

310 CMR 15.000 (Title 5)
Natural Resource Nitrogen Sensitive Area Regulatory
Amendments and
314 CMR 21.00, Watershed Permit Regulations
Regulation Implementation Questions and Answers

What areas are affected by the Title 5 revisions?

There are 14 towns on Cape Cod covering 31 Watersheds that are now designated as Natural Resource Nitrogen Sensitive Areas (NRNSAs). This table lists the towns with watersheds with approved Total Nitrogen Total Maximum Daily Loads (TMDLs), and the date the watershed was designated as an NRNSA:

<u>TOWNS</u>	<u>NRNSA Designation Date</u>
BARNSTABLE, BOURNE, BREWSTER, CHATHAM, DENNIS, FALMOUTH, HARWICH, MASHPEE, ORLEANS, SANDWICH, YARMOUTH	July 7, 2023
EASTHAM, TRURO, WELLFLEET	September 29, 2023

How can I find out if my system is in an NRNSA?

The Department has developed the Natural Resource Area Nitrogen Sensitive Areas Address Lookup Map found here:

[Nitrogen Sensitive Areas Address Lookup \(arcgis.com\)](https://arcgis.com)

Click on the link.

Agree to the terms and conditions by checking the box on the lower left and click OK.

Enter the address of the facility (#, Street, and Town).

If the facility is in a dark green shaded area, then it is located within an NRNSA that was designated July 7, 2023.

If the facility is in the teal shaded area, then it is located within an NRNSA designated on September 29, 2023.

What is the Notice of Intent (NOI) period?

The NOI period is a 2-year period following the date of NRNSA designation during which the town may file an NOI to pursue a Watershed Permit, a Watershed Permit application, or a De Minimis Nitrogen Load application (De Minimis application).

What happens when the NOI period ends?

If your town does not submit a Notice of Intent, a Watershed Permit application, or a De Minimis application during the 2-year NOI period, the requirements regarding the installation of Best Available Nitrogen Reducing Technology (BANRT) for existing systems will take effect.

For those towns with watersheds designated on July 7, 2023, the requirement to upgrade existing septic systems with BANRT begins July 8, 2025.

For those towns with watersheds designated on September 29, 2023, the requirement to upgrade existing septic systems with BANRT begins September 30, 2025.

How do I know if my town has filed an NOI, Watershed Permit Application, or De Minimis Load application?

The Department maintains a list of those towns that have submitted a Watershed Permit related application found here:

[insert link to table of application submittals]

This list is updated on a weekly basis.

You can also contact your town directly for more information on the status of a Watershed Permit related submission.

When do I have to install BANRT for new construction?

The Department has extended the date for requiring the incorporation of BANRT in septic systems serving New Construction on Cape Cod in designated NRNSAs.

Per 15.215(2)(b): New Construction must incorporate BANRT starting **six months** following the date of NRNSA designation unless a town files an NOI, Watershed Permit application or De Minimis application.

The Department has extended this date to July 8, 2024 for any New Construction on Cape Cod in areas designated as an NRNSA. If your town does not submit a Notice of Intent, a Watershed Permit application, or a De Minimis application by this date, the requirements regarding the installation of BANRT for New Construction will take effect.

It is important to note that New Construction is defined in Title 5 at 310 CMR 15.002 and includes: the construction of a new building requiring an occupancy permit; and any increase in the actual or design flow to an existing system. See [15.002](#) for the entire definition.

How much time do I have to install BANRT for an existing septic system?

Existing systems will have **5 years to upgrade to BANRT**. The 5-year period begins at the end of the 2-year NOI period.

For those Cape Cod watersheds designated as NRNSAs on 7/7/23:

7/8/25 through 7/8/30 for existing systems.

For Wellfleet Harbor designated as an NRNSA on 9/29/2023:

9/30/25 through 9/30/30 for existing systems.

Do towns have up to two years to file the NOI per 15.215(2)(c)?

Yes, the NOI filing period is 7/7/23 through 7/7/25 for the Cape Cod Watersheds with a nitrogen TMDL as of 7/7/23; and 9/29/23 through 9/29/25 for the Wellfleet Harbor watershed.

How should a town or local board of health (LBOH) handle new construction projects that come up for permitting in the (up to) 1.5 year period between the six-month timeframe for new construction and the 2-year timeframe for filing of the NOI?

The Department has extended the date for any New Construction on Cape Cod in areas designated as NRNSAs to install BANRT to July 8, 2024. Applications received by the LBOH from that date forward must incorporate BANRT in the septic system design unless the town has filed an NOI, a Watershed Permit application, or a De Minimis application.

Filing any of these applications will suspend the requirement for the installation of BANRT for both new construction and existing facilities.

Would a town have to file the NOI by January 7th, 2024, to prevent new construction from having to install BANRT?

The Department has extended the date for any New Construction on Cape Cod to install BANRT in areas designated as an NRNSAs to July 8, 2024. This extension date applies to all NRNSA designated watersheds on Cape Cod.

A town would have to submit an NOI, Watershed Permit application or De Minimis application prior to that date to stay the requirement for new construction.

Are there requirements/recommendations for properties to install BANRT during the NOI period to meet the future watershed permit requirements.

For new construction, if no NOI, Watershed Permit application, or De Minimis application covering the area where the system will be located is filed by July 8, 2024, the property owner will need to install BANRT.

For existing facilities, the requirement to install BANRT will begin on 7/8/25 or 9/29/25, depending on which NRNSA watershed it is located in.

Existing facilities that need to upgrade/replace their system prior to that time (i.e., system failure), should work with the town and local BOH to determine the most appropriate upgrade for the system.

Determining whether a town will pursue a Watershed Permit and how the area a system is located within will be addressed under the Watershed Permit can help to determine what type of system should be installed.

If a town has a bylaw/regulation which requires installation of I/A systems independent of Title 5 BANRT upgrade requirements, then these requirements must be followed as directed by the LBOH.

It is important to note that Title 5 provides an exemption from BANRT upgrade requirements for facilities that installed enhanced nitrogen removal systems up to ten years prior to the effective date of the BANRT upgrade requirements.

What is the status of best available technology and what are the approved I/A systems?

The Department is currently reviewing enhanced nitrogen reducing technologies and will post a list of all BANRT technologies and any changes to it here:

[Approved Title 5 innovative/alternative technologies | Mass.gov](#)

Do the Title 5 revisions and Watershed Permit regulations address freshwater impairment?

Towns can incorporate measures to address freshwater impairment in their Comprehensive Wastewater Management Plan (CWMP) and request incorporation of the CWMP into their Watershed Permit.

Per 15.215(4): 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 NRNSAs 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.

Does "whether" in the final sentence of CMR 15.215(4) mean a disclosure is required only if the facility is subject to an upgrade?

The disclosure should indicate whether the facility is or is not subject to an upgrade. This will be determined based on location of system and whether the town has filed an NOI, Watershed Permit application, or De Minimis application. The Department will post a list of applications received here: [insert link]

Also, the regulations require the party who filed the NOI, Watershed Permit application, or De Minimis application to publish notice of that filing in the Environmental Monitor, on the Town Hall notification system and website, and in a local newspaper with the largest readership in the affected area.

Also, if the area includes an Environmental Justice Population, notice must also be translated and published in at least one additional news organization that serves the Environmental Justice Population.

The Environmental Justice Map Viewer can be found here:

[Environmental Justice Populations in Massachusetts | Mass.gov](#)

How does disclosure to a LBOH occur?

The Department has created a model template for the disclosure requirement found here: [insert link]

It should be signed by the entity transferring title to facility property, the entity to whom title is being transferred, and a copy of the disclosure must be submitted to the LBOH. There is a place on the template form for acknowledgment of receipt by signature of the LBOH. LBOH can utilize this template or develop their own disclosure template.

Could this be incorporated into the Title 5 inspection report?

Not all transfers of title to property require an inspection. The Title 5 regulations require facility owners to ascertain if their septic system is located within an NRNSA and if an upgrade is required, not system inspectors.

What is required for both new construction and existing homes during the period when a town falls within an NRNSA but does not yet have a watershed permit?

If no NOI, Watershed Permit application, or De Minimis application is filed, the requirement to install BANRT will begin:

For New Construction, on July 8, 2024.

For Existing Systems, 2 years after NRNSA designation:

7/8/25 for Cape Cod Watersheds designated as of 7/7/23; or

9/30/25 for Wellfleet Harbor Watershed.

What happens if the town submits an NOI or applies for a Watershed Permit or De Minimis Load Exemption but does not ultimately obtain the Watershed Permit or Exemption?

If a Watershed Permit or De Minimis Load Exemption is not issued by the Department for a watershed, then the requirement to install/upgrade with BANRT will take effect for systems in that watershed.