
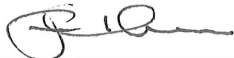


Marathon County Health Department Policy	
Policy Name	Human Health Hazard Regulation
Relevant Procedure(s)	Not Applicable
Applicable To	Not Applicable
Location	O:\Policies and Procedures – Final\Human Health Hazards\Human Health Hazard Regulation 2017-12-11.pdf
Effective Date	December 2, 2014
Date of Review	December 11, 2017
Date of Revision	
Legal and Other References	Administrative Code ATCP 134, and 134.02 Marathon County General Code of Ordinances Chapters 24, 25.04 Wisconsin State Statutes Chapters 54.10(3), 68, 101.01, 251.04 (1) and (3), 254.01(2), 254.59 and 254.593
Authorizing Signatures	 12/28/2017
	Dale Grosskurth, Director of Environmental Health & Safety Date
	 12/28/2017
	Joan Theurer, Health Officer Date

### Authority

Wisconsin State Statute Sections 251.04 (1) and (3), grants authority to the Board of Health to assure the enforcement of state public health statutes and rules of the department and to adopt regulations for its own guidance and the governance of the local health department that is considers necessary to protect and improve the health of the public.

### Purpose

The purpose of the Marathon County Human Health Hazard Regulation is to protect the health and safety, of the public and communities in Marathon County from environmental exposures that may contribute to communicable disease, acute or chronic illness, or endanger life. This regulation provides guidance for the administration and enforcement in the event of a human health hazard.

### Applicability

The determination of a human health hazard is made using a variety of criteria, including but not limited to: duration of exposure, quantity and nature of exposure, type and number of individuals exposed, and known or expected health risk.

When Marathon County Health Department finds a child, an adult determined to be incompetent, or tenant (i.e. person not in control of their living environment) is impacted by a Human Health Hazard, the role of Marathon County Health Department is to provide education, referral services and enforcement as necessary. When a competent adult(s) is involved, the role of Marathon County Health Department may be limited to providing education and referral services.

This regulation shall be enforced in a manner that is consistent with, and in recognition that, tenants do not possess property rights and typically do not possess financial resources to make necessary repairs, changes, or alterations to the physical structure which they occupy such that they may be subject to financial exploitation for attempting to break a rental agreement even in the face of human health hazards.

This regulation is a tool to address identified human health hazards risks, which may be regulated by other town, municipal and county regulations and ordinances. The Marathon County Health Department will work closely with towns, municipalities and county departments to determine proper agency jurisdiction when multiple agencies are involved. Where jurisdiction is determined to be held by another agency, municipality, or where regulation is pre-empted by other State or Federal authorities, that agency's authority shall supersede this regulation.

### **Jurisdiction**

The jurisdiction of the Marathon County Health Department pursuant to this regulation shall include all air, land, and water (both surface and ground) within Marathon County but shall not apply within the corporate limits of municipalities that have a full-time Health Department pursuant to Chapter 251 Wisconsin Statutes.

#### **Section 1.01 Definitions**

- (1) *County* means Marathon County, Wisconsin.
- (2) *Child* "when used without further qualification, means a person who is less than 18 years of age.

- (3) *Contamination* means any physical, chemical, biological, or radiological substance or matter in air, land, or waters of the state such that the contaminant poses an actual or potential threat to human health.
- (4) *Department* means Marathon County Health Department.
- (5) *Designated swimming* area means a body of water that a public or private property owner has maintained and identified as a swimming area open to the public or members for use.
- (6) *Dwelling* means a building or structure having walls and a roof, whether or not it is erected or set upon an individual foundation or slab constructed base which is designed or used for the housing, shelter, enclosure, or support of persons. This definition includes mobile homes.
- (7) *Groundwater* means all water found beneath the surface of Marathon County located in sand, gravel, lime rock, or sandstone geological formations or any combination of these formations.
- (8) *Human Health Hazard* means a substance, activity or condition that is known to have the potential to cause acute or chronic illness, to endanger life, to generate or spread infectious diseases, or otherwise injuriously to affect the health of the public” Source: Wisconsin State Statute 254.01(2).
- (9) *Health Officer* means the Health Officer of Marathon County, his or her designee or authorized agent. The Director of Environmental Health and Safety and the Environmental Health Sanitarian are considered designees.
- (10) *Imminent Human Health Hazard* means a Human Health Hazard which could cause serious or life-threatening injury or death at any time, determined by the Health Officer.
- (11) *Incompetence* is a court-determined finding involving a physician or psychologist. An individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:
  - a. The individual is aged at least 17 years and 9 months.
  - b. Because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.
  - c. Because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to

management of his or her property or financial affairs, to the extent that any of the following applies:

- i. The individual has property that will be dissipated in whole or in part.
- ii. The individual is unable to provide for his or her support.
- iii. The individual is unable to prevent financial exploitation.

Source: Wisconsin State Statute 54.10(3)

- (12) *Person* means any individual, firm, corporation, society, institution, public body or any other entity.
- (13) *Pollution* means contaminating or rendering unclean or impure the air, land or waters of the County, or making the same injurious to public health.
- (14) *Potable* means water supplied for human consumption, sanitary use or for the preparation of food that bacteriologically or chemically exceeds State drinking water standards.
- (15) *Public building* means any structure, including exterior parts of such building, such as a porch, exterior platform, or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. Source: Wisconsin State Statute 101.01
- (16) *Regulation* means the Marathon County Human Health Hazard Regulation.
- (17) *Rental agreement* means an oral or written agreement, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on essential terms of tenancy such as rent. Source: Administrative Code ATCP 134.02
- (18) *Rental housing* means a dwelling occupied by one or more tenants pursuant to a rental agreement.
- (19) *Solid Waste* means garbage, refuse, and all other discarded or salvageable solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operation and from domestic use and public service activities, but does not include solids or dissolved material in waste water effluent or other common water pollutants.
- (20) *Tenant* means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. Source: Administrative Code ATCP 134.02

- (21) *Toxic or Hazardous Materials* means any chemical and/or biological material that is or has the potential to create a public health hazard.
- (22) *Unfit for Human Habitation, Occupancy, or Use* refers to a dwelling which because of condition or situation is dilapidated or out of repair or otherwise contains Human Health Hazard(s) which render it dangerous, unsafe, or unsanitary to engage in activities including, but not limited to cooking, eating, and/or sleeping, until necessary repairs have been made.

## Section 1.02 **Administration**

- (1) General Provisions – This Regulation shall be interpreted, administered, and enforced by the Marathon County Health Officer or his/her designee.
- (2) Powers – The Health Officer shall have all the powers necessary to enforce the provisions of this code without limitation by reason of enumeration including the following:
- (a) To investigate potential human health hazards and determine whether or not a human health hazard exists.
  - (b) To secure a court order or warrant where necessary in order to enter dwellings or premises for the purposes of investigation.
  - (c) To order stop work, abatement, and/or correction of any human health hazard not in compliance with this Regulation or State codes.
  - (d) To delegate the responsibilities of administration and enforcement of this Regulation to a registered environmental health sanitarian or another person qualified in the field of public health.
  - (e) To initiate any other action authorized under the law or this Regulation to ensure compliance with the purpose and intent of this Regulation and the requirements of this Regulation.
  - (f) To declare any dwelling or dwelling unit used for human occupancy found to be Unfit for Human Habitation, Occupancy or Use pursuant to this regulation and to placard said dwelling or dwelling unit accordingly. The Health Officer shall remove such placard whenever the defect or defects, upon which the declaration and placarding were based, have been eliminated.

### Section 1.03 **Adoption and Provisions by Reference**

- (1) Adoption by Reference: This regulation adopts by reference Sections 254.59 and 254.593, Wisconsin Statutes and any successor statutes or regulations as if fully set forth. Any and all amendments and/or revisions thereto are adopted.

### Section 1.04 **Human Health Hazard**

- (1) Human Health Hazard prohibited – No person shall erect, construct, cause, continue, maintain, or permit any human health hazard within the County. Any person who shall cause, create, or maintain a human health hazard or who shall in any way aid or contribute to causing, creating, or maintenance thereof shall be in violation of this Regulation and shall be liable for all costs and expenses attendant upon the removal and correction of such hazard and to the penalty provided herein.
- (2) Responsibility of Property Owner – It shall be the responsibility of the property owner to maintain such owner’s property in a human health hazard-free manner and also to be responsible for the abatement and/or correction of any human health hazard that has been determined to exist on their property.
- (3) Human Health Hazard Enumerated – Specifically, but not limited by enumeration, the following are human health hazards subject to this regulation.
  - (a) Air Pollution – The presence in the air of one or more contaminants in such quantities and of such duration as is or tends to be injurious to public health.
  - (b) Animal Waste – Accumulation of the bodily waste from all domestic animals and fowl that are handled, stored, or disposed of in a manner that creates a human health hazard, but exclusive to those wastes common to ordinary and approved agricultural practice.
  - (c) Places for Vermin, Insects, etc. – Accumulation of decayed animal or vegetable matter, trash, rubbish, garbage, rotting lumber, bedding, packing material, scrap metal, animal and human fecal matter, or any substance in which flies, mosquitoes, disease carrying insects, rats, or other vermin can breed, live, nest, or seek shelter.

- (d) Solid Waste – Accumulation of solid waste that is stored or disposed of in a manner which may pose a human health hazard or renders any property unsanitary, unhealthy, or unfit for human habitation, occupancy, or use.
- (e) Toxic or Hazardous Material – Any chemical and/or biological material that is stored, used, released, or disposed of in such quantity or manner that it is or has the potential to create a human health hazard.
- (f) Holes or Openings – Any hole or opening caused by an un-abandoned or improperly abandoned cistern, septic tank, dug well, or any other improperly abandoned or covered up excavation.
- (g) Nonfunctional or Unsanitary Public Building Fixtures – Nonfunctioning water supply systems, toilets, urinals, lavatories or other fixtures considered necessary to ensure a sanitary condition in a public building, including any public restroom which is soiled by human or other waste, or maintained in a filthy condition or lacking soap and single-use hand towels.
- (h) Harmful Condition – Any condition or situation which renders a dwelling or any part thereof unsanitary, unhealthy, and unfit for human habitation, occupancy, or use, or renders any property unsanitary or unhealthy.
- (i) A dwelling that lacks a potable drinking water supply.
- (j) Unsafe Dwelling – An unsafe dwelling is one that is found to be dangerous to the life, property, or safety of the public or the occupants of the dwelling by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such dwelling contains dangerous equipment, wiring, or other fixtures, or is so damaged, decayed, dilapidated, structurally unsound, or of such faulty construction or unstable foundation, that partial or complete collapse is possible. Conditions that are considered unsafe include but are not limited to the following:
  - i. A dwelling which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates a serious hazard to the health or safety of the occupants or to the public.
  - ii. A dwelling which does not have a heating system functioning properly as to protect the health or safety of the occupants or of the public or which lacks a functioning heating system able to maintain a temperature of at least 67° F in habitable rooms during all seasons of the year in which the dwelling unit may be occupied. Temperatures in

living areas shall be measured at the approximate center of the room, midway between floor and ceiling. Source: Administrative Code ATCP 134

- iii. Smoke detectors – A minimum of one smoke detector must be installed on each floor of a dwelling; and where applicable, as close to the sleeping rooms as possible.
- iv. Carbon monoxide detectors- As a minimum, a carbon monoxide detector must be installed on each floor of a dwelling; and where applicable, as close to the sleeping rooms as possible in dwellings with a fuel-burning appliance or an attached garage.
- v. A dwelling which, because of its condition, is currently implicated as the source of a confirmed case of lead poisoning.
- vi. Roofs– The roof and flashing shall be sound and not have defects that admit rain, snow, or other moisture.

#### Section 1.05 Declaration of Unfitness for Human Occupancy

- (1) No person shall continue to occupy, rent, or lease quarters for human habitation, which are declared unfit for human habitation, occupancy, or use by the Health Officer.
- (2) Any dwelling or dwelling unit declared as unfit for human habitation, occupancy, or use, and so designated and placarded by the Health Officer, shall be vacated within a reasonable time, as specified by the Health Officer.
- (3) No dwelling or dwelling unit which has been declared and placarded as unfit for human habitation, occupancy, or use shall again be used for human habitation until written approval is secured from and such placard is removed by the Health Officer.
- (4) No person shall deface or remove the placard from any dwelling or dwelling unit which has been declared as unfit for human habitation, occupancy, or use.
- (5) Action by the Health Officer as set forth in sub. (1) or in sub. (2) where the property owner has not brought the property into compliance within the time limit set forth in the order or extended order, shall constitute governmental intervention into the rental agreement between the property owner and the tenant in the form of governmental intervention outside the control of the tenant or property owner (Force Majeure), condition making action imperative and necessary (Exigent circumstance), or an



unforeseen combination of circumstances that call for immediate action (Emergency) such that continued occupancy and use of the rental housing by the tenant is prohibited by law under this Regulation.

### Section 1.06 Designated Swimming Beaches

- (1) Sanitary Survey at Designated Swimming Beaches – At the discretion of the Marathon County Health Department, a sanitary survey may be conducted at any time at an existing beach assessing unsafe conditions including but not limited to debris, litter, or algae blooms.
- (2) Water Sampling at Designated Swimming Beaches - If beach water sampling is performed; samples shall be collected within one foot of the surface in water having a depth range of 3 to 6 feet.
- (3) Criteria for Advisory or Closure Posting at a Designated Swimming Beach – When one or more of the following are not complied with, the beach or public swimming area shall be posted with an Advisory or closed to the public, based on a determination by the Health Officer, until compliance is achieved.
  - (a) Microbiological Quality – Advisory or closure signs should be posted when the *E. Coli* count in the beach water, as determined by microbiological sampling, exceeds 235 cfu/100mL. If the beach is suspected to be the cause of communicable disease, it shall be closed until the source of the disease is identified and removed and/or bacteriological quality sampling indicates the water is safe for swimming. Beach advisory/closure signs can be removed when the sample results of two consecutive days of sampling are below 235 colony forming units (cfu)/100mL.
  - (b) Unsafe Conditions – When the safety of a beach is in doubt, and acceptable levels have not yet been established following a flood, chemical or biological spill, or unusually serious storm event.
- (4) Closing of Designated Swimming Beaches – If a designated swimming beach is determined by the Health Officer to be a human health hazard, the Health Officer may order it closed and post a sign with the following wording: “Closed for Swimming by Order of the Marathon County Health Department.”

### Section 1.07 Enforcement

- (1) Voluntary compliance through education and referral.
- (2) Written Order – When a violation of this Regulation is encountered, the Health Officer or designee may issue the violator a written order, delivered personally, by First Class Mail, or sent by Certified Mail to the owner, operator, or occupant as the case may require. This order shall specify the following:
  - (a) A description of the real estate involved.
  - (b) The nature of the violation and the steps needed to abate and/or correct it.
  - (c) Whether Stop Work is required because activities are resulting in hazardous or unsafe work and/or conditions.
  - (d) The time period in which the violations must be corrected and/or abated (usually within 5 to 30 days depending on the nature of the violation or whether a compliance time extension was granted to the violator by the Health Officer).
  - (e) The penalty or penalties the violator would be subject to if the apparent violation is not abated and/or corrected within the given time period, see subsection (3) and (4) below.
- (3) Noncompliance with Order – If a person does not comply with a written order from the Health Officer, the person may be subject to one or more of the following actions and/or penalties:
  - (a) To declare any dwelling or dwelling unit used for human occupancy found to be Unfit for Human Habitation, Occupancy or Use pursuant to this regulation and to placard said dwelling or dwelling unit accordingly.
  - (b) Commencement of legal action seeking a court imposed forfeiture [see subsection (6) below].
  - (c) Commencement of legal action seeking an injunction to abate the violation and/or correct the damage created by the violation.
  - (d) Any other action authorized by this Regulation or by other applicable laws as deemed necessary by the Health Officer.

- (e) The initiation of one action or penalty under this section does not exempt the alleged violator from any additional actions and/or penalties listed in this section.
- (4) Written Orders not required – In extreme cases where a violation poses an imminent health hazard, as determined by the Health Officer or designee, or in the case of repeating occurrences of the same violation by the same person, the action(s) specified in the subsection (3) above can be initiated immediately.
- (5) Abatement by Marathon County  
Abatement or Removal of Human Health Hazards – If the human health hazard is not abated or removed by the date specified in Section 1.07(2) above, the Health Officer or designee may enter upon the property and abate or remove the human health hazard. The cost of the abatement or removal may be recovered from the person permitting the violation, or may be paid by the County Treasurer, who shall enter the amount chargeable to the property in the next tax roll in a column headed “For Abatement of a Human Health Hazard” as a special tax on the lands upon which the human health hazard was abated and the tax shall be collected as are other taxes.
- (6) Penalties  
Anyone violating a provision of this regulation or maintaining a human health hazard shall be subject to forfeiture according to the penalties set forth in Section 25.04 Penalty Provisions of the Marathon County General Code of Ordinances.
- (7) Initiation of Legal Action – Legal action shall be initiated against a violator as requested by the Health Officer in accordance with the following. Prosecution of violations of this Regulation shall be conducted by the Office of Corporation Counsel for Marathon County.

**Section 1.08 Appeal of Written Orders and Declarations of Unfitness for Human Habitation, Occupancy, or Use.**

- (1) Any person having a substantial interest that is adversely affected by an administrative determination made on behalf of the County pursuant to any of the provisions of this Regulation may have such determination reviewed as provided in Chapter 68, Wis. Stats., and in conformance with the following procedures:
  - (a) Any person having a substantial interest that is adversely affected by a determination by a staff person or persons may, within 30 days of notice to such person of such determination, request in writing a review of the determination before the Health Officer. The request shall state the ground

or grounds upon which the person adversely affected contends that the decision should be modified or reversed. The request for review shall be made to the staff person or persons who issued the initial determination, the environmental Health and Safety Director or to the Health Officer.

- (b) The Health Officer shall review the initial determination and make a decision within 15 days of receipt of the request for review. The time for review may be extended by agreement with the person aggrieved. The decision shall state the reasons for such decision and shall advise the person aggrieved of the right to appeal the decision, the time within which the appeal shall be taken, and the office or person with whom notice of appeal shall be filed.
  - (c) Any person having a substantial interest that is adversely affected with the decision of the Health Officer pursuant to the review procedure, set forth above, may appeal to the Marathon County Administrative Board of Review by requesting a hearing within 30 days of notice of the Health Officer's decision. The request must be in writing and must be filed with or mailed to the office of the Health Officer.
  - (d) The Marathon County Administrative Board of Review shall constitute the appeals board to provide a hearing of the appeal of the Health Officer's decision. A member of the Board shall conduct the hearing within 15 days of receipt of the notice of appeal. The hearing will be conducted pursuant to s. 68.11, Wis. Stats. The procedures of the hearing shall be in accordance with the Marathon County General Code of Ordinances, Chap. 24.
  - (e) This section does not apply if Marathon County Health Department has commenced any action in circuit court for injunction or other enforcement under this regulation.
- (2) Any declaration of Unfitness for Human Habitation, Occupancy, or Use made pursuant to this regulation shall remain in full force and effect pending any appeal under this regulation.

#### Section 1.09 **Severability and Repeal**

- (1) Severability – Each section, paragraph, sentence, clause, word and provision of this Regulation is severable and if any provisions shall be held unconstitutional or invalid for any reason, such decisions shall not affect the remainder of the Regulation nor any part thereof other than that affected by such decision.

This regulation shall take effect upon passage and publication.

Adopted by the Marathon County Board of Health this \_\_\_\_2nd\_\_\_\_ day of \_December\_, 2014

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