

Summary of proposed amendments to the MA State Environmental Code, Title 5, 310 CMR 15.000 and new Watershed Permit Regulations, 314 CMR 21.00

To ensure the Title 5 regulations are protective of the environment, particularly in relation to the impact of nitrogen discharges on surface water quality, the Massachusetts Department of Environmental Protection (MassDEP) is proposing revisions to its Title 5 regulations.

Proposed Title 5 Amendments

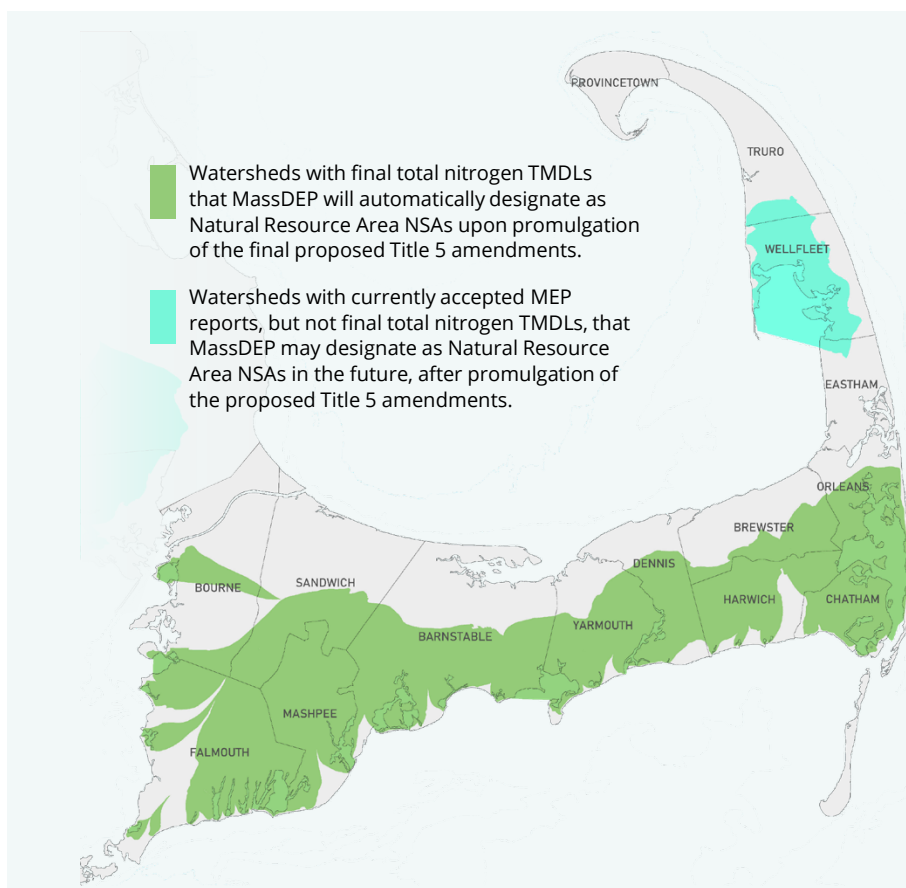
The proposed amendments establish a new type of Nitrogen Sensitive Area, known as a natural resource area:

1. All watersheds to coastal water bodies subject to the Cape Cod 208 Plan and with a nitrogen TMDL are automatically designated natural resource area Nitrogen Sensitive Areas (NSAs)
2. Existing development and new construction in natural resource areas designated as NSAs must utilize *Best Available Nitrogen Reducing Technology* within 5 years of the date of designation
3. If a town obtains a *Watershed Permit*, or files a Notice of Intent to apply for a Watershed Permit within 18-months of the NSA designation, the 5-year timeframe for upgrades of individual systems within the subject watershed is paused
4. Within 5 years of the NSA designation, towns must demonstrate they are making reasonable progress toward receipt of the watershed permit to maintain the pause on individual system upgrades

Best Available Nitrogen Reducing

Technology: this includes I/A systems approved for general use, as well as systems approved for provisional and private use, provided they perform as well as or better than the best performing general use system.

Watershed Permit: The Watershed Permit is a 20-year permit which utilizes an adaptive management approach, requiring permittees to monitor, evaluate and report results, and adjust and modify the strategies and practices as needed to address conditions that are causing the water quality impairments.



Promulgation of the proposed regulations will result in the automatic designation of 30 watersheds on Cape Cod that have a nitrogen Total Maximum Daily Load (TMDL) as *Nitrogen Sensitive Areas (NSAs)*.

Designation of additional NSAs in the future will undergo a public process.

Source: MassDEP;
<https://www.mass.gov/doc/natural-resource-area-nsa-map/download>

Watershed Permit – Draft Regulations

MassDEP is proposing to provide a voluntary 20-year permit for communities to implement long-term wastewater plans in the most efficient and effective way for the entire watershed. Permittees will be authorized to take a holistic, long-term, innovative approach to reducing the nitrogen load that enters the estuaries and embayments.

A Watershed Permit establishes performance standards, authorized activities, and the timeframes that will be utilized under an adaptive management framework to meet water quality and habitat restoration goals. The Watershed Permit is based on a “Watershed Management Plan” a long-term plan to address an existing water quality impairment to restore and protect water quality. May be based on a CWMP or TWMP. Must be approved by local governing body and deemed consistent with the 208 Plan.

Required Elements of a Watershed Permit

- Approved Watershed Management Plan and Implementation Schedule
- Monitoring and Reporting – the permittee shall monitor water quality and report annually
- Adaptive Management Framework – the permittee shall establish and implement a framework to evaluate the results of the management program and adjust strategies and practices as needed
- Identification of other permits incorporated by reference
- Conditions

Who Can Apply?

- Any local government unit may file an application for a permit
- Multiple local government units may apply jointly if they have entered into an enforceable agreement that confirms their percentage shares of pollutant load removal reasonability and provides a framework for coordinating decision-making and financial arrangement

In part, the Plan must include:

- Current and historic water quality conditions
- Nitrogen load contributed over the last 10 years and projected loads for the following 20 years
- Nitrogen load reductions required
- The Conventional Control Technologies and Alternative Control Approaches or Technologies selected, and their estimated nitrogen load reductions, and identification of permittee responsible for implementation
- An implementation schedule not to exceed 20 years
- A contingency plan
- A monitoring plan conducted consistent with a Quality Assurance Program Plan
- If the Watershed Management Plan proposed will not meet nitrogen reductions necessary to meet water quality and restoration goals, documentation showing the financial costs and environmental impact of complete compliance and a proposed alternative that makes reasonable progress toward achievement of goals

Additional Resources:

- <https://www.mass.gov/doc/fact-sheet-massdep-regulatory-strategy-for-estuaries-impaired-by-nitrogen-june-1-2022/download>
- <https://www.mass.gov/doc/310-cmr-15000-314-cmr-2100-q-a/download>
- <https://www.mass.gov/doc/310-cmr-15000-314-cmr-2100-background-document/download>