

MassDEP Summary of Proposed Regulatory Changes

310 CMR 15.000: The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of the On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage and 314 CMR 21.00: Watershed Permit Regulations

November 1, 2022

The Title 5 regulations, 310 CMR 15.000, establish minimum standards for the proper siting, construction, upgrade, and maintenance of on-site sewage disposal systems (“septic systems”) and the appropriate means for the transport and disposal of septage in order to protect public health, safety, welfare and the environment. MassDEP is proposing to amend the Title 5 regulations to enhance protection of embayments and estuaries—particularly on Cape Cod, the Islands and Southeastern Massachusetts—from eutrophication caused by nitrogen pollution originating in many locations primarily from wastewater. This is complemented by the proposed promulgation of new regulations at 314 CMR 21.00 to provide a watershed permitting approach to control nitrogen and other pollutants from entering the embayments and estuaries.

I. Proposed Regulations

The two regulatory initiatives would work in tandem to reduce nitrogen loads. First, MassDEP is proposing to revise the Title 5 regulations, 310 CMR 15.000, to establish natural resource “Nitrogen Sensitive Areas” (“NSA”) for watersheds adversely impacted by nitrogen. Septic systems) located within designated NSAs would be required to upgrade to the best-available, nitrogen-reducing technology within 5 years of designation, *unless* the community in which the septic system is located obtains a Watershed Permit for the watershed or files a Notice of Intent for a Watershed Permit. The Watershed Permit would be issued pursuant to the second component of the proposed regulations—the new Watershed Permit Regulations at 314 CMR 21.00.

A. Title 5 Amendments

The primary changes to Title 5 include enhancing the process for designating NSAs in 310 CMR 15.214 (formerly 310 CMR 15.215) and amending the Nitrogen Loading Limitations provision in 310 CMR 15.215 (formerly 310 CMR 15.214). The more significant provisions are as follows:

1. Upon the effective date of the proposed regulations, any watershed to an embayment or sub-embayment that is the subject of a nitrogen TMDL and the Cape Cod 208 Plan would be automatically designated as an NSA. 310 CMR 15.214(1)(b)1. All watersheds to an embayment or sub-embayment on Cape Cod that have a TMDL for nitrogen would immediately become designated NSAs.
2. The proposed regulations would allow MassDEP to designate in the future any other watershed outside the Cape Cod 208 Plan area as an NSA based upon a TMDL, Massachusetts Estuary Project technical report, or Scientific Evaluation demonstrating

nitrogen impacts to an embayment or sub-embayment. 310 CMR 15.214(1)(b)2. This category of NSA designation would have to be preceded by a public process. 310 CMR 15.214(1)(b)2. and 15.214(2).

Upon occurrence of the above NSA designations, existing Title 5 systems and systems serving new construction would be required to upgrade with the best-available, nitrogen-reducing technology within 5 years unless the community obtains a Watershed Permit. 310 CMR 15.215(2)(a) and 15.215(2)(c). If a community obtains a Watershed Permit, the upgrade requirements are generally suspended for all permitted watersheds while the permit is in effect. A community may also pause the upgrade requirements by filing a Notice of Intent. 310 CMR 15.215(2)(b). If the Watershed Permit is terminated or revoked in the future, the upgrade requirement is revived, requiring upgrades within 5 years from the effective date of the designation or 2 years from the date of termination or revocation, whichever is longer. 310 CMR 15.215(2)(d).

B. Watershed Permit Regulations

MassDEP is proposing the Watershed Permit Regulations to provide a 20-year permit for communities to implement long-term wastewater planning in the most efficient and effective way for the entire watershed. Permittees will be authorized to take a holistic, long-term, innovative approach to reducing the nitrogen load that enters the estuaries and embayments. The more significant provisions are as follows:

1. MassDEP has been working for several years to help communities adopt Comprehensive Wastewater Management Plans and Targeted Watershed Management Plans. These proposed regulations would build on those efforts by enabling communities with these existing plans to apply for a Watershed Permit if either of these plans includes or is supplemented with the information required for a Watershed Management Plan, which is a prerequisite to a Watershed Permit. 314 CMR 21.03(2).
2. For watersheds that coincide with more than one municipality, permittees would be able to obtain a joint permit. 314 CMR 21.03(1), (2)(c).
3. To receive a Watershed Permit the applicant(s) would be required to demonstrate that: (1) necessary pollutant loads will be achieved within the 20-year life of the permit; or (2) that reasonable progress towards those reductions will be achieved. Reasonable progress criteria include consideration of financial costs, environmental impacts, feasibility, and at least a 75% reduction in the nitrogen loads necessary to achieve compliance, or, other reduction levels approved by MassDEP based upon circumstances preventing full compliance. 314 CMR 21.04(1).
4. The proposed regulations require annual reporting and an adaptive management framework to monitor and achieve necessary pollutant load reductions. 314 CMR 21.05(2) and (3); 21.09(10).

II. Public Information Sessions

MassDEP will hold two all-remote public information sessions, which are now scheduled for November 15, 2022 at 6 pm and November 16, 2022 at 12:00 pm. More information regarding access to the remote connection will be posted on MassDEP's website.

III. Public Hearings and Comments

MassDEP will conduct three public hearings.

In-person & Remote, MassDEP, 20 Riverside Dr., Lakeville, MA, November 30, 2022 at 6:00 p.m. Register for remote session in advance at:

https://us06web.zoom.us/webinar/register/WN_oay0_6bGTjeEUzevfxm7Jg

Remote Only, December 1, 2022 at 1:00 p.m. Register in advance at:

https://us06web.zoom.us/webinar/register/WN_BTOR_A3oSI6EZm56mYdoRw

In-person & Remote, Barnstable Town Hall, 367 Main St., Hyannis, MA, December 5, 2022 at 6:00 p.m. Register for remote session in advance at:

https://us06web.zoom.us/webinar/register/WN_f_YXLbaZRRyJsmdYrtDjNQ

After registering for remote sessions, you will receive a confirmation email containing information about joining the meeting. You do not need to register in advance to attend either of the hearings in-person. Comments on the proposed revisions may be presented orally at the public hearing.

Written comments will be accepted until 5:00 p.m. on December 16, 2022. All comments submitted must include the name and contact information of the person providing the comments. Please submit comment by e-mail to dep.talks@mass.gov and include *Title 5 & Watershed Permit* in the subject line. Written comments may also be submitted by mail and should be sent to MassDEP, Bureau of Water Resources – Division of Watershed Management, One Winter Street, 5th floor, Boston, MA 02108, Attention: Title 5 & Watershed Permit.

For special accommodations for these hearings, please call the MassDEP Diversity Office at 617-348-4040. TTY# MassRelay Service 1-800-439-2370. This information is available in alternate format upon request.

MassDEP provides language access interpreter/translation services to limited English proficient individuals free of charge. If you need an interpreter to participate in this meeting, translation services can be found at the following link: <https://www.mass.gov/info-details/massdep-language-translation-assistance>. MassDEP intends to provide Spanish and Portuguese translation at the public hearings. Please provide 72 hours advance notice if additional translation services are requested.