



**TOWN OF WESTPORT**  
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## **SEPTIC SYSTEM WATER RESOURCE PROTECTION REGULATION**

### **1.0 AUTHORITY**

The following regulation is adopted by the Westport Board of Health in accordance with the provisions of Massachusetts General Laws (MGL) Chapter 111, Section 31. The regulation is enacted under the authority, which includes, but is not limited to, one or more of the following: MGL Chapter 111, Sections 31, 122, 122A 127, 143, 187, 188, Section 310 CMR 11.02 and 310 CMR 15.00 et. seq. Board of Health regulations are an exercise under which the various levels of government are responsible for protection of the public health, safety, welfare and the environment.

The Board of Health may also establish administrative policies regarding septic plan submission requirements and other operational requirements, which shall be published.

### **2.0 FINDINGS**

Water defines and influences much of the character of the Town of Westport. The Westport River is an essential part of the Town's history and a vital natural resource used for recreation, fishing, shell fishing and general enjoyment. The landscape also features abundant wetlands, coastal beaches, and small streams. Almost all residents rely on private wells that draw from the groundwater and aquifers to supply drinking water to their homes. In addition, virtually all properties in Town use onsite sewage disposal, which disperses septic effluent into surrounding soils and ultimately discharges to local waters.

The Westport River is degraded due to nitrogen pollution and it has failed to meet water quality standards for over 15 years. Excess nitrogen contributes to algae growth, which reduces water clarity and harms habitats like eelgrass and saltmarshes. The Westport River is on the federal 303d list of impaired waters and is currently over the Total Maximum Daily Load (TMDL) allowable limit for nitrogen. The TMDL report identifies septic effluent as a primary contributor to excess nitrogen in the Westport River.

High nitrogen levels in drinking water can also harm human health, especially in vulnerable populations. Drinking water wells in many areas of Town are unsafe because of high nitrogen levels as well as bacterial contamination. Westport does not have a public water supply as a backup for homeowners with contaminated wells. Contaminated well hotspots are found in areas of town with denser development and/or cesspool locations. Hundreds of homes within the town of Westport use old cesspools for wastewater disposal. Cesspools do not treat wastewater and are often found in the water table. They have not been permitted for over 40 years because they do not meet the minimum standards of Title 5 septic systems, threaten public health and fail to protect the environment.

The 2020 Targeted Integrated Water Resource Management Plan for Westport, which was developed with extensive community input, has identified and prioritized the most realistic and effective strategies for preserving and improving the quality of the water resources in Town. Nitrogen reduction is a key priority. Development buildout using conventional septic systems would add more nitrogen to the existing total load. Nitrogen reducing septic systems have the ability to substantially reduce the amount of new nitrogen discharged to our critical water resources.

### **3.0 PURPOSE**

This regulation of the Board of Health has been adopted to protect public health and the environment. Westport has very limited access to a public water supply and will never have public sewer in many parts of town. Since Title 5 of the state environmental code sets only minimum common standards for septic systems, local Board of Health regulations are needed to provide more complete protection of the Town's water resources from pollution. Specifically, this regulation will reduce the amount of nitrogen discharged from septic systems from new construction and from out-of-date cesspools. Local regulation is also necessary for efficient administration and management, as well as to ensure proper operation and maintenance of systems, which is essential to avoid public health hazards and to protect the environment.

### **4.0 DEFINITIONS**

The terms and provisions of this regulation shall be applied consistent and in conjunction with the State Environmental Code, 310 CMR 15.000 (Title 5) and the Wetland Regulations, 310 CMR 10.00, except as otherwise specifically provided herein.

Cesspool – A pit with open-jointed linings or holes in the bottom and/or sidewalls into which raw sewage is discharged, the liquid portion of the sewage being disposed of by seeping or leaching into the surrounding soils and the solids or sludge being retained in the pit.

Nitrogen reducing septic system – An innovative/alternative (I/A) on-site sewage disposal system specifically designed and operated to enhance the removal of nitrogen approved pursuant to 310 CMR 15.000, including systems designed to reduce, convert or remove nitrogenous compounds and composting toilets.

Design Flow – The quantity of sanitary sewage, expressed in gallons per day (gpd), for which a system must be designed in accordance with 310 CMR 15.203.

Existing System – Any on-site subsurface sewage disposal systems including cesspools, nonconforming, conforming and failed systems that existed prior to the effective date of this regulation.

Failed System – A system, which fails to protect public health and safety or the environment as, set forth at 310 CMR 15.303 or 15.304.

Innovative/Alternative (I/A) Systems – Systems designed to provide or enhance onsite sewage disposal pursuant to the definition of Alternative Systems in 310 CMR 15.002.

New Construction – The construction of a new building for which an occupancy permit is required or an increase in the actual or design flow to any existing system as defined herein. New construction shall include the purposeful demolition and replacement of an existing building.

On-Site Subsurface Sewage Disposal System, Septic System or System – A system or series of systems for the treatment and disposal of sanitary sewage below the ground surface of real property and any building thereon. The standard components of the system include, without limitation, a sewer pipe, septic tank, distribution system and soil absorption system containing effluent distribution lines to distribute and treat septic effluent prior to discharge to subsurface soils and a reserve area. These terms also include tight tanks, shared systems and alternative systems. Unless the text of 310 CMR 15.000 indicates otherwise, these terms also include nonconforming systems.

Title 5 – The State Environmental Code at 310 Code of Massachusetts Regulations (CMR) 15.000.

Westport River Watershed – The boundaries of that portion of the Westport River Watershed located within the Town of Westport as delineated on the most current Geographic Information Services (GIS) digital map on the Town’s GIS website.

## **5.0 CESSPOOLS**

- A. All cesspools within the Town of Westport shall be upgraded to meet standards set forth in Title 5 by the earliest of the following:
  - 1. The deadline(s) established in Title 5 pursuant to 310 CMR 15.305 for systems that fail to protect public health, safety, welfare or the environment;
  - 2. Availability of sanitary sewer or a cluster/shared nitrogen reducing system; or
  - 3. Five (5) years from the effective date of this regulation.
- A. Pursuant to Title 5, a shorter period of time for a cesspool upgrade can be set by the Board of Health based upon the existence of an imminent health hazard.

## **6.0 NEW CONSTRUCTION (NEW SYSTEMS OR INCREASE IN FLOW)**

Except where the Board determines that it is feasible to connect the facility or any portion of the facility for which a system approval is sought to a sanitary sewer, all new construction located in the Westport River watershed shall install a nitrogen reducing system meeting the performance standards as provided in Section 7.0 of this regulation, as the on-site subsurface sewage disposal system.

## **7.0 PERFORMANCE STANDARD FOR DENITRIFICATION SYSTEMS**

- A. Nitrogen reducing septic systems must meet a system performance standard of 19 milligrams per liter or less for the total nitrogen (TN) in effluent sampled according to the procedures approved for each specific technology and tested at a Massachusetts Department of Environmental Protection (Mass DEP) or EPA certified testing laboratory. The 19 milligrams per liter standard shall apply to a rolling average of sampling results over a one-year period.
- B. If a sample value exceeds the permitted performance level by greater than 25%, the maintenance contractor must notify the property owner, the Board of Health and/or its designated entity within seven (7) days of receipt of the laboratory results. The Board of

Health, in consultation with the contractor and homeowner, may require a plan for additional sampling requirements and/or order appropriate corrective measures. A nitrogen reducing system shall not be considered out of compliance due to its inability to meet the performance standard in this section, provided it was installed, operated, maintained and monitored in accordance with the regulations, MassDEP approval letter and applicable orders of the Board.

## **8.0 CONNECTION TO SEWER**

In the event sanitary sewer becomes available to a property or facility after the installation of a denitrification system pursuant to this regulation, the property or facility may delay connection to the sanitary sewer for up to the maximum time period established according to the following formula:

- ❖ 20 years minus the age of the existing nitrogen reducing system = years to connect to public sewer. (For example, if the denitrification system is 11 years old, the owner will be granted 9 years to connect to public sewer (20-11 = 9)).

## **9.0 GENERAL CONDITIONS FOR INNOVATIVE/ALTERNATIVE SYSTEMS**

Design, installation and use of an I/A system, including nitrogen reducing systems, shall be in strict conformance with the company's MassDEP approved plans and specifications, the MassDEP Approval Letter, 310 CMR 15.000 and this regulation. Prior to the issuance of a Certificate of Compliance by the Board of Health, the System Installer and Designer shall provide, in addition to the certifications required by 310 CMR15.021(3), certifications in writing to the Board of Health that the I/A system has been constructed in compliance with the terms of the MassDEP Approval Letter.

## **10.0 OPERATION AND MAINTENANCE AGREEMENTS FOR INNOVATIVE/ALTERNATIVE SEPTIC SYSTEMS**

- A. At all times, the permit holder for an I/A system, including nitrogen reducing systems, shall maintain and comply with any MassDEP required Operation and Maintenance Agreement, which is subject to the prior approval of the Board of Health and its consultants and agents.
- B. The permit holder shall notify the Board of Health in writing within seven (7) days of any cancellation, expiration or other change in the terms and/or conditions of the Operation and Maintenance Agreement.
- C. The permit holder shall repair, replace or modify the I/A system or take other action as required by the Board, if the Board determines that the I/A system was not installed, operated, maintained or monitored in accordance with Title 5, this regulation or the MassDEP Approval Letter.

## **11.0 MONITORING FOR INNOVATIVE/ALTERNATIVE SEPTIC SYSTEMS**

- A. The Board may require additional maintenance and monitoring conditions of an approved I/A system that it deems reasonable and necessary to ensure that the system is performing as designed and approved. This may include, but is not limited to; monitoring that exceeds that specified in the MassDEP Approval Letter. At a minimum, the Board of Health shall require semi-annual measurement of total nitrogen (TN) in the effluent of any nitrogen reducing

system for the first two years after issuance of a Certificate of Compliance by the Board. After two years and upon a finding of compliance with this regulation, the Board of Health may reduce such monitoring.

- B. Any required sample analysis shall be conducted by an independent U.S. Environmental Protection Agency or MassDEP approved testing laboratory or an approved independent university laboratory. It shall be a violation of this regulation to falsify any data collected pursuant to an approved testing plan, to omit any required data or to fail to submit any report required by such plan. All measurements and samples collected shall be collected, transported and stored in such manner as outlined in the most recent edition of Standard Methods for the examination of Water and Wastewater, American Public Health Association and the latest EPA analytical procedures.
- C. Any person or entity that owns, operates, inspects or monitors an I/A system in Westport shall provide the results of all required monitoring and inspections to the Board of Health or an entity designated by the Board of Health, in a format designated by the Health Director. All reports regarding maintenance, monitoring or inspections of I/A systems shall be submitted within 30 days of the time when the maintenance, inspection or monitoring was initiated.
- D. No I/A system operating permit shall be issued until the applicant has filed, if required under its MassDEP I/A approval letter, a notice with the Registry of Deeds that indicates the presence of an approved I/A system and the requirement for an Operation and Maintenance Agreement for the life of the system. Proof of such recording shall be provided to the Board of Health prior to issuance of Certificate of Compliance.
- E. Any I/A system operating permit shall be renewed prior to or concurrent with transfer of ownership of property.

## **12.0 ENFORCEMENT**

The Board of Health or its authorized Agents, under the authority of MGL c. 111, s.31, 310.CMR 11.00 and other governing laws or regulations, may issue administrative enforcement orders, violation notices or other documents to enforce the provisions of this regulation. In addition, the Board of Health may pursue criminal or non-criminal prosecution, civil litigation or a combination of these in the courts of the Commonwealth of Massachusetts to enforce the provisions of this regulation.

## **13.0 VARIANCE**

The Board of Health, in any particular case and following a public hearing, may grant a variance of any provision of this regulation, when it determines

- 1) An alternative will result in equal or greater environmental protection (including but not limited to nitrogen reduction) required under Title 5 and this regulation, or
- 2) Strict enforcement would be manifestly unjust and the variance is not inconsistent with the intent or purpose of Title 5 or this regulation.

In making its determination, the Board may consider all relevant facts and circumstances including, without limitation, the proximity of system to drinking water and surface waters, the physical conditions of the site and the costs of full compliance.

#### **14.0 SEVERABILITY**

The invalidity of any section or provision of this regulation shall not invalidate any other section or provision thereof.

#### **15.0 EFFECTIVE DATE**

This regulation will take effect on **February 1, 2021**. It shall apply to all applications for disposal construction works permit submitted on or after that date.

**WESTPORT BOARD OF HEALTH**