the same bathing season shall not exceed 35 colonies per 100 ml.

(B) For fresh water, the indicator organisms shall be *E. coli* or Enterococci.

(1) No single *E. coli* sample shall exceed 235 colonies per 100 ml. and the geometric mean of the most recent five *E. coli* samples within the same bathing season shall not exceed 126 colonies per 100 ml; or

(2) No single Enterococci sample shall exceed 61 colonies per 100 ml. and the geometric mean of the most recent five (5) Enterococci samples within the same bathing season shall not exceed 33 colonies per 100 ml.

445.032 Collection of Bathing Water Samples

(A) Location.

(1) The Board of Health, for public and semi-public bathing beaches that are not operated by the Commonwealth shall approve sampling locations at each bathing beach in its jurisdiction. (2) The Department, for bathing beaches that are operated by the Commonwealth, shall approve sampling locations at each bathing beach in its jurisdiction.

(3) Samples of bathing water shall be taken at locations within areas of greatest bather load.

(4) Additional samples shall also be obtained at any critical location subject to contamination from business developments, dwellings, streams, sewer outfall pipes or other sources.

(5) At locations where there are multiple beach operators within 500 meters of shoreline, the beach operators may designate a single sampling location, known as a surrogate sampling point, which will provide sufficient protection to public health as approved by the local Board of Health. These locations must meet the following criteria:

(a) Bathing beaches must not be physically separated from the surrogate sampling point by natural or man-made formations. These may include:

(I) embayments or peninsulas

(II) streams, rivers, or creeks

(III) jetties or other bounding structures

(IV) stormwater or combined-sewer overflow outfalls

(b) At any time the results of a bacterial test exceed the levels in 105 CMR 445.030, all beach operators using a surrogate sampling point must comply with 445.040.

(c) Each beach operator utilizing a surrogate sampling point will be equally responsible for the costs of testing, monitoring and analysis.

(d) Thirty days prior to the beginning of the beach season, the local Board of Health must notify the Department of the beach operators utilizing a surrogate sampling point, their location, and the location of the surrogate sampling point.

(e) The local Board of Health or the Department may require any or all of the beach operators to discontinue the use of

surrogate sampling points at any time the bathing waters are found to be unfit, subject to contamination as to constitute a menace to public health, or do not provide sufficient protection to protect public health.

(B) Sample Collection. Samples shall be obtained in accordance with the procedures recommended by the most recent edition of the Standard Methods for the Examination of Water and Waste Water of the American Public Health Association or as approved by the United States Environmental Protection Agency.

(C) Frequency.

(1) The Board of Health, its agent, or any other authorized person shall collect the bacteriologic samples:

(a) Within the five days immediately preceding the opening of the bathing season; and

(b) At least weekly during the bathing season at a time and day approved by the Board of Health or the Department; and

(c) Prior to reopening a beach after closure due to the presence or suspected presence of any of the conditions specified in 105 CMR 445.030(B).

(2) Testing for oil, hazardous materials, or heavy metals shall only be required if the operator, the Board of Health, or the Department has information indicating possible contamination of the bathing beach or bathing waters from oil, hazardous materials or heavy metals.

(D) Field Data. Physical conditions at the time of sampling shall be noted and recorded on a form provided by the Department.

(E) Personnel. Samples shall be taken by the Board of Health, the Department, their duly authorized representatives or other qualified persons as determined by the Board of Health or the Department.

445.033: Laboratory Analysis and Reporting

(A) Laboratory Analysis. -Laboratory analysis of bathing water as required by 105 CMR 445.000 shall be conducted in accordance with the most recent edition of the Standard Methods for Examination of Water and Waste Water of the American Public Health Association or as approved by the United States Environmental Protection Agency.

(B) Reporting.

(1) Routine Reporting by Operators. Any operator or authorized agent of a public bathing beach, except public bathing beaches operated by the Commonwealth, and any operator or authorized agent of a semi-public bathing beach shall report the certified results of all testing, monitoring and analysis of bathing water to the Board of Health within five (5) days of receipt of the results from the laboratory.

(2) Reporting by Operators of Levels Exceeding the Established Standards. Any operator or authorized agent of a public or semi-public bathing beach shall immediately and in no event later than 12 hours after the results are validated report to the Board of Health the results of all testing, monitoring and analysis of bathing water found to exceed the standards established in 105 CMR 445.030.

(3) Reporting by the Board of Health. The Board of Health or its authorized agent shall report the results of all testing, monitoring and analysis of bathing water to the Department no later than October 31 of each year.

445.034 Bathing Beaches Operated by the Commonwealth

State agencies that own or operate a bathing beach shall conduct or cause to be conducted all testing, monitoring, and analysis of bathing water at such bathing beach in accordance with these regulations. If the results of such testing, monitoring and analysis are found to exceed the standards established in 105 CMR 445.030, state agencies shall immediately, and in no event later than 12 hours, report the results of such testing, monitoring and analysis to the Department and the Board of Health in the community where the bathing beach is located. All other results shall be reported to the Department no later than October 31 of each year.

445.035: Sampling and Analysis at Semi-Public Beaches

(A) The operators of semi-public bathing beaches shall pay for the costs of testing, monitoring and analysis of bathing waters adjacent to such semi-public bathing beaches.

(B) Operators of semi-public bathing beaches may enter into contractual agreements with the Board of Health to have the testing, monitoring and analysis of bathing water conducted by the Board of Health, the Department or other qualified persons as determined by the Board of Health or the Department.

445.036: Public Request for Testing

Any person may request that the Board of Health, or in the case of a bathing beach operated by the Commonwealth, the state agency or the Department, conduct testing, monitoring, and analysis of public and semi-public bathing waters when there is reasonable basis to believe that an alleged violation of 105 CMR 445.000 has occurred. The Board of Health or the Department, as appropriate, shall promptly review such requests

and determine whether any such testing, monitoring, and analysis is necessary to ensure the public health and safety of bathing waters.

445.040: Posting and Reopening Notifications

(A) Posting. Whenever the bathing water quality does not meet the requirements of 105 CMR 445.030, 105 CMR 445.032, or after any significant rainstorm at a bathing beach where there has been a history of violations of the water quality requirements contained in 105 CMR 445.030, the Board of Health, its agent, or any other authorized person shall immediately, and in no event later than 24 hours, notify the Department, and post or cause to be posted, a sign, or signs, at the entrance to each parking lot and each entrance to the beach stating:

WARNING! NO SWIMMING
SWIMMING MAY CAUSE ILLNESS

and a graphic depiction of a swimmer in a red circle with a diagonal hatch mark. The sign shall also contain the reason for the warning, the date of the posting and the name and telephone number of the board of health. For conditions solely related to physical hazards, the word "injury" may be substituted for "illness" in the required notification.

(B) Reopening. Prior to reopening bathing water posted due to a violation or an assumption of a violation of the standards established in 105 CMR 445.030(B), the Board of Health, its agent, or any other authorized person shall verify that the certified results of the laboratory analysis are less than the standard specified in 105 CMR 445.031. Prior to reopening bathing water posted due to a violation or an assumption of a violation of the standards established in 105 CMR 445.030(A) or 105 CMR 445.030(C), the Board of Health, its agent, or any other authorized person shall confirm by analytic testing or other verifiable means that conditions no

longer constitute a threat to human health or safety. The operator of any state operated bathing beach shall notify the Department and the Board of Health within 24 hours, or the next business day, of the reopening of the bathing water.

445.100: Variance

(A) The Board of Health may grant a variance from the provisions of 105 CMR 445.000 for any public or semi-public bathing beach not operated by the Commonwealth. The Department may grant a variance for any bathing beach operated by the Commonwealth. In granting a variance, the Board of Health and the Department shall review available epidemiological data and a written sanitary survey of the bathing beach, as provided by the operator. The survey shall include:

(1) All possible sources of contamination, both bacterial and chemical, on the watershed tributary to the bathing beach including the location and volume of:

(a) sewage and industrial wastewater discharges;

(b) storm water overflows;

(c) bird and animal populations; and

(d) commercial and agricultural drainage.

(2) The volume and quality of the diluting water, water depth, water surface area, tides and confluence of tributaries, water currents and prevailing winds.

(B) Any variance granted by the Board of Health shall specify the required bacteriological testing schedule, provided that the frequency of bacteriological testing shall not be less than once prior to the bathing season and at least every 30 days thereafter throughout the duration of the bathing season.

(C) Any variance granted by a Board of Health or the Department shall expire:

(1) at any time as determined by the Board of Health or the Department, but in no instance greater than four years, at which time the operator may apply for an extension, or

(2) at any time the results of bacterial testing exceed the levels specified in 105 CMR 445.031.

(D) No variance from the requirement of weekly testing shall be granted until the applicant provides the Board of Health or the Department with water quality data collected for at least two complete and consecutive bathing seasons.

(E) In granting a variance, the Board of Health or the Department must determine that the enforcement of 105 CMR 445.000 would not serve a significant public health purpose and that the granting of the variance will not conflict with the intent and spirit of these minimum standards. Any variance or other modification authorized to be made by these regulations may be subject to such qualification, revocation, suspension, or other expiration as the Board of Health or the Department expresses in its grant. A variance or other modification authorized to be made by this regulation 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 the opportunity to be heard.

445.101: Variance to be in Writing

(A) Any variance granted by the Board of Health or the Department shall be in writing. Any denial for a variance shall also be in writing and shall contain a brief statement of the reasons for denial. A copy of each variance shall be conspicuously posted for 30 days following its issuance and shall, while it is in effect, be available to the public at all reasonable

hours in the office of the clerk of the community, or in the office of the Board of Health and in the case of a variance by the Department, at the Department.

(B) The Board of Health shall submit to the Department a notice of the intent to grant a variance. The Department shall approve, disapprove, or modify the variance within 45 days from receipt thereof. If the Department fails to comment within 45 days, its approval shall be presumed. No alteration of any requirement in these regulations shall be made under any variance until the Department approves it or 45 days has elapsed without comment, unless the Board of Health certifies in writing to the Department that an emergency exists.

445.300: Permit - Issuance

(A) Permit Required to Operate. After May 28, 2010 no person shall commence the operation of, or continue to operate, a bathing beach unless the operator is the holder of a valid permit issued by the Board of Health or the Department.

(B) Application. By no later than April 26, 2010, any person currently operating a bathing beach desiring to continue operating said beach shall file a written application for a permit with the Board of Health, on forms prepared by the Department and obtained from the Board of Health. Any information as required by the Board of Health and payment of any fee required by local bylaw, ordinance or regulation shall accompany the application.

(C) Permit. Upon receipt of a completed application form and any applicable fee, the Board of Health shall review the information to determine if the beach meets the criteria established in 105 CMR 445.000. If so, the Board of Health shall make a determination within

30 days for existing applicants or 60 days for new applicants whether to issue a permit to the operator or the proposed operator to operate a bathing beach, on a form provided by the Department.

(D) Expiration and Renewal of Permit.

(1) A permit shall expire no later than two years from the date issued.

(2) A bathing beach permit may be renewed by applying at least 30 days prior to the expiration of the permit. Renewal application forms prepared by the Department shall be obtained from the Board of Health.

(3) Upon receipt of a completed renewal application form and any applicable fee, the Board of Health shall issue a renewal permit, provided that the conditions for operation set forth in 105 CMR 445.000 are satisfied. The Board of Health may suspend, revoke, or refuse to renew a permit to an operator who is in repeated non-compliance with 105 CMR 445.000.

(4) If a permit expires while a timely filed application for renewal is pending, the bathing beach shall continue to operate under the expired permit until a new permit is issued or the renewal application is denied.

445.400: General Administration

The provisions of 105 CMR 400.000 shall govern the administration and enforcement of 105 CMR 445.000.

445.500: Severability

In the event that any section of 105 CMR 445.000 is found to be invalid or unconstitutional, the remaining sections shall not be affected and shall remain in full force and effect. To this end, the provisions of this regulation are hereby declared severable.