

**Board of Health Minutes**  
**Monday, August 10, 2009, 6:00 PM**  
Meeting Room A, Town Hall  
25 Green Street, Ipswich, MA

**Call to Order:** Susan Hubbard called the meeting to order at 6:02 PM.

**Members attending:** Susan Hubbard, Dr. Spencer Amesbury, and Chuck Hill.

**Others attending:** Health Director Colleen Fermon, Health Administrative Assistant Jennifer Brown, Food Inspector Maureen Lee, Timothy White, George Rathe, Elizabeth Berkman, Evan Parker, Cheryl Wickers, Reverend Howard Schmidt and Jack Rivers.

**Citizens Queries:** None

**Minutes:** Susan Hubbard made a motion to approve the April 6, 2009 minutes. Dr. Amesbury seconded the motion. The motion passed unanimously. Dr. Amesbury made a motion to approve the June 8, 2009 minutes. Chuck Hill seconded the motion. The motion passed unanimously. Susan Hubbard made a motion to approve the July 13, 2009 minutes. Chuck Hill seconded the motion. The motion passed unanimously.

**6:05 – Introduction of Maureen Lee, Food Inspector.**

Ipswich Food Inspector, Maureen Lee introduced herself to the Board. She reported that, thus far, inspections in Ipswich have gone well and most violations found have been voluntarily corrected in time for the re-inspection.

Subsequently, Maureen met with Colleen to review the inspection reports and to identify gaps in compliance. The Health Department will do mailings of guidance documents periodically to address said gaps. Compliance issues to be addressed immediately will be use of sanitizer and its testing equipment, use of probe thermometers, kitchen fire code compliance and anti-choking certification compliance.

**6:10 – Hearing - Ipswich Butcher Shop – 195 High Street – Summary Suspension of Reduced Oxygen Packaging operation.**

Cheryl Wickers presented, and a hearing was conducted regarding non-compliance with Ipswich Butcher Shop's Hazardous Analysis Critical Control Point (HACCP) plan for reduced oxygen packaging of raw meats and marinated meats.

The Board reviewed inspection reports from June 2006 through July 2009 that contain violations of the Food Code and the HACCP plan. There is a history of non-compliance as evidenced by the reports.

The Ipswich Butcher Shop opened on June 13, 2006. In July 2006, Health Agent, Colleen Fermon, sent a letter informing the owners that Board of Health approval of Reduced Oxygen Packaging (ROP) was required prior to offering products using this method of packaging.

On December 4, 2006 the Ipswich Butcher Shop was found using Reduced Oxygen Packaging (ROP) without approval of a HACCP plan for Reduced Oxygen Packaging. Subsequently, the Hazardous Analysis Critical Control Point (HACCP) plan review was submitted to the Board for approval, but approval was denied on January 15, 2007 due to deficiencies in the submittal.

Consequently, on March 26, 2007; the Ipswich Butcher Shop was again found using Reduced Oxygen Packaging (ROP) without approval. The owners claimed a revised HACCP plan review was submitted to the Health Department. No HACCP plan was received and, again; no approval had been issued to the Ipswich Butcher Shop. For that reason, in a letter dated March 28, 2007, the Board of Health ordered the Ipswich Butcher Shop to cease using Reduced Oxygen Packaging (ROP).

On April 14, 2007, HACCP plan approval was given by the Board of Health for using Reduced Oxygen Packaging (ROP) of raw and marinated meats only.

On April 8, 2008, HACCP plan records were not in the store during a routine inspection. A letter dated May 7, 2008 was sent to the owners reminding them of the requirement to have the HACCP records on site and of the necessity of an annual HACCP plan review.

On January 7, 2009; during a routine inspection, the Food Inspector found that the owner's expanded the food establishment area into an area not previously approved by the Board of Health. Once again, HACCP plan records were not on site.

Accordingly, a letter dated, January 8, 2009 requested the owners to attend the February 2, 2009 Board of Health meeting to discuss the two (2) HACCP violations in the first nine (9) months of operation.

At the February 2, 2009 Board of Health meeting; the Board of Health decided not to suspend the HACCP approval but directed that any agent of the Board of Health, finding the Reduced Oxygen Packaging (ROP) not in compliance with the HACCP Plan, shall immediately suspend, without a hearing, the Reduced Oxygen Packaging (ROP) approval.

The Health Agent sent a letter dated February 25, 2009 outlining the fact that HACCP plan field verification would be occurring in the near future. They were informed that the appropriate individual would be interviewed and must be able to demonstrate that they understand how to perform the verification procedures and can complete the required records. Additionally, a copy of the HACCP Field Verification Report Form that would be used by the inspector was provided for their review.

On April 22, 2009, the Ipswich Food Inspector met with Cheryl Wickers and conducted a routine Food Establishment Inspection and a HACCP Field Verification. The field verification identified that they were Reduced Oxygen Packaging cheeses and sausages that contain vegetables and cheese that were not identified in their HACCP plan and were not approved by the Health Office. No annual review of the plan occurred and they were ordered to immediately cease Reduced Oxygen Packaging foods that had not been approved for this process.

The HACCP plan for Reduced Oxygen Packaging of only raw meats and marinated meats was approved for implementation. In a letter dated May 4, 2009 it was explained that the approval was solely for raw meats and marinated meats and it clearly stated that if the Butcher Shop wanted to expand the HACCP plan beyond the approved raw meats or marinated meats they would need to amend their plan and receive approval. The Butcher Shop was ordered to immediately cease Reduced Oxygen Packaging foods that have not been approved for this process. Additionally, they were informed that if they wanted to receive approval to conduct Reduced Oxygen Packaging on new foods, a HACCP plan must be submitted to the Health Office for approval.

In a letter dated May 4, 2009 the Health Agent reminded the Ipswich Butcher Shop, once again, of the annual review requirement. The letter informed the owners that verification is necessary to ensure that the approved HACCP plan reflects current establishment conditions and that it is functioning effectively.

The July 14, 2009 inspection revealed numerous violations of the HACCP plan; food with no labels, product with an expiration date of July 27, 2009 but the product was not recorded on the production log. The last entry on the production log was July 2, 2009, and an incomplete label was on the product. The meat room door was open and the temperature was sixty (60) degrees farenhight; well above the forty five (45) degree minimum requirement. A staff member was found with an open beverage cup in the meat room with a toothpick in his mouth. Additionally, there was no food thermometer to verify the temperature of the meat prior to packaging and no sanitizer strips available for the sanitizer being used. Consequently, the concentration of the sanitizer exceeded the allowable limit. Furthermore, Reduced Oxygen Packaging was being conducted in the new area allowed for storage only. On February 9, 2009, approval for the expanded area of the store was given for storage only. Based on the February 2, 2009 decision of the Board, the Health Agent closed the Reduced Oxygen Packaging operation on July 15, 2009 after reviewing the inspection report with the Food Inspector.

Susan Hubbard asked who is responsible for the day-to-day operation of the establishment. George is listed on the permit. Cheryl said they both are responsible for the day-to-day operation of the establishment.

Susan Hubbard questioned who was certified in food protection management. George is certified in food management. Cheryl is not certified.

Susan Hubbard asked Cheryl who the Person in Charge (PIC) is and what, under state regulation; the Person in Charge (PIC) is responsible for. George, Cheryl, and their 25 year -old son are all Persons in Charge. Cheryl was unable to adequately answer what the Person in Charge (PIC) is responsible for. It was noted that she could also not answer this at the time of the last inspection.

Susan Hubbard expressed concern due to the history of compliance problems with the Butcher Shop since its opening. Cheryl disagreed that there have been compliance issues since the Ipswich Butcher Shop's opening.

Colleen reported that, since its opening in June 2006; and amid many other non-compliance issues, the Ipswich Butcher Shop was found twice to be doing Reduced Oxygen Packaging without approval.

Dr. Amesbury agreed that there is difficulty with compliance, particularly with record keeping, despite the fact that the Board of Health has extended an opportunity to comply.

Susan Hubbard questioned what is the plan to ensure compliance. Cheryl felt having one (1) person designated in the Reduced Oxygen Packaging process would help.

Based on the two (2) plus years of the owners doing Reduced Oxygen Packaging, Colleen raised concerned about he owners understanding of standard operating procedures needed to comply with the state regulation. Standard operating procedures need to be in place before high risk procedures that require HACCP plans should be undertaken. It appears the owners still do not understand the importance of following the HACCP plan and having complete records on site to demonstrate they can perform Reduced Oxygen Packaging safely. She felt basic principles of HACCP, which are outlined in their plan, are not occurring. There is no monitoring or corrective action being taken. Labeling, which is one of the critical control points, is not being monitored as evidenced by incomplete or missing labels and incomplete or non-existent logs. Temperature, the other critical control point, can't be verified if there is no food thermometer present and the meat room is not maintained at the proper temperature. Additionally, employee training is lacking on hygiene and sanitizing as demonstrated on the last inspection.

Food Inspector, Maureen Lee, agreed that a proficient grasp of standard operating procedures is not in place. For example; there is no food thermometer present. Standard operating procedures are the entire basis of food protection certification course; a collection of best practices, which no food establishment can operate without. If there is no working knowledge of the basics, as evidenced by the inspection; a specialized process requiring additional knowledge and approval should not be allowed. Additionally, potential hazards associated with a food and measures to control those identified hazards have not been established since there is a lack of understanding the HACCP principles and how to implement them.

Maureen said she will be creating a check-list for Reduced Oxygen Packaging (ROP) which would cover what is expected for a HACCP plan field verification review and that would help guide the process.

Given that the Ipswich Butcher Shop has had repeated violations of their HACCP plan since approval was given in April 2007, Dr. Amesbury made a motion to uphold the suspension of their reduced oxygen packaging (ROP) approval at this time. He stated that the following items be completed with the requisite documentation provided to the Health Office.

1. Re-submission the HACCP plan for reduced oxygen packaging for approval by the Health Agent.
2. All personnel must become certified in food protection management by passing a food safety exam which is recognized by the Department of Public Health. A copy of all certificates must be forwarded to the Health Office as proof that all staff has successfully completed the course. A list of approved instructors could be obtained at [www.mass.gov/dph/fpp](http://www.mass.gov/dph/fpp).
3. All personnel, once certified, must be able to demonstrate to the Ipswich Food Inspector that they have knowledge of food safety practices.
4. All personnel that will be performing reduced oxygen packaging must be able to demonstrate to the Food Inspector that they have a complete understanding of Hazardous Analysis Critical Control Point principles and that they can implement the HACCP plan.

Once compliance is achieved with the aforementioned items, as determined by the Health Agent, the suspension of reduced oxygen packaging approval may be withdrawn. Susan Hubbard seconded the motion. The motion passed unanimously.

**6:45 – Hearing - N. Timothy White – HomePro Northshore – title 5 inspection reports for 8 Pine Street and 4 Adeline Drive and high groundwater determinations.**

Timothy White was present for the hearing to discuss Title 5 Inspection reports for 8 Pine Street and 4 Adeline Drive and his process of determining high groundwater.

In accordance with Title 5, Mr. White submitted inspection reports to the Health Department for the systems serving 8 Pine Street and 4 Adeline Drive, Ipswich, Massachusetts. The Health Agent determined that the reports did not adequately convey the depth to groundwater. Subsequently, at the requests of the property owners, hearings were held with the Board of Health regarding the Title 5 Inspection reports. The Board found that in both reports Mr. White did not adequately address the estimated depth to high groundwater section, section D, of the report.

Colleen stated that on an Official Title 5 Inspection Form, the inspector is required to document the estimated depth to high groundwater. Mr. White attested that he reviews the files at the Health Office and documents soil testing for that property, if available, and uses that to determine whether or not a leaching system is above high groundwater. Mr. White said he did not feel that post 1995 soil testing information should supersede pre-1995 soil testing information that was used for the design of the septic system. Mr. White questioned if the estimated depth to high groundwater on the report is the same as high groundwater that is obtained through redoximorphic features.

Colleen stated the high groundwater elevation shall be estimated by the inspector based on the methods described in 310 CMR 15.302(4). The estimated depth to high groundwater, that the inspector documents on an Official Title 5 Inspection Form, is the depth to high groundwater that is obtained through redoximorphic features found during soil testing as outlined in CMR 310 15.103 (3) (a). Since pre-1995 testing did not take into consideration redoximorphic features, the information from testing prior to 1995 must carry low weight in the analysis unless this is the only available information.

Susan Hubbard informed Mr. White that both properties required hearings to determine how to proceed with a high groundwater determination.

Mr. White feels that the estimated depth to high groundwater on the report is not the same as high groundwater that is obtained through redoximorphic features found during soil testing as outlined in 15.103 (3) (a). Why aren't all his reports questioned?

Colleen said that this becomes a problem when the inspector relies on soil testing prior to 1995 and does not consider the post 1995 soil testing results when they exist. Mr. White will review the file and document soil testing for that property, if available, and use that to determine whether or not a leaching system is below high groundwater although there is often post 1995 soil testing information on an abutter's property (within 150 feet) that would more accurately reflect high groundwater.

Colleen spoke with Claire Golden of the Department of Environmental Protection (DEP) for clarification regarding what is being asked on page number 16 of the inspection report under estimated depth to high groundwater. It was Claire's written determination that the inspector must note the estimated depth to seasonal high groundwater which is the same groundwater as determined through redoximorphic features. To do so, the inspector must rely on all available information: soil testing, landscape features, drainage (including sump pump) features, monitoring wells, etc. Since pre-1995 soil testing did not take into account redoximorphic features, the information from such testing should carry low weight in the analysis unless that is the only information available in that area. Soil testing information from adjacent sites should be adjusted, as appropriate; to reflect elevation differences or other factors that may affect the estimated ground water elevation on the property being inspected. In summary, high groundwater must be obtained through the best available information.

Susan Hubbard made a motion that prior to Mr. White's determination of the estimated depth to high groundwater on a report, and as part of a Title 5 inspection, he must do the following:

1. Conduct a Board of Health file review of groundwater information for all properties within 150 feet of the septic system being inspected and the results documented and submitted with the inspection report, in accordance with Board of Health Septic System Regulation 10.3. If available, note the depth to high groundwater that is obtained through redoximorphic features found during soil testing as outlined in CMR 310 15.103 (3) (a). Since pre-1995 testing did not take into consideration redoximorphic features, the information from testing prior to 1995 must carry low weight in the analysis unless this is the only available information.
2. Consider all available information within 150 feet of a given property such as landscape features, the elevation of nearby water bodies, or evidence of groundwater infiltration in other subsurface structures (for example, cellars), or hand augering to determine depth may aid in determining whether the system is located in the groundwater. Soil testing from other sites must be adjusted, as appropriate; to reflect elevation differences or other factors that may affect the estimated high groundwater elevation on the property being inspected.
3. Describe the methods used to determine high groundwater elevation in the inspection report.
4. Provide reasoning on the inspection report when a leaching system appears to be below high groundwater (based on high groundwater on another property) but he feels it passes inspection.

Dr. Amesbury seconded the motion. The motion passed unanimously.

#### **7:09 – Hearing - George Rathe – 26 Town Farm Road - noncompliance with order to upgrade septic system.**

George Rathe presented, and a hearing was conducted regarding where Mr. Rathe is in the process of obtaining revised septic plans that meet current Title 5 and Board of Health Septic Regulations.

At the May 5, 2008 Board of Health meeting a one (1) year extension was granted on Disposal System Construction Permit 05-26. Mr. Rathe was informed that the Disposal System Construction Permit would expire on May 17, 2009 and no additional extension on the permit would be allowed.

Previously, on June 8, 2009, a hearing was conducted since Mr. Rathe failed to comply with the Board of Health order, issued on May 5, 2008, to either upgrade the septic system or connect to town sewer by May 17, 2009. Additionally, the Disposal System Construction Permit expired on May 17, 2009 and therefore a new septic plan was required.

At the June 8, 2009 meeting, Mr. Rathe explained to the Board that he had contracted with an installer for the upgrade installation, but became unemployed in February 2009 so he could no longer finance the installation prior to the May 17, 2009 deadline. It was the decision of the Board to have Mr. Rathe attend the August 2009 Board of Health meeting to give an update on where he is in the process of obtaining revised septic plans that meet current Title 5 and Board of Health Septic Regulations.

At the August 10, 2009 meeting, Mr. Rathe explained that he is still unemployed, and after obtaining an estimate from his engineer, he is unable to finance the revised septic plans. Mr. Rathe stated that his intentions are to find work, re-mortgage the home, and install the new system; but he stated that he may be forced to sell the property. Currently, there are two (2) persons living in the home.

Dr. Amesbury question if pumping would be a temporary solution for Mr. Rathe. Colleen confirmed that the system could be maintained by pumping, however; this would not solve the problem of the septic failure

Chuck Hill made a motion that that the system must be pumped and inspected by September 10, 2009 to ensure it is

operating properly. After the pumping, the septage hauler must inform the Health Agent on the condition of the system.

Additionally, it was the decision of the Board to have Mr. Rathe attend the February 2010 Board of Health meeting to give an update on where he is in the process of updating the septic system design. Susan Hubbard seconded the motion. The motion passed unanimously.

**7:20 – Hearing - Evan Parker – 213 High Street - noncompliance with order to upgrade septic system.**

Evan Parker presented, and a hearing was conducted since he failed to comply with the Board of Health order, issued on January 5, 2009, to have the new septic system installed, with the Certificate of Compliance issued, by July 31, 2009.

At the meeting of the Board of Health on January 5, 2009, a hearing was conducted since Mr. Evans failed to comply with the Board of Health order, issued on October 20, 2008, to have the new septic system serving 213 High Street installed, with the Certificate of Compliance issued, by November 30, 2008. At the meeting Mr. Parker asserted that insufficient funds were escrowed, as part of the transfer of title, based on the assumption the property would be connected to town sewer. The Board of Health granted an extension until July 31, 2009; with the condition that the system was installed with the Certificate of Compliance issued by said date.

In a letter dated June 17, 2009, Mr. Parker was informed that a licensed Installer had not come to the Health Department to obtain the Disposal System Construction Permit (DSCP) and the Health Department had not received any correspondence regarding when the septic system was scheduled for installation. Mr. Parker was reminded that he assumed the system failed and signed an agreement to upgrade on June 22, 2007 since a Title 5 Inspection was not conducted in December 2004 when the property transferred. He was asked to contact the Health Department within seven (7) day receipt of notice to inform us whether the timeframe for installation would be met. No one contacted the Health Department.

At the August 10, 2009 meeting, Mr. Parker explained that he is not financially able to do the upgrade. He only has two-thirds (2/3) of the cost of the upgraded system. His desire is to sell the home and he attested that he will be putting it on the market within the next month to be sold. Currently there are only two (2) people residing in the home.

Additionally, Mr. Parker contacted an installer, but he never received an estimate for the installation of the system from the installer.

Dr. Amesbury explained that not having money for the upgrade is not an acceptable reason for non-compliance. Susan Hubbard asked if the failed system posed an imminent public health hazard. Colleen confirmed that the system did not pose an imminent public health hazard. There were no visible problems when she did a walkthrough to determine a bedroom count in 2004 and no complaints have been filed about the property.

Based on the assertion by Mr. Parker that he will put the home on the market to be sold, and since the financing of the upgrade is contingent upon the sale of the property; Chuck Hill made a motion to have Mr. Parker attend the February 2010 meeting to give an update of where he is in the process of selling the home and to provide a timeframe for bringing the property into compliance. A copy of his listing agreement must be submitted to the Health Department within thirty (30) days. Susan Hubbard seconded the motion. The motion passed unanimously.

**7:30 – Hearing - Elizabeth Berkman – 6 James Road - noncompliance with order to upgrade septic system.**

Elizabeth Berkman presented, and a hearing was held, upon her request, to discuss an extension for the installation of the upgraded septic system serving 6 James Road. In a letter dated January 12, 2009, the Board of Health notified Ms. Berkman that the septic upgrade plan designed by Daniel Johnson, R.S., plan # J-2177, dated January 14, 2008, revision date November 17, 2008, for the three (3) bedroom dwelling located at 6 James Road, Ipswich, Massachusetts was approved and that the upgraded system must be installed with the Certificate of Compliance issued by July 31, 2009.

A follow-up letter dated June 17, 2009, was sent informing her that a licensed Installer had not come to the Health Department to obtain the Disposal System Construction Permit (DSCP) and this office had not received any correspondence regarding when the septic system is scheduled for installation.

Ms. Berkman explained to the Board that she had been unemployed for nine (9) months and very recently returned to work so she could no longer finance the installation of the system. The cost of the system went from twenty three (\$23,000) thousand dollars to thirty nine thousand dollars (\$39, 000) since she first began the process of upgrading the system. Financially she is not able to keep the home and has put it on the market to be sold. She will use the sale of the home to finance the upgrade of the system. The system was pumped 6 months ago.

Based on her assertion that she has put her home on the market to be sold, and since the financing of the upgrade is contingent upon the sale of the property; Chuck Hill made a motion to have Ms. Berkman attend the February 2010 meeting to give an update of where she is in the process of selling the home and to provide a timeframe for bringing the property into compliance. Dr. Amesbury seconded the motion. The motion passed unanimously.

**7:35 – Hearing - Reverend Howard Schmidt – applicant – 7 Rear Blair Drive – soil testing for new construction outside the new construction season.**

Jack Rivers presented, and a hearing was conducted to discuss a variance from Ipswich Board of Health Septic System Regulation 8.1 which requires soil testing for new construction to be completed between March 1 and May 31. Reverend Schmidt is in the process of purchasing 7 Rear Blair Drive. He would like to have perc testing done prior to purchasing the property to ensure the lot is buildable but he has missed the soil testing timeframe for new construction.

Dr. Amesbury made a motion to grant a variance from Ipswich Board of Health Septic System Regulation 8.1 which requires soil testing for new construction to be completed between March 1 and May 31. Said variance allows soil testing to be conducted outside the new construction testing season. The testing can be scheduled once:

1. A trench application and the requisite fee is submitted to the Health Department, and
2. The Conservation Agent conducts a site visit to confirm determine the testing areas are not within the jurisdiction of the Conservation Commission.

Susan Hubbard seconded the motion. The motion passed unanimously.

**7:35 – Hearing - Keith Vanderbilt – 27 Allen Lane – noncompliance with operation and maintenance contract and annual inspection of the pressure distribution system.**

The hearing was withdrawn since the homeowner attested to signing an operation and maintenance agreement today. Proof of said contract must be provided to the Health Department or the owner will be asked to attend the September 14, 2009 meeting.

**7:45 - Report of the Health Agent:**

**Household Hazardous Waste:** Household Hazardous Waste day will take place on Saturday, September 26, 2009 between 9:00AM-12:00PM at the Transfer Station located on Town Farm Road.

**Influenza Plan:** Public Health Nurse, Pamela Lara, and Health Director, Colleen Fermon, are working on an Influenza plan. A finalized draft will be issued by the end of August to Board of Health members and school nurses.

**H1N1 Vaccinations:** The state will issue H1N1 vaccine, if available, after the regular influenza vaccine is administered. For most people the vaccine will need to be a two (2) dose series. Colleen is seeking assistance from the MRC triad and Partners Home Care for the administration of the vaccine. Partners Home Care could administer to adults, but there is no plan at this time for administration of the vaccine to children. Additionally, it is not evident how much assistance the town may be granted.

**1-12 LeBlanc Drive:** Colleen will contact Kopelman and Paige if the dumpster is not on location at the time of inspection.

**Next Board Meeting:** The next meetings of the Board of Health were scheduled for September 14, 2009 and October 19, 2009 at 6pm.

**Adjourn:** Susan Hubbard made the motion to adjourn at 8:15 PM. Dr. Amesbury seconded the motion. The motion to adjourn passed unanimously.

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Susan Hubbard, Chairperson

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Dr. Spencer Amesbury, Board Member

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Charles Hill, Board Member