

## MINIMIZING NITROGEN FROM WASTEWATER

### 1.0 Purpose

The purpose of this regulation is to protect and restore the coastal water quality in the Town of Wareham from the impacts of nitrogen pollution by minimizing nitrogen generated from residential and commercial wastewater.

### 2.0 Authority

This regulation is adopted by the Board of Health of the Town of Wareham, Massachusetts, acting under the authority of Chapter 111, Section 31 and Chapter 21A, Section 13 of the Massachusetts General Laws and under Title 1 and Title 5 of the State Environmental Code (310 CMR 11.00 and 15.00). This Regulation is intended to enhance existing and applicable regulations promulgated by the Massachusetts Department of Environmental Protection.

### 3.0 Definitions

For the purposes of this regulation, the following terms shall mean:

- 3.1 Alternative System - A Massachusetts Department of Environmental Protection approved system designed to provide or enhance the removal of nitrogen in on-site sewage disposal. As of the initial adoption of this regulation, use of an Alternative System is the only means by which to achieve the nitrogen limitations required hereunder.
- 3.2 New Construction - (i) The construction of a new building for which an occupancy permit is required; or (ii) an increase in the actual or design flow to any existing septic system; or (iii) an increase in the actual or design flow to any nonconforming septic system.
- 3.3 Nitrogen Minimization - For the purposes of this regulation, nitrogen minimization shall mean compliance with Section 6.0 of this regulation.
- 3.4 Nonconforming System - Any system which: (i) has, as result of qualified inspection or otherwise has been determined by the Board, its duly appointed agent or a

qualified and licensed septic system inspector to not be in full compliance with the standards and requirements of 310 CMR 15.000; and/or (ii) has been determined, as a result of any such inspection pursuant to 310 CMR 15.301 (System Inspection), 310 CMR 15.303 (Systems Failing to Protect Public Health and Safety and the Environment), or 310 CMR 15.304 (Large Systems which Fail to Protect or which Threaten Public Health and Safety and the Environment), to require an upgrade.

#### **4.0 Applicability**

Except as provided for in section 5.0, this regulation shall apply to all New Construction and Nonconforming Systems, as defined above, in the Town of Wareham.

#### **5.0 Exemptions**

This regulation does not apply to discharges requiring a state issued groundwater discharge permit pursuant to 310 CMR 5.00 or to Composting Toilets as defined in 315 CMR 5.002.

#### **6.0 Nitrogen Minimization from Wastewater in New Construction and Nonconforming Systems in the Town of Wareham**

The Board of Health shall hold at least one public hearing annually to review whether the effluent limitation in sub section 6.3.1 is protective of water quality. Any amendments to such effluent limitation shall be made via an amendment to this Regulation.

The Board of Health shall not approve a disposal system construction permit unless all of the requirements in this section have been satisfied. As of the effective date of these regulations, all New Construction and Non-Conforming Systems shall require an application for the implementation of a denitrification septic system meeting the effluent limitations cited below.

6.1 Application Requirements. All applications shall be submitted to the Board of Health which shall hold a hearing to consider their approval within 30 days. No abutter notification shall be required for this approval except as otherwise required. All applications shall be accompanied by a copy of a so-called Approval Letter from DEP, if applicable, for the proposed system, appropriate

for the technology indicating the level of approval (General Use, Remedial Use, Provisional Use, Piloting Use, or site-specific Pilot Approval) and a copy of a suitable Operation and Maintenance Agreement. The Board may utilize peer review consultants, as allowed under G.L. c 4. 44, §53G in the evaluation of any application submitted hereunder.

6.2 Requirements on Plans. All systems submitted for approval, whether an Alternative System or not, shall have sampling ports that are appropriate for obtaining a representative sample and that are easily accessible and secured from unauthorized tampering. The design plans shall contain a clear illustration of all sampling ports, accompanied by an illustration and explanation for their use.

6.3 Operating Permit. Upon issuance of a Certificate of Compliance, the Board of Health shall issue an Operating Permit with the following requirements:

6.3.1 Permit Limit Requirement. All approved systems, whether an Alternative system or not, shall be required to meet a rolling annual average nitrogen effluent limit of 12mg/L or less.

6.3.2 Operation and Maintenance Agreement. At all times the permittee shall maintain and comply with an Operation and Maintenance Agreement, which is subject to the prior approval of the Board and its consultants and agents.

6.3.2.1 Such Operation and Maintenance Agreement shall include a provision requiring the system operator to take immediate corrective action, and notification to the Board of Health within seven (7) days, if the total nitrogen effluent limit is not in compliance with section 6.3.1 of this regulation.

6.3.2.2 The permittee 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.

6.3.2.3 The permittee shall be required to repair, replace, modify or take any other action as required by the Board of Health, if the Board of Health determines that the system is not capable of meeting the required reduction in nitrogen in the effluent.

6.3.3 Monitoring Requirements.

6.3.3.1 The Board of Health may require monitoring of approved systems that exceed monitoring specified in the Approval Letter issued by the MA DEP. At a minimum, the Board of Health shall require quarterly measurement of total nitrogen in the effluent for the first two years after permit approval. After two years and upon a finding of compliance with section 6.3.1, the Board may reduce such monitoring to twice a year, samples to be taken more than four months apart.

6.3.3.2 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.

6.3.3.3 The results of all such monitoring shall be subject to the requirements of Section 6.3.4.

6.3.4 Reporting Requirements. Any person or entity that owns, operates, inspects or monitors a system approved under this Regulation in Wareham shall cause the results of all monitoring and inspections to be submitted to the Board of Health in a format designated by the Health Agent. All reports regarding maintenance, monitoring or inspections of such approved systems shall be submitted within 30 days of the time when the maintenance, inspection or monitoring was initiated. An annual reporting fee of \$75 shall be required from each system operator. The fee shall be paid to the Board of

Health which will be used to defray the cost of oversight, inspection, monitoring and enforcement.

6.3.5 Notification With Registry of Deeds. No operating permit shall be issued until the applicant has filed, with the Registry of Deeds, a notice indicating both the presence of a system approved hereunder, and the existence monitoring and reporting requirements and the requirement for a service contract for the life of the system. Proof of such recording shall be provided to the Board of Health prior to issuance of an occupancy permit.

6.3.6 Permit Renewal. Such operating permit shall be renewed prior to transfer of ownership of property.

6.3.7 Any other conditions that may be deemed necessary by the Board, including, but not limited to, issuance of a warranty for the system to be installed.

## **7.0 Responsible Entity**

There shall be one named entity, at the time of permitting - either the developer, landowner, a Home Owners Association or Condominium Association - responsible for the permit compliance under this regulation. Notice shall be made to the Board of Health prior to a Responsible Entity's transfer of ownership. Any transfer of responsibility must be recorded in the Registry of Deeds and responsibility for compliance shall transfer with the property.

## **8.0 Waiver**

The Board of Health may waive strict compliance with specifically identified requirements of this regulation where such waiver: (i) is necessary to avoid a demonstrated and unreasonable economic hardship to the owner of an owner-occupied single-family home. The level of hardship must be determined by the Board to outweigh the purposes of full enforcement of this Regulation and in applying such balancing test, the Board shall consider the availability of loan programs to assist in meeting the requirements of this regulation; (ii) is necessary to accommodate an overriding public interest and is consistent with section 1 of this

regulation; and/or (iii) is warranted where the Board of Health finds that there are no reasonable system designs that would allow for compliance with this regulation. Any and all waivers in this section are subject to a public hearing and must be set forth, in detail, by a written decision of the Board of Health. In review of any waiver request, it shall be presumed that the Board shall fully apply the requirements of this Regulation; and it shall be the applicant's burden to rebut such presumption by clear and convincing evidence that a waiver is warranted. No waiver shall be given for new construction.

### **9.0 Fines and Enforcement**

The Board of Health and Health Agent shall be responsible for enforcing this regulation. Violations of this regulation may result in fines up to \$300 per offense. Each day or portion thereof during which a violation continues shall constitute a separate offense and each section of this regulation violated shall constitute a separate offense.

### **10.0 Effective Date**

These regulations were adopted by a unanimous vote by the Board of Health for the Town of Wareham at the **XXXX**, 2011 meeting. The effective date of these regulations shall be August 15, 2011.

### **11.0 Severability**

The provisions of this regulation are severable. If any provision of this regulation is declared to be invalid or inapplicable to any particular circumstance, that invalidity or inapplicability will not affect the enforceability of the remainder of this regulation.