

**Title 5 Nitrogen Sensitive Areas & Watershed Permit Regulatory  
Revisions in Response to Comments  
6-21-23**

<b>Reg Change</b>	<b>Primary Commenters &amp; Reason for Change in Comments</b>	<b>Change Location</b>	<b>What Was Changed</b>
<b>Title 5</b>			
Focus solely on Cape Cod, instead of providing ability to designate off-Cape NSAs at later time	Individuals/ municipalities/ officials: Give more time to non-Cape for planning; provide more focus on Cape	15.214(1)(b)	Limited ability to designate Nitrogen Sensitive Areas (NSAs) to areas subject to Section 208 Plan; made new TMDLs on Cape automatic
Change Title 5's 5-year upgrade period to start 2 years after NSA designation instead of immediately after designation	Individuals/ municipalities/ officials: need more time, feasibility issues with supplies and contractors; need more time to make decision	15.002 (Notice of Intent Period definition); 15.215(2)(a)-(c)	Extended Notice of Intent Period from 18 months to 2 years; Timeline for required Title 5 upgrades does not commence until after 2 yrs, if no Notice of Intent or Watershed Permit is filed; specified in 21.03 must file notice of intent or permit application to prevent running of upgrade clock
Changes to notice of intent provision to include more notice and criteria	Municipalities/officials: Need more clarification for application process expectations; reduce likelihood of appeal; provide more notice to affected parties regarding upgrade requirements	15.215(2)(c) 15.215(2)(e)	Specified criteria; expanded notice requirements; included provision for DEP to extend deadlines in its discretion to address feasibility issues
Include provision for DEP to extend timelines	Communities/officials/individuals: Potential feasibility issues related to undersupply of equipment and contractors	15.215(2)(e)	Added time extension provision
Integrate "area" into drinking water provision	Industry: Consistency with current regs and focus on area instead of facility	15.214(1)(a)2	Added "areas" and clarified to serve facility(ies)
Revise Best Available Nitrogen Reducing Technology	Municipalities/industry: Avoid focus/monopoly with one technology; expand market; provide options for maximum feasible compliance and	15.002; 15.215(g)	Specified tiered ranges for BANRT, instead of one lowest value; include

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("BANRT") definition	more flexibility; clarify application of Recirculating Sand Filter don't apply when in natural resource area NSA		provision allowing discretion for DEP to designate additional systems as BANRT based on availability of systems and their performance
Clarified application of Recirculating Sand Filter remains for drinking water NSAs, but BANRT trumps Recirculating Sand Filter when also in natural resource NSAs	Municipalities: Need clarification about application of NSAs and drinking water standards and what controls in the event both drinking water and natural resource NSAs overlap	15.215(1), 15.202, 15.216, 15.217	Specified Recirculating Sand Filter application in drinking water standard; specified in 15.202 application to drinking water under 15.214(1)(a); specified in 15.215(3) that BANRT applies if in both types of NSAs
Increase exemption for previously installed Nitrogen removal systems from 1 year to 10 years	Individuals/municipalities: Many recent nitrogen removal upgrades either voluntarily or required by municipality	15.215(2)(h)	Changed 1 year to 10 years
Link local upgrade approvals & max feasible compliance with NSA upgrade requirement; clarify that may do voluntary upgrade, i.e., before upgrade time period expires	Municipalities: Feasibility issues raised; need upgrades to comply with maximum feasible compliance provisions; opens up market/supply for Innovative Alternative systems	15.002; 15.215(2)(a); 15.402(1); 15.403	Clarified definitions; Added citation for compliance with max feasible upgrades; clarified applies to all existing nonconforming systems and voluntary upgrades
Remove limitation on systems with Certificate of Compliance	Municipalities/individuals: Focus on upgrade for all systems, and not limit to Certificate of Compliance	15.215(2)(a)	Removed Certificate of Compliance requirement
DEP may accept scientific evaluations commenced before regulations' effectiveness	Groups: Several scientific evaluations underway	15.214(1)(b)	Added provision allowing acceptance of already commenced scientific evaluations

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<b>Watershed Permit</b>			
Clarify permit focus is on load reduction vs sentinel station compliance	Municipalities: Focus on nitrogen reduction; likely very difficult and longer period of time for sentinel station compliance; several variables that could affect compliance at sentinel station	21.01; 21.02 21.03(1)&(2); 21.04(1); 21.05(1), (3), (5); 21.09(2)(e)&(f)	Added definition: Necessary Nitrogen Load Reductions as focus of permit; changed Watershed Management Plan (“WMP”) definition; clarified permit compliance is Necessary Load Reductions
Add flexibility and ease transition from Comprehensive Wastewater Management Plan / Targeted Wastewater Management Plan to WMP	Municipalities: Facilitate reliance on prior work and planning and ease transition to permit	21.02 (WMP – changes); 21.03(2); 21.04(1); 21.06(4); 21.10(24)	Changed WMP definition to be more flexible and removed local approval requirement in WMP def.; added several references to “unless otherwise determined by Department” for added flexibility
Created De Minimis Nitrogen Load Exemption	Municipalities/groups: Not cost effective to remove de minimis loads; little-to-no environmental benefit; undue administrative expense for small load; need flexibility; focus more pressing needs	21.12; 21.02	Drafted de minimis exemption and related definitions—baseline nitrogen load, controllable attenuated nitrogen load, updated nitrogen load
Facilitate receipt of credit for prior Nitrogen reduction efforts	Municipalities/groups: Need to account for prior load reduction	21.03(2)(b)4.a	Added provision specifically requesting prior work
Clarify ability to rely on prior MA Estuaries Project or other evaluation buildout scenarios	Municipalities: Reduce administrative burdens on applicants and provide more flexibility	21.03(2)(b)4.b	Added provision allowing this
Delete requirement to analyze upgradient flows and other criteria	Municipalities: Redundant of other requested information	21.03(2)(b)8, 9, 12	Made change

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Clarify WMP may also address other pollutants	Municipalities: Increase flexibility and adaptability	21.02 (WMP definition)	Added provision to WMP definition
Clarify significant vs. minor modification	Municipalities: need clarification and flexibility for changes as permit is implemented over the years	21.06(4)	Clarified provision and included provisions giving Department flexibility; also removed publication requirement for minor modifications because it is unnecessary and inconsistent with other permitting programs
Clarify permittees only responsible for load from within own borders	Municipalities: Need clarification and flexibility	21.03(1)	Added clarification provision
Clarify joint permittees not responsible for enforcing permit against each other	Municipalities: Requested clarification	21.03(1)	Added clarification provision
Clarify permit may cover > 1 watershed	Municipalities: Reduce administrative burdens, provide flexibility	21.02 (watershed permit def)	Specified in definition
Change annual reports to 5-year reports but keep annual reporting of monitoring data	Municipalities: not necessary & reduce costs and administrative burdens	21.05(2); 21.10(8)&(10)	Changed to requiring five-year reports but maintained annual reporting of monitoring data