



TOWN OF BOURNE
HEALTH DEPARTMENT
WWW.TOWNOFBOURNE.COM/HEALTH
508-759-0600 EXT. 1513



December 28, 2022 Draft
~~Revised 1/13/2023~~

Formatted: Left

By Email

MassDEP, Bureau of Water Resources – Division of Watershed Management
Attention: Title 5 & Wastewater Program
One Hundred Cambridge Street, 9th Floor
Boston, MA 02114

**Re: Proposed Amendments to Title 5: 310 CMR 15.000 and proposed 314 CMR 21.00:
Watershed Permit Regulations**

Dear Commissioner Suuberg et al.,

Thank you for the opportunity to comment on the proposed amendments to Title 5: 310 CMR 15.00 and the new draft 314 CMR 21.00: Watershed Permit Regulations. –We support the purpose of these proposals to better protect and restore the environmental health of our estuaries and embayments. The Town of Bourne has been working diligently to finalize a Comprehensive Wastewater Management Plan (“CWMP”), for approval by MassDEP, and these proposed regulations will impact our future planning efforts.

Formatted: Justified

–Bourne is different than other Cape Cod towns because we abut and share watersheds with communities located outside of Barnstable County. –Bourne also has watersheds on the 303(d) list of impaired waterbodies, but do not have TMDLs. Planning for non-TMDL watersheds includes a targeted 25% reduction in nitrogen loading pursuant to MassDEP’s Wastewater Planning Guidance (1996). It is not clear how the proposed regulations will designate non-TMDL watersheds as nitrogen sensitive areas and potentially impact years of planning and implementation efforts. –If the Town pursues a Watershed Permit for a non-TMDL watershed, there would be an enforceable 75% reduction requirement in 20 years which contradicts the existing MassDEP criteria.

Formatted: Highlight

The Town of Bourne respectfully request~~ed~~ that MassDEP thoughtfully consider all questions and comments raised thus far, and develop a revised draft of the proposed regulations for further review by the public.

Formatted: Highlight

- ~~1. 1.~~ MassDEP has failed to take this opportunity to address the continued existence of nonconforming systems (i.e. cesspools). –In order to identify and upgrade the systems which pose the greatest risk to public health and safety, and to the waters of the Commonwealth, sections 15.301-305 should be amended –during this process.

Formatted: Justified, Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment:
Left + Aligned at: 0.25" + Indent at: 0.5"

These systems should be deemed automatic failures upon inspection prior to transfer of title, or immediately upon promulgation of these amendments if located within a nitrogen sensitive area pursuant to 15.214. –Existing facilities which have never upgraded to Title 5 compliant systems should be prioritized, and the proposed regulations should specifically ensure that cesspools are

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

failed systems by amending 15.301. -By eliminating the exclusions for inspection at time of title transfer for certain relationships within 15.301(4)(d), -loopholes would be eliminated which are currently used to avoid reporting nonconforming or failed on-site systems to their respective municipalities.

2. ~~2~~-Implementation of Title 5 upgrade requirements within 15.215: Nitrogen Loading Limitations, should be a phased approach. -If a Watershed Permit is not obtained, the requirement to upgrade on-site systems within 5 years of the NSA designation ~~may not be is not~~ feasible due to the limited supplies of materials and equipment, a shortage of personnel such as soil evaluators, system installers, designers, wastewater operators, municipal employees and Board of Health members, and the lack of funding. -The cost to the property owners could be substantial, and this unfunded mandate will only exasperate the existing housing crisis within Barnstable County.

MassDEP should prioritize the upgrade of failed and nonconforming systems first, followed by systems closest to resource areas, and those which do not meet nitrogen loading limitations within existing public and private water supply protection areas. -Other passing Title 5 on-site septic systems with valid certificates of compliance can be upgraded to best available nitrogen reducing technology over a longer timeframe. -Timing should be at the discretion of the local approving authorities to best implement solutions to address nitrogen pollution and impairments to their watersheds.

The language in 15.215(2) and 15.215(2)(a) is repetitive and conflicting, where subsection (a) specifies an “existing facility with a certificate of compliance” vs. just an “existing facility”. Cesspool systems and those installed prior to Article XI of the State Sanitary Code do not have certificates of compliance. -Having both the two-year vs. draft five-year upgrade requirement is confusing and needs to be clarified whether or not these systems under 15.215 are deemed to be in failure-

3. ~~3~~-On August 25, 1995, MassDEP published Title 5 Interpretive Guidance: Consideration of Cost In Determining Maximum Feasible Compliance. This document summarizes the need for Boards of Health to also consider the economic feasibility of on-site system upgrade costs for properties relative to the environmental benefit gained.

The current I/A septic systems approved for General Use by MassDEP for nitrogen reduction do not consistently meet the expected level of total nitrogen removal of < 19mg/l in the field, according to decades worth of data maintained by the Barnstable County Database. -Difficulty tracking these systems and enforcing maintenance and monitoring conditions has negatively impacted their ability to protect environmental health. There is currently no responsible management entity (RME) to oversee their performance and ensure that these high-cost systems have a great enough environmental benefit to be justified.- Additionally, the cost of installing these I/A systems relative to property values, will create a disparity amongst the cost for homeowners in the same watershed with significantly different property values. The requirement to install nitrogen reducing technology for upgraded systems should be on a case-by-case basis so that neighborhoods are not disproportionately impacted within the same watershed. -This could also be addressed by providing state subsidies for homeowners to offset the cost. Clarifying variance provisions, local upgrade approval criteria, and “grandfathering” of systems should be included in these proposed regulatory changes as well.

4. ~~4~~-The definition provided for **“Best Available Nitrogen Reducing Technology”** (310 CMR 15.002) is useless without a comprehensive list of said technologies being furnished by MassDEP. -The *“Summary of Innovative/Alternative Technologies Approved for Use in*

Formatted: Justified

Formatted: Justified, Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment:
Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

Formatted: Justified

Formatted: Justified, Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment:
Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

Formatted: Justified

Formatted: Justified, Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment:
Left + Aligned at: 0.25" + Indent at: 0.5"

Massachusetts and Under Review As of March 30, 2022” published on MassDEP’s webpage, presents the approved I/A Technologies with Nitrogen Reduction Credit as an afterthought.

Some technologies have approved uses and nitrogen reduction limits specific for facilities subject to the existing nitrogen loading limitations for nitrogen sensitive areas (can increase N loading limit to 550 gpd/ acre with effluent TN <25 mg/l or 660 gpd/ acre with TN <19 mg/l), whereas some technologies are listed as approved for nitrogen reduction, with a listed TN target which is not specific to being approved for increasing nitrogen loading limits in nitrogen sensitive areas, (NitROE WWTS <11mg/l).

MassDEP should clearly define “Best Available Technology” in the proposed regulations and provide more useful supplements such as an up-to-date Summary Table or a Decision Matrix. Waiving the “best available technology” requirement should be specified for approved, permitted, or installed I/A technology systems as this definition will evolve over time. –The proposed definition is vague and imprecise, and does not address the need for different solutions to address phosphorous pollution, contaminants of emerging concern, or virus attenuation, which may be more beneficial in areas that directly contribute to freshwater resources like ponds and streams.

5. ~~5.~~–The proposed amendments to “**Nitrogen Loading Limitations**” (310 CMR 15.215), should be consistent between the two designated categories of nitrogen sensitive areas. Facilities within (1) public and private water supply protection areas, and (2) natural resource areas, should be held to the same standard of 440 gpd/acre except as set forth in 310 CMR 15.216 (aggregate flows) or 15.217 (enhanced nitrogen removal) for both new construction and upgrades.– This standard should be specific to upland land area only. Some of the language within this section is repetitive and it is not clear why the existing standard would not be maintained for all nitrogen sensitive areas.

6. ~~6.~~–The November 2022 watershed map provided by MassDEP pursuant to 15.215(4), was not published in a timely fashion in respect to the circulation of the June 1, 2022 fact sheet and October 28, 2022 draft regulations. This map fails to allow for the public to visualize watershed boundaries or the impact of these regulations. This map does not show major roadways, ponds, or streams, and has posed a significant hurdle to public transparency during the comment period. The majority of residents of Barnstable County are ages 65 years and over (U.S. Census Bureau, 2020). –The inability of MassDEP to provide a useful tool for its residents to interpret, has already burdened the municipalities, with staff fielding numerous inquiries per day from concerned and upset residents, most of whom are seniors on fixed-incomes.

The current Nitrogen Sensitive Areas are portrayed as a data layer on MassMapper, which is critical in determining regulation applicability on a parcel by parcel basis. The same or equivalent maps should be furnished by MassDEP in order to determine an equivalent level of impact caused by these proposed regulations.¹

7. ~~7.~~–It is unclear how the proposed amendments will affect Campgrounds under 15.006-7. Campgrounds provide a substantial amount of year-round and seasonal housing in Barnstable County, and this should be clarified.

8. ~~8.~~–The proposed 314 CMR 21.00: Massachusetts Watershed Permit Regulations should not accommodate the federal government as a permittee on a Watershed Permit. –Impacted communities are already subject to Cape Cod’s Area Wide Water Quality Management Plan

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

Formatted: Justified

Formatted: Justified, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Justified

Formatted: Justified, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

Formatted: Justified

Formatted: Justified, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Justified

Formatted: Justified, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Times New Roman, 9 pt

Formatted: Font: Times New Roman, 9 pt

Formatted: Font: Times New Roman, 9 pt

Formatted: Font: Times New Roman

¹The Town of Bourne is aware of the ArcGIS mapping tool furnished by MassDEP after this letter was drafted.

Update (208 Plan Update), developed pursuant to Section 208 of the Clean Water Act. This plan was certified by Governor Charles Baker in June of 2015, and approved by the U.S. Environmental Protection Agency on September 15, 2015. –The most recent 208 Plan Compliance Reports (2021) outline compliance with other permits such as MS4, and GWDPs.

Municipalities also have either Department approved Comprehensive Wastewater Management Plans, or those which are in progress pursuant to Department guidance. -These communities have been successfully implementing approved methods for addressing nutrient remediation through a variety of approaches. –The unique and multijurisdictional nature of the issue on Cape Cod requires a simpler and fair approach.

We look forward to continuing as a full and engaged partner in this process.

Sincerely,

The Bourne Select Board – unanimous vote 1/24/2023
The Bourne Board of Health

insert joint signature page

Formatted: Justified

Formatted: Justified, Indent: Left: 0.5"

Formatted: Justified

Formatted: Highlight