



New England Water Environment Association, Inc.
10 Tower Office Park, Suite 601, Woburn, MA 01801-2155
Tel 781-939-0908 | Fax 781-939-0907 | www.newea.org | mail@newea.org

Proposed Title 5 Watershed Permit Regulations

To: dep.talks@mass.gov

Re: Title 5 and Watershed Permit - Responding to Comment Period, closing 1/30/23, for: 310 CMR 15.000 and 314 CMR 21.00

Dear MassDEP:

We are writing in support of the proposed regulations (310 CMR 15.000 and 314 CMR 21.00) and encourage their quick enactment.

In order for the regulations to achieve the desired objectives, we want to highlight a number of priorities and concerns. Our top three issues:

- **Money and Funding** The original 2015 208 Plan called for about \$4-6b, just for Cape Cod and exclusively using conventional sewerage to achieve the Clean Water Act nitrogen load reductions. Enhanced Innovative/Alternative Onsite Wastewater Treatment Systems ("I/A") now provide a more cost-effective solution in many locations where there is moderate to low density. They should save significant cost. With inflation (about 30% in this industry in the past two years, per a recent estimate), and with expansion of the coverage area to include NSAs, the South Coast and the Islands, the total price tag could easily exceed \$10b. This is beyond the individual towns' ability to fund. The State needs to play a role with funding legislation, and a legislative working group should be established to work on this issue. New York State funded the Long Island Septic Improvement Program homeowner grants with money from their 2017 Clean Water Bond Act. Additional funding for homeowners came from Suffolk County's property transfer tax. The IRS very recently ruled that these homeowner grants are not taxable.
- **Best Available Nitrogen-Reducing Technology (BAT)** The approach to this concept needs thoughtful definition and process. We understand that a range of solutions is needed and is potentially available at effluent nitrogen ranges of 12 to <5 mg/L. The state wants to encourage multiple solutions in the marketplace to manage risk, facilitate choice and

2022 Executive Committee

President

Frederick J. McNeill
Manchester, NH

President Elect

Robert K. Fischer
South Burlington, VT

Vice President

Scott C. Goodinson
Narragansett, RI

Treasurer

Clayton "Mac" Richardson
Windham, ME

Deputy Treasurer

David VanHoven
Boston, MA

Past President

Virgil J. Lloyd
Manchester, CT

Executive Director

Mary M. Barry

WEF Delegates

James R. Barsanti
Wilmington, MA

Peter B. Garvey
Boston, MA

Raymond A. Vermette, Jr.
Dover, NH

Janine Burke-Wells
West Warwick, RI

Directors—State

Vanessa McPherson
Middletown, CT

Paula L. Drouin
Lewiston, ME

F. Adam Yanulis
Westwood, MA

Michael A. Trainque
Chester, NH

Edward J. Davies
North Kingstown, RI

Michael A. Smith
Waterbury, VT

Directors—Council

Dr. Marianne Langridge
West Hartford, CT

Virgil J. Lloyd
Manchester, CT

Amy Anderson George
Wakefield, MA

Marina Fernandes
Milton, MA

Deborah S. Mahoney
Andover, MA

Colin P. O'Brien
Andover, MA

Vonnie M. Reis
Melrose, MA



encourage multiple vendors to develop improved systems over time. While a couple of solutions may be available below 5 mg/L, that performance level may not be required in every instance. We encourage adopting a Pay for Performance approach that rewards higher performance and discourages a rush to only the cheapest solution. We could envision a tiered system with break points that would fit a parcel's needs (e.g. 12, 8 and 5 mg/L). We also understand that a town may require better performance levels than state permits do. The operationalization of the BAT concept is a high priority that has to be done right.

- **Responsible Management Entity (RME)** The implementation of an RME is core to the regulations' success, and it should be part of the regulation. I/A systems need to be managed as infrastructure to achieve their performance objectives. The RME will support the purposeful management of I/A assets, be they owned by homeowner or town, thus supporting SRF requirements. Also, the RME will measure and quantify how well the various solutions are working, further supporting SRF requirements. MASSTC's RME pilot is underway and needs both support and funding. While different towns may want different approaches to an RME, its core provision of OM&M services is essential to success. We need to adequately fund the pilot RME. EPA's SNEP and The Nature Conservancy have already committed \$1.25m to the pilot. It will require \$2m additional over 3+ years. Once operating at scale, yearly user fees, similar to those charged by centralized wastewater utilities, will support it. It should be a model for other communities and be expanded to include the South Coast and the Islands. At some point, MassDEP will need to consider how to strengthen enforcement of homeowner I/A septic violations.

For context, here are other observations that may amplify the core points.

We want to make it clear that **we support sewerage and view I/A as another "tool in the toolbox"**. We assume no changes in sewerage plans for the next decade or more. As I/A solutions mature, we do view them as increasingly viable components in Adaptive Management Reviews. I/A will be appropriate where lack of housing density makes sewerage less cost effective.

If an I/A installation earns credits for TMDL reductions, the **homeowner should pay no more to implement and maintain I/A than those who are getting sewerage**. The costs and benefits accrue to the whole town, not just the



homeowner. As with sewerage, the town should fund the difference between actual cost to the town and what the homeowner pays. With I/A costing less, this approach reduces the total cost of compliance to the town, and it is shared equally across the tax base. Resistance from homeowners, who are today expected to pick up the total cost of I/A, will be reduced. The RME service fees will be analogous to sewer bills, and a division of cost between town and homeowner should make the homeowner indifferent to being sewerage or using an I/A solution.

Money needed is beyond **towns' ability to pay**

- Cape towns should not fund the state's permitting process. That is a state function.
- Town Health Departments are already at capacity. They will need additional staff to support permit process volume increases driven by the new regulations.

We need **state money to fund pilot installations for the I/A permitting process**. Only one promising technology has 50 installed systems in MA, the threshold for earning General Permit status. They received state, Federal and private/NGO grants. Other vendors have only a few installations, generally a half dozen to a dozen, or even fewer. Those vendors go to states with less stringent permitting processes. Vendors will not commit (and generally don't have) the kind of money to fund a MA General Permit.

Companies with the most promising BAT solutions will need funding for capacity development, as these small companies have limited capacity to scale up production to meet expected demand.

The state will need **investments and programs focused on recruiting and building a decentralized wastewater workforce** to put these technologies in the ground. OM&M companies already have challenges keeping up with current demand for conventional systems installations. An aging workforce exacerbates this issue.

We need a **homeowner affordability analysis** to ensure the technologies used to achieve water quality goals are affordable. A structure for loan forgiveness based on income levels is being developed. This is part of the financing need. We expect to need **enabling legislation to fund** these regulations. This is beyond SRF. We need a working group to draft appropriate legislation. AquiFund, formerly



the Community Septic Management Loan Program managed by Barnstable County and funded by SRF, will need to be extended beyond Cape Cod.

How will we **measure progress** along the way? This commitment will need teeth. We stand ready to engage and help in this arena. Please feel free to contact Bruce Walton, NEWEA's Innovative/Alternative Onsite Wastewater Treatment Systems Task Force lead at (617) 633-5065 or bwalton@battaliawinston.com.

Sincerely,

A handwritten signature in blue ink that reads "Fred J. McNeill". The signature is fluid and cursive, with the first name "Fred" and last name "McNeill" clearly legible.

Fred McNeill, NEWEA President

A handwritten signature in black ink that reads "Mary M. Barry". The signature is fluid and cursive, with the first name "Mary" and last name "Barry" clearly legible.

Mary Barry, NEWEA Executive Director