Version 10.7: I/A for new construction only.

9/29/25

FHR 15.15 REQUIREMENT TO INSTALL ALTERNATIVE ONSITE SEPTIC SYSTEM IN NITROGEN REGULATED AREAS

Purpose: The purpose of this regulation is to protect the public health, safety, welfare and the environment throughout the Town of Falmouth by regulating the introduction of new sources of nitrogen pollution from on-site sewage disposal systems. The Town of Falmouth must take immediate steps to reduce nitrogen levels in its watersheds caused primarily by the introduction of wastewater from on-site sewage disposal (septic systems). Excessive levels of nitrogen lead to algal blooms and subsequent destruction of animal and aquatic plant habitat. The Mass DEP has mandated that the Town address damaging nitrogen levels through a watershed permitting process. Falmouth faces a formidable challenge in complying with the watershed permitting regulations due to the sheer number of watersheds to be addressed. To attempt to achieve compliance with Mass DEP regulations, the Town must take immediate action to reduce septic pollution in order to keep the drinking water clean and to reduce nitrogen levels in estuaries and other protected waters. These regulations are essential as part of a comprehensive plan to address these environmental problems.

Authority: The Falmouth Board of Health is authorized to promulgate regulations pursuant to M.G.L. c. 111 § 31 and may enact regulations that are more stringent than the State Environmental Code, pursuant to 310 CMR 15.003(3). In order to support and promote the purpose of the Watershed Permit Regulations issued by the Mass DEP at 314 CMR 21.00, in accordance with the intent of the Massachusetts Clean Waters Act at M.G.L. c. 21 §§ 26-53, as well as the intent of the Massachusetts Surface Water Quality Standards at 314 CM. 4.00, these regulations are enacted to improve the water quality of the estuaries, embayments, ponds and protect the drinking water supply of the Town of Falmouth.

1. Definitions
   (a) Best Available Nitrogen Reducing Technology: For the purpose of this section, an alternative system(s) under general, conditional, or piloting approval from the Massachusetts Department of Environmental Protection which has a Total Nitrogen effluent performance value of 10 mg/L or less total nitrogen, as defined in 310 CMR 15.002. Regardless of approval status, for this regulation an approved alternative system must meet an effluent performance value of 10 mg/L or less for the lifetime of the system.

   (b) Falmouth Nitrogen Regulated Area: For the purposes of this section, a Nitrogen Regulated Area includes: all areas designated by the DEP as requiring a watershed permit pursuant to 314 CMR 21.00; those areas defined in 310 CMR 15.214 as either public or private water supply protection areas, or natural resource protection areas; those watersheds determined by the Commonwealth of Massachusetts to be nitrogen impaired and listed in the most recent Clean Water Act Section 303d Integrated Report, whether or not a Total Maximum Daily Load (TMDL) is available; the Black Beach/Great Sippewissett Marsh District of Critical Planning Concern as defined by the Falmouth Town Code Chapter 235, Wetlands Protection, and the Falmouth Conservation Commission Wetlands Regulations;

and the Drinking Water Resource Protection Overlay as defined by the Falmouth Town Code in accordance with 310 CMR 22.000.

(c) The map portraying Town of Falmouth designated Nitrogen Regulated Areas within the Town of Falmouth, as may be amended, shall be made a part of these regulations and incorporated herein.

(d) New Construction: For the purposes of this section, the construction of a new building for which an occupancy permit is required or an increase in the actual or design flow to any system or an increase in the actual or design flow to any nonconforming system or an increase in the design flow to any system above the existing approved capacity. New Construction shall only include an Accessory Dwelling Unit if there is an increase in the actual or design flow of the property. New Construction shall also include the voluntary demolition and reconstruction of a building, without regard to when it was originally built.

2. Requirement for new construction.

   All New Construction located on a lot any part of which is in a Nitrogen Regulated Area shall incorporate Best Available Nitrogen Reducing Technology in septic system design and installation.

3. Exception for new construction in a future sewer service area.

   New construction in a future sewer service area shall not be required to incorporate Best Available Nitrogen Reducing Technology if, at the time construction commences pursuant to a properly issued building permit, Town Meeting has voted to appropriate funding for the design for a connection to the Town's sewer service for the area encompassing the property and a ballot measure for said funding has also been approved by the registered voters of the Town, if so required.

4. Credit for installation of the Best Available Nitrogen Reducing Technology in sewered areas.

   (a) Structures that have incorporated the Best Available Nitrogen Reducing Technology in their subsurface sewage disposal system shall not be required to connect to the sewer for a period of 15 years after the sewer project has been completed, or 20 years after a Nitrogen Reducing System has been installed, whichever occurs earlier. This time credit does not exempt an owner from any sewer betterment charges assigned to the property.
   (b) If the subsurface sewage disposal system fails or fails to operate as approved, and all attempts to bring the system into compliance with FHR 15 have failed, the structure must connect to the sewer on a schedule determined by the Board of Health, but not more than 2 years following failure.