



Town of Swampscott
OFFICE OF THE
Board of Health
ELIHU THOMSON ADMINISTRATION BUILDING
SWAMPSCOTT, MASSACHUSETTS 01907

Regulation Regarding Mercury in Fish Advisory
Town of Swampscott
July 12, 2004

Section 1: Preamble - Statement of Intent

The Town of Swampscott Board of Health (“The Board of Health”) is authorized, in accordance with Massachusetts general Laws Chapter 111, section 31, to “make reasonable health regulations.” The Board of Health agrees with the U.S. Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Massachusetts Department of Public Health that the consumption of fish which is high in the concentration of methylmercury is harmful to the developing neurological system in the unborn fetus and in small children. The Board of Health, however, believes that the recent FDA/EPA advisory released in March, 2004, does not go far enough to protect this at-risk population, and that it is our responsibility, based on our research, expert testimony taken at two previous public hearings, and our understanding of the data, to better inform the residents of our town of the dangers of mercury in fish.

The Board of Health recognizes that there is a general lack of knowledge and understanding in the community regarding the potential harm that mercury consumption can cause in susceptible individuals, due to the lack of legislation on a state or national level which would require the posting of such information where high mercury-containing fish is sold.

Furthermore, the Board of Health believes that it is our citizens’ right to be able to make an informed decision regarding the purchase and consumption of high mercury-containing fish.

Therefore, the Board of Health has determined that a regulation providing notice and warning to the public regarding the danger of consuming mercury- containing fish is reasonable for the protection of public health. The Board of Health enacts this regulation to assist in educating women of child-bearing age, pregnant women, nursing mothers, parents of young children, and school officials, regarding the harmful effects of mercury, so that an informed decision can be made when purchasing high mercury-containing fish for consumption.

Section 2: Philosophy/Principles

The Board of Health will require advisories to be posted in all food establishments in Swampscott which sell any of the high mercury-containing fish mentioned, in the

manner specified in this regulation. Detailed consumer information, provided by the Board of Health, will be required to be available upon request in all establishments that sell any of these fish.

The commercially-sold fish identified as containing high levels of mercury which, based on consumption data, could result in a blood level of mercury toxic to the neurological system of a fetus or a young child, are ***swordfish, shark, king mackerel, tilefish, tuna steaks and canned white-albacore and chunk light tuna.***

Section 3: Posting Requirement

1. An advisory shall be posted in all food establishments in Swampscott which sell any of the aforementioned high mercury-containing fish. The posting shall contain the language exactly as follows:

Consumer advisory regarding mercury in fish*

Pregnant and nursing women, women who may become pregnant, and children under the age of 12 are advised to not eat the following fish: swordfish, shark, king mackerel, and tilefish. Tuna steaks and canned white albacore and chunk light tuna consumption should also be limited. These fish contain levels of mercury which the EPA and FDA agree can be toxic to a developing neurological system.

***More information can be obtained from this establishment upon request.
Swampscott Board of Health**

2. (a) In supermarkets and convenience stores, this advisory shall be posted in plain view wherever the high-mercury containing fish is displayed for sale. For fish in a display case or freezer, the advisory shall be on top of the case, or attached to the case glass.

(b) In sandwich shops or at locations in other businesses where sandwiches including high-mercury containing fish are offered for sale, this advisory must be in plain view at the counter where patrons order their sandwiches, either on top of the counter, attached to the front of the counter, or as part of the menu on the wall.

(c) The size of the posted advisory as specified herein shall be a minimum of 8 ½ by 11 inches, and shall have a font size of no less than 20. An example of such a notice is included as **Appendix A**. Any advisory smaller than 8 ½ by 11 inches in these locations, or any change in the wording, must have the written approval of the Board of Health.

In restaurants, the advisory shall be clearly printed on the menu, or be placed as a placard on the individual tables. The printed side of the placard must be at least 3 x 5 inches in size, with font size no smaller than 12 (as written in the example above). Font size on a printed menu may be no smaller than 9.

3. In addition, all establishments that sell any fish shall make available to patrons, upon request, a more detailed consumer advisory on the health risks of mercury in fish, which will be provided by the Board of Health. See **Appendix B**.

4. This regulation shall be effective as of October 1, 2004.

Section 4: Enforcement

1. The provisions of these regulations may be enforced by any available means in law or equity, including but not limited to enforcement by noncriminal disposition pursuant to G.L. c. 40, §21D and Article XII of the By-laws of the Town of Swampscott. Each day a violation exists shall constitute a separate violation.

When enforced through noncriminal disposition, the penalties shall be as follows:

- (a) first offense – warning
- (b) second offense - \$50.00 fine
- (c) third and subsequent offenses - \$100 fine

2. Upon a third offense and/or subsequent offenses, the Board of Health may, at its discretion, suspend or revoke the establishment's operating permit in accordance with the provisions of 105 CMR 590.014.

Signed, on the 12th day of July, 2004

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