



Title 5 & Watershed Permit Final Regulations

Massachusetts
Health Officer
Association
Conference

October 26, 2023

Background – The Problem



Many estuaries do not meet the Massachusetts Water Quality Standards, resulting in an "impaired" listing and requiring development of Total Maximum Daily Load (TMDL).

This is an **environmental problem** and **economic problem** because it causes a decline in:

- Fishing
- Shellfishing
- Recreational opportunities
- Tourism
- Real Estate Values
- Business

Unaddressed, this problem will become worse.

Background- 2022 Proposed Regulatory Strategy

Title 5 Proposed Regulatory Revision:

- Establish new "Nitrogen Sensitive Area" (NSA) designations under Title 5 regulations
 - Automatic for Cape Cod areas with nitrogen TMDLs
 - Public process for future designations
- Septic systems located in new NSAs would be required to be constructed or upgraded with **Best Available Nitrogen Reducing Technology (BANRT)**:
 - Within 5 years of designation for existing systems
 - Upon NSA designation for new construction
 - **Unless** the designated watershed is covered by a **Watershed Permit or a Notice of Intent (NOI) is filed within 18 months of designation**

Background –Draft Regulations Public Outreach/Public Comment

November 10, 2022 MassDEP issued draft regulations for public comment

December 16, 2022 public comment deadline extended until January 30, 2023

- 4 Public Information Sessions
- 5 Public Hearings
- Legislative briefing
- 3 Legislative and 4 Municipal “Office Hours”
- Received more than 900 comments

Background- 2022 Proposed Regulatory Strategy (continued)

New Watershed Permit Proposed Regulations:

- Authorizes 20-year permits to communities to implement long-term wastewater solutions inclusive of innovative solutions
- Issued to Local Government Unit, Regional Local Government Unit, Multiple local Government Units (through Intermunicipal agreement)
- Provides communities the opportunity to employ a greater range of solutions to address their water quality needs, including alternative or innovative approaches
- Utilizes an adaptive management approach, requires monitoring, evaluation, reporting of results, and modification of the approach as needed to address conditions that are causing the water quality impairments
- Watershed Permit is based on a Town approved **Watershed Management Plan**

Major Comments

Geographic Area & Timing & BANRT

- Communities at different stages in assessing and addressing coastal water quality issues
- Cape Cod further along in their planning process
 - MEP Reports
 - Cape Cod 208 Plan
 - TMDLs developed
- Increase timeframes for:
 - Title 5 Upgrade requirement
 - NOI submittal
 - Allowance for previously installed enhanced systems
- Improve definition of BANRT to avoid monopoly and supply chain issues

Title 5 Regulatory Revisions

Regulatory Change	Primary Commenters & Reason for Change in Comments	What Was Changed
Focus solely on Cape Cod	Individuals/ municipalities/ officials: Give more time to non-Cape for planning; provide more focus on Cape	Limited NSA designations to areas subject to Section 208 Plan Made any new nitrogen TMDLs on Cape Cod automatic NSA Allows designation of other Cape Cod watersheds through public process (310 CMR 15.214(1)(b))
Change 5-year upgrade to start 2-years after NSA designation	Individuals/ municipalities/ officials: need more time to comply.	Extended Notice of Intent Period from 18 months to 2 years Title 5 upgrade timeline for existing systems does not commence until after NOI Period. Submittal of NOI or permit application stops upgrade clock. (310 CMR 15.215(2))
Include provision for DEP to extend timelines	Communities/officials/individuals: Feasibility issues related to undersupply of equipment/ contractors	Added time extension provision (310 CMR 15.215(2)(e))
Revise Best Available Nitrogen Reducing Technology (“BANRT”) definition	Municipalities/industry: Avoid monopoly, expand market; provide options for maximum feasible compliance and more flexibility;	Specified tiered ranges for BANRT, instead of one lowest value Allowed DEP to designate additional systems as BANRT based on availability of systems and their performance (310 CMR 15.002; 15.215(2)(g))

Title 5 Final Regulations - Timelines

For Cape Cod towns with a final nitrogen TMDL when regulations were promulgated:

NSA designation date = the regulation promulgation date of **July 7, 2023**

- The **NOI period** will run 2-years until **July 7, 2025**
- The requirement for enhanced nitrogen removal systems for **New Construction** will begin **January 8, 2024***
- The requirement for **existing septic system upgrades** will commence **July 8, 2025 through July 8, 2030***
- ***Unless an NOI, Watershed Permit or De Minimus application is submitted**

Title 5 Final Regulations - Timelines

For Cape Cod towns with a final nitrogen TMDL after regulations were promulgated
NSA designation date = the final nitrogen TMDL approval date

For Wellfleet Harbor:

- Total Nitrogen TMDL approved **September 29, 2023**
NSA Designation = September 29, 2023
- The **NOI period** will run 2-years until **September 29, 2025**
- The requirement for enhanced nitrogen removal systems for **New Construction** will begin **March 30, 2024***
- The requirement for **existing septic system upgrades** will commence **September 30, 2025 through September 30, 2030***
- ***Unless an NOI, Watershed Permit or De Minimus application is submitted**

Title 5 Final Regulations – ‘BANRT’

Best Available Nitrogen Reducing Technology Definition:

General Use Certified nitrogen reducing technology meeting 10 mg/l or less for total nitrogen (TN)

If no technology meeting 10 mg/l or less:

General Use Certified nitrogen reducing technology with lowest effluent TN performance

Provisional Use and Piloting nitrogen reducing technologies can be used:

Must be less than or equal to the General Use nitrogen technology meeting 10 mg/l or less

or, if no technology meeting 10 mg/l or less:

Must be less than or equal to the General Use nitrogen technology with lowest effluent TN performance

Title 5 Final Regulations – ‘BANRT’

Best Available Nitrogen Reducing Technology:

- DEP will publish a list of technologies that qualify as BANRT on Title 5 IA Technology webpage
- DEP may allow the use of nitrogen reducing technologies outside of the BANRT definition due to significant supply/market constraints
- DEP may prohibit the use of a technology as BANRT due to noncompliance with performance standards
- Facility owners who upgraded their system with nitrogen reducing technology within 10 years of NSA designation are exempt from the individual system upgrade requirement
- Facility owners who upgrade with BANRT are not required to upgrade to subsequent BANRT unless Local Approving Authority determines it is needed.

Major Comments

Watershed Permit

Towns want more flexibility with Watershed Permit:

- Want to utilize existing approved Comprehensive or Targeted Watershed Management Plans
- Want credit for work previously done
- Want permit to cover multiple Watersheds
- Want to address other pollutants
- Want a simpler pathway where the community's nitrogen contribution to the embayment or estuary was only a very small proportion of the entire watershed – a de minimis load

Watershed Permit Regulatory Revisions

Regulatory Change	Primary Commenters & Reason for Change in Comments	Regulatory Provision	What Was Changed
Add flexibility in transition from CWMP/ TWMP to WMP	Municipalities: Facilitate reliance on prior planning/work and ease transition to permit	21.02 (WMP changes); 21.03(2); 21.04(1); 21.06(4); 21.10(24)	Changed WMP definition; removed local approval requirement; added flexibility
Clarify permit may cover > 1 watershed	Municipalities: Reduce administrative burdens	21.02 (watershed permit def)	Specified in definition
Clarify WMP may also address other pollutants	Municipalities: Increase flexibility and adaptability	21.02 (WMP definition)	Added provision to WMP definition
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
Created De Minimis Nitrogen Load Exemption	Municipalities/groups: No environmental benefit; undue administrative expense for small load; need flexibility;	21.12; 21.02	Developed de minimis load exemption - baseline nitrogen load <3%controllable attenuated nitrogen load

Information and Assistance

[310 CMR 15.000: Septic Systems \("Title 5"\) | Mass.gov](#)

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Information and Assistance

Nitrogen Sensitive Area Amendments

MassDEP issued amendments to 310 CMR 15.000, effective July 7, 2023, in order to reduce nitrogen loads for coastal estuaries and embayments on Cape Cod.

[Response to Comments](#)

[Table of Revisions in Response to Comments](#)

[Frequently Asked Questions](#) ([Español](#) | [Português](#))

[Map with Address Lookup](#)

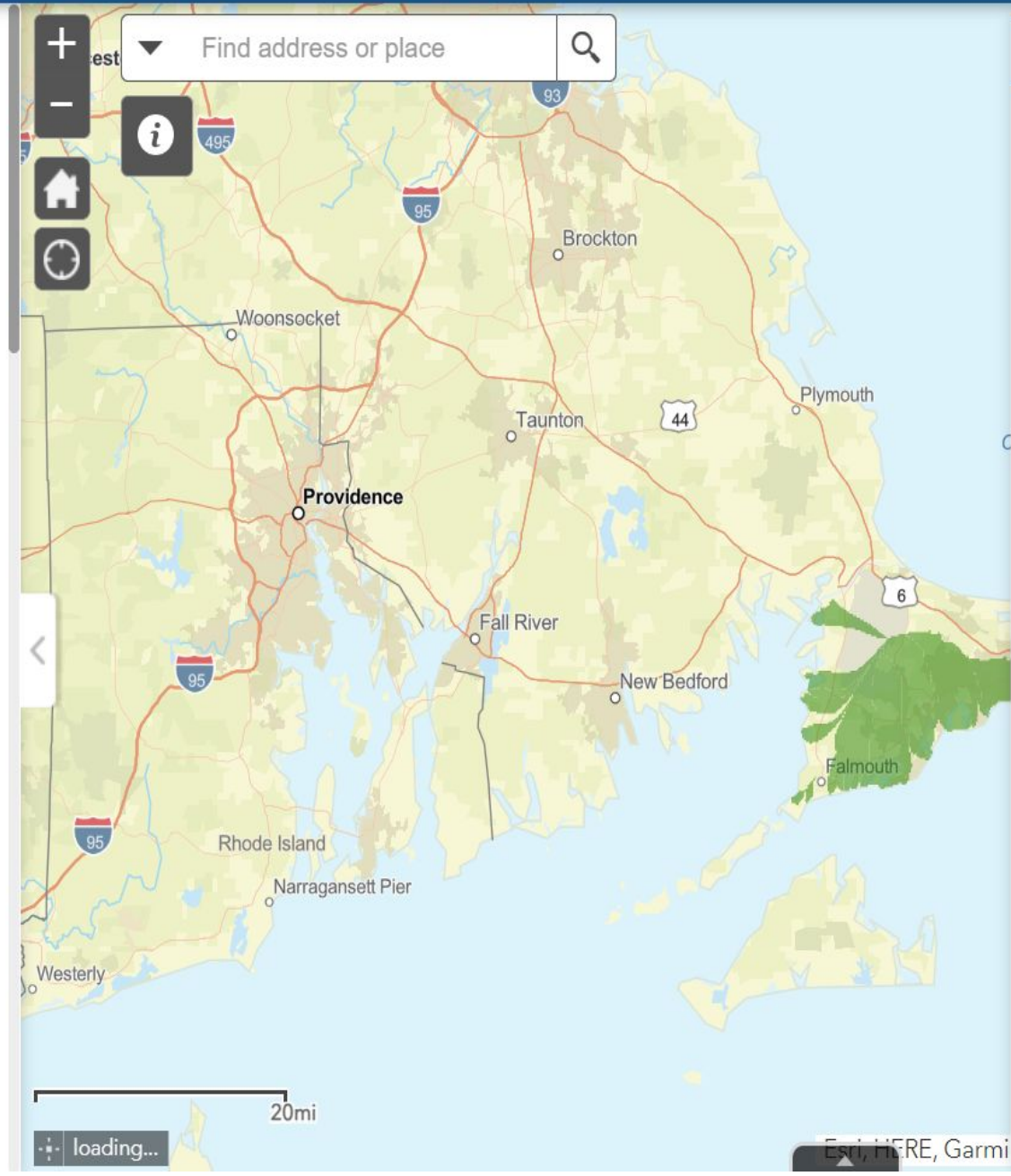
[Information on Funding Sources](#)

See also: [Proposed Watershed Permit Regulations, 314 CMR 21.00](#)

MassDEP Designated Natural Resource Area Nitrogen Sensitive Areas


Additional Information


This map was developed to help Cape Cod property owners determine whether they are affected by the Title 5 regulatory provision at 310 CMR 15.215(4) which provides: "The owner of a system or proposed system shall ascertain whether the facility is in a designated Nitrogen Sensitive Area. The Department will prepare and make available on the Department's website maps portraying designated Nitrogen Sensitive Areas within the Commonwealth. Prior to any transfer of title for property where the facility is located, the transferor shall disclose to the transferee and Board of Health whether the facility is subject to an upgrade requiring Best Available Nitrogen Reducing Technology pursuant to 310 CMR 15.215." A facility is defined as "Any real property (including any abutting real property) and any buildings thereon, which is served, is proposed to be served, or could in the future be served, by a system or



Legend

MassDEP Natural Resource Area: Nitrogen Sensitive Area

-  Watershed with EPA approved final total nitrogen TMDL that is automatically designated as a Natural Resource Area Nitrogen Sensitive Area on July 7, 2023, effective date of applicable Title 5 regulatory provision, pursuant to 310 CMR 15.214(1)(b)1.

-  Watershed with EPA approved final total nitrogen TMDL effective September 29, 2023, and designated as a Natural Resource Area Nitrogen Sensitive Area September 29, 2023, pursuant to 310 CMR 15.214(1)(b)1.

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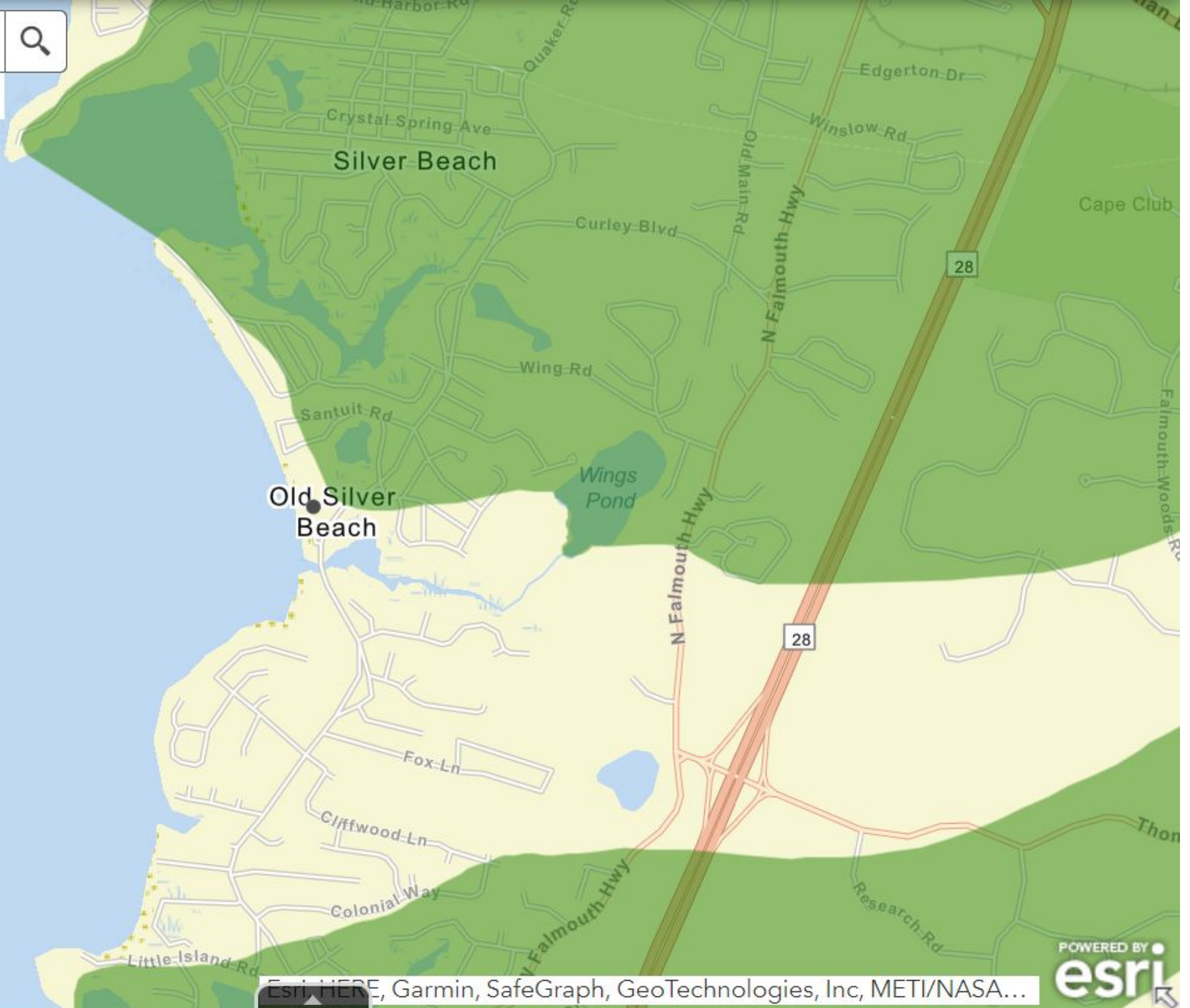
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Information and Assistance

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Thank you