

RE22RC24: Title 5

1. Define/explain Title 5
 - a. Regulation administered by MA DEP, governing septic systems
 - b. Complex regulations govern the design, construction, operation and inspection of septic systems
 - c. About 1/3 of the homes in the Commonwealth are dependent on septic systems
 - d. Nearly 650,000 residential and commercial systems in MA
 - e. There are no federal regulations governing septic systems
2. Definition of systems/components
 - a. Septic system – “on-site waste water disposal system that treats waste water usually under 10,000 gallons per day” (MA DEP)
 - b. Septic system components
 - i. holding tank
 - ii. distribution box
 - iii. soil absorption systems
 - iv. tank baffles
 - c. Cesspool - A pit which acts both as a settling chamber for solids and a leaching system for liquids
 - d. Tight tank – an enclosed tank, similar to septic tanks, but does not have an outlet
3. History of Title 5 regulations
 - a. 1975 – MA DEP adopted Title 5 regulation 310 CMR 15.00
 - b. DEP’s goal: to provide sufficient information to make a determination as to whether or not the on-site disposal system is adequate to protect public health and the environment
 - c. Regulations revised in: 1994, 1995, 1996, 2006, 2007, 2016
 - d. City/town Board of Health responsible for enforcing Title V in residential and commercial capacities
 - e. Cities/towns may have independent Title V regulations
4. Impact of the NSA (Nitrogen Sensitive Area) legislation
 - a. At issue: nitrogen pollution
 - b. A large portion of Cape Cod is included in the area subject to the new regulations, more areas could be added
 - c. What does it mean for septic?
 - i. Homeowners may be required to upgrade their septic systems to an IA (Innovative Alternative) system (by July 2030 if no watershed permit)
 - ii. Municipalities also have the option to apply for a watershed permit (would need to be done by July of 2025)
 - d. Real estate licensees should also be aware of sewer expansion programs when applicable.
5. Title 5 inspections
 - a. System inspections determine if the system in its current condition can protect health and the environment
 - b. Only DEP-approved inspectors may conduct inspections
 - c. Key elements of an inspection:
 - i. description of the tank and condition
 - ii. evaluation of the distribution box

- iii. condition of the soil absorption system
 - iv. new updates may require looking for water treatment systems nearby that may flush into septic systems
- d. Inspections are required:
 - i. within 2 years of a sale of a property
 - ii. change of use or footprint
 - iii. design flow of 10,000 – 15,000 gallons per day
 - iv. every year for shared systems
 - v. a property is divided or ownership of 2 or more properties is combined
 - vi. DEP orders
- e. Inspections must occur within 2 years prior to the time of transfer; report is valid for 2 years or, if pumped each year, 3 years
- f. Exemptions on residential properties:
 - i. title transfer between spouses
 - ii. title transfer between parents and children
 - iii. title transfer between full siblings
 - iv. revocable or irrevocable trust
- g. Exceptions:
 - i. weather conditions
 - ii. frequent pumping with records on file
 - iii. foreclosures or deed in lieu of foreclosure
 - iv. tax taking by government
 - v. bankruptcy
- h. Condominiums – 5+ units – inspect every 3 years; Condo Association responsibility
- i. If weather conditions prevent inspection, the inspection may be done within 6 months after the transfer of the property
- j. Lenders may require a “holdback” if inspection is delayed
- 6. Reporting Results
 - a. Inspector must use DEP-approved inspection form
 - b. Inspector submits report to Board of Health within 30 days, unless inspection is voluntary
 - c. Large and shared systems must be submitted to the Board of Health and MA DEP
 - d. Buyer must be given a copy of the report
- 7. System Failure
 - a. Owner/operator of the system is the legally responsible party required to upgrade failing system
 - b. Failed system must be upgraded within 2 years or sooner if the Board of Health determines an imminent health hazard
 - c. DEP factors that determine failure:
 - i. system back up
 - ii. breakout/ponding
 - iii. system pumped more than 4 times a year
 - iv. system in estimated groundwater table
 - v. within a certain distance of a drinking well

8. Conditional Pass
 - a. A system with certain components needing repair or replacement can qualify for a conditional pass
 - b. Conditional pass can be due to:
 - i. damaged or cracked septic tank
 - ii. distribution box damaged or uneven
 - iii. broken or obstructed pipe
 - iv. malfunctioning pipe chamber
 - c. SAS and cesspools cannot be repaired under a conditional pass
9. MA Tax Credits and Financial Aid
 - a. Tax credit for homeowners on a primary residence only (1997)
 - b. Maximum tax credit: 60% of the cost or \$30,000, whichever is less, \$18,000 for 5-year period; \$4,000max per year
 - c. MA programs:
 - i. Community Septic Management Program
 - ii. Homeowner Septic Loan Program
 - d. Federal programs:
 - i. U.S. Department of Housing and Development – FHA
 - ii. USDA Rural Development Program
10. New Systems/System Design
 - a. Any change in use or expansion that requires building/occupancy permit
 - b. No new system shall be constructed and no system shall be upgraded or expanded if the facility can be connected to a sanitary sewer
 - c. Exceptions :
 - i. remedial use of an alternative system (ie: Presby, Sludgehammer)
 - ii. variances and special approvals
 - iii. grandfathering on industrial category users
 - d. Minimal septic tank size – 1,500 gallons or to be determined by the Board of Health
 - e. Soil testing - deep hole and percolation tests in new system design
11. Commercial Systems
 - a. Commercial septic systems are usually larger and more complex than residential
 - b. Systems with design flow of 10,000 gallons per day or greater but less than 15,000 gallons per day
 - c. May require issuance of a groundwater discharge permit
 - d. May require the installation of technology capable of discharging effluent which meets Class 1 groundwater standard
 - e. No person shall discharge from the industry categories to any regulated systems
 - f. No system shall receive oil, hazardous materials or waste, medical wastes or radioactive wastes

References:

- 310 CMR 15.00
- Massachusetts DEP
- Vanderwiel v. Jones 1996 Mass. App. Div. 184 (1996)

Additional References:

- MAR 700– “Seller’s Statement of Property Condition”
- MAR 508 – Title V Addendum
- Title V Inspection Form: <http://www.mass.gov/eea/docs/dep/water/approvals/year-thru-alpha/t-thru-v/t5insp.pdf>
- MA Department of Environmental Protection:
<http://www.mass.gov/eea/agencies/massdep/>
- MA Department of Public Health, Environmental Health :
<http://www.mass.gov/eohhs/gov/departments/dph/programs/environmental-health/>
- EPA Pamphlet for homeowners with septic systems:
www.epa.gov/owm/septic/pubs/homeowner_guide_long.pdf
- MA DEP - Title V information:
<http://www.mass.gov/eea/agencies/massdep/water/wastewater/septic-systems-title-5.html>
- 310 CMR 15.00: The State Environmental Code Regulating Septic Systems ("Title 5"):
<http://www.mass.gov/eea/agencies/massdep/water/regulations/310-cmr-15-00-septic-systems-title-5.html>
- [Governor Healey Signs First Tax Cuts in More Than 20 Years | Mass.gov](#)