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314 CMR 21.00: MASSACHUSETTS WATERSHED PERMIT REGULATIONS

Section

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21.01: General Provisions

(1) Purpose. The purpose of these regulations is to establish a watershed permitting strategy and process to restore and protect water quality in nutrient impacted watersheds. The development and implementation of a Watershed Management Plan that will eliminate these water quality impacts are essential to this purpose.

A Watershed Permit establishes performance standards, authorized activities, and the timeframes that will be utilized under an adaptive management framework to achieve nutrient load reductions that are necessary to meet the specific water quality and habitat quality restoration goals that have been identified in a watershed analysis as being necessary to meet the designated uses of the waterbody established by the Department under 314 CMR 4.00: *Massachusetts Surface Water Quality Standards*, for the nutrients identified in the watershed analysis.

(2) Authority. The Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, charges the Department with the duty and responsibility to protect the public health and enhance the quality and value of the water resources of the Commonwealth. The Massachusetts Watershed Permit Regulations are promulgated pursuant to M.G.L. c. 21, § 27 and St. 2014, c. 259, § 2A. Consistent with this authority, any Watershed Permit that the Department issued prior to the effective date of these regulations shall remain valid and binding on the permittees.

21.02: Definitions

For the purposes of 314 CMR 21.00, the following terms shall have the following meanings, unless the context clearly requires otherwise:

208 Plan – An Areawide Waste Treatment Management Plan certified by the Governor or his or her designee and approved by EPA pursuant to § 208 of the federal Clean Water Act, 33 U.S.C. § 1288.

Alternative Control Approach or Technology – A technology or approach that is not a Conventional Control Approach or Technology but can be effectively used to remove pollutants from a waterbody or prevent or reduce the introduction of pollutants into a waterbody. Examples include but are not limited to permeable reactive barriers, enhanced natural attenuation, restored or constructed wetlands, fertilizer reduction, and pollutant credits or trading.

Alternative Restoration Plan – A near-term plan or description of actions with a schedule and milestones under the federal Clean Water Act § 303(d), 33 U.S.C. § 1313(d), that is expected to be more immediately beneficial or practicable in achieving water quality standards in the near term than pursuing development of Total Maximum Daily Load(s). An Alternative Restoration Plan was previously identified as an Alternative Total Maximum Daily Load.

Baseline Nitrogen Load – A Local Government Unit's proportion of the Controllable Attenuated Nitrogen Load that existed during the evaluation period for, and as reported in, the applicable TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation. It is sometimes referred to as the "present-day" load that existed during the evaluation period.

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Best Management Practices or BMPs – Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs include, but are not limited to, treatment requirements; operating procedures; and structures, devices, or practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act or CWA – The Federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

Comprehensive Wastewater Management Plan or CWMP – A plan which develops and evaluates alternatives that can be implemented to meet a community's wastewater infrastructure and management needs and which is consistent with the Department's Guide to Comprehensive Wastewater Management Planning.

Comprehensive Water Resource Management Plan or CWRMP – A plan developed in accordance with the Department's Guide to Water Resource Management Planning that identifies a community's needs and problem areas in one sector of its water resource structure, evaluates alternative means of addressing those needs and problem areas, selects the most cost-effective and environmentally appropriate remedy, and proposes an implementation plan and schedule. CWRMPs include

- (a) plans that evaluate a community's wastewater infrastructure and management needs (*e.g.*, CWMP),
- (b) plans that focus on the community's water supply infrastructure and management issues, and
- (c) plans that focus on the community's stormwater management needs.

Controllable Attenuated Nitrogen Load – The total nitrogen load from all controllable loads within the watershed that reaches the embayment or estuary.

Conventional Control Approach or Technology – A combination of physical, chemical, and biological processes that provide primary, secondary, or tertiary treatment and have been proven to be consistently effective for treating wastewater or sewage to remove suspended solids, dissolved solids, biological decomposition of organic matter, pathogens, and nutrients from wastewater. Examples of Conventional Control Technology include but are not limited to sewage treatment plants and enhanced nutrient removal alternative septic systems that the Department accepts as conventional.

Core Sewer Area – The area identified in a CWMP, CWRMP, or TWMP requiring wastewater collection using Conventional Control Technology as the optimal control technology because of factors such as the extent of the local wastewater impact, proximity to impacted resources, and existing density and anticipated growth.

De Minimis Nitrogen Load Exemption – An exemption from the permitting requirements of 314 CMR 21.00 issued by the Department pursuant to 314 CMR 21.12.

Department – The Massachusetts Department of Environmental Protection.

District – Any county, regional or local district, commission, board or other political subdivision or instrumentality of the Commonwealth, howsoever named, which is authorized to provide itself or through an officer, board, department or division thereof local water pollution abatement, sewer or stormwater services, or public water supply services, whether established under general law or special act.

Environmental Justice (EJ) Population –

- (a) A Neighborhood that meets one or more of the following criteria:
  1. the annual median household income is not more than 65% of the statewide annual median household income;
  2. minorities comprise 40% or more of the population;
  3. 25% or more of households lack English language proficiency;
  4. minorities comprise 25% or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150% of the statewide annual median household income; or

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(b) A geographic portion of a Neighborhood designated by the Secretary as an Environmental Justice Population pursuant to M.G.L. c. 30, § 62; provided, however, that a Neighborhood or a geographic portion of a Neighborhood that the Secretary has determined shall not be designated an Environmental Justice Population pursuant to M.G.L. c. 30, § 62 shall not be considered an Environmental Justice Population under 314 CMR 21.00.

EPA – The United States Environmental Protection Agency.

Local Government Unit – Any town, city, district, county, commission, agency, authority, board or other instrumentality of the commonwealth or of any of its political subdivisions, including any Regional Local Governmental Unit.

Massachusetts Estuary Project Report or MEP Report – A technical report produced by the Massachusetts Estuaries Project that has been accepted by the Department and was created to: determine current nitrogen loads to estuaries; evaluate reductions that would be necessary to support healthy ecosystems based on a linked model to evaluate nitrogen inputs to estuaries; and provide technical guidance to support appropriate wastewater, watershed, and embayment management techniques to reduce nitrogen loading.

Necessary Nitrogen Load Reductions – The proportion of the total Controllable Attenuated Nitrogen Load that must be reduced in order to restore the waterbody to applicable water quality and habitat quality restoration goals that have been identified in a TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation as being necessary to meet the designated uses of the waterbody established by the Department under 314 CMR 4.00: *Massachusetts Surface Water Quality Standards*.

Person – Any agency or political subdivision of the Commonwealth, the Federal government, any public or private corporation or authority, individual, partnership or association, or other entity, including any officer of a public or private agency or organization.

Pollutant – Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works or waters of the Commonwealth.

Quality Assurance Program Plan or QAPP – A planning document for a specific monitoring project or program that describes the quality-control elements to be implemented to help ensure that the data collected will be of known and documented quality to meet the project or program needs. Implementation of an approved QAPP is generally required for any monitoring data used by the Department.

Regional Local Government Unit – Any Local Government Unit which is responsible for the ownership or operation of a Regional System.

Regional System – An entity or legal arrangement that is designed to provide public water supply or wastewater services through facilities, sources, or distribution networks and has the authority to set rates and charges for the consumers of such services, including but not limited to: a Local Government Unit or District serving two or more municipalities, a private water system serving two or more municipalities, or a county in which all municipalities of the county have agreed to provide shared public water or wastewater services and set rates and charges for such services.

Scientific Evaluation – A watershed assessment that is accepted by the Department because it is scientifically rigorous and based upon information, data, modeling, and analyses that could be used to: delineate the watershed; develop and implement an EPA-approved TMDL; and develop and implement wastewater and nutrient management plans to satisfy the TMDL; and which produces, at a minimum, the following:

- (a) quantitative and qualitative assessments of the nutrient related health of the waterbodies being assessed;
- (b) identification of all controllable and uncontrollable nutrient sources and their respective contributions to the waterbodies for the present day and the next 20 years, including any projected buildout;

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(c) nutrient threshold concentrations that must be achieved to comply with 314 CMR 4.00: *Massachusetts Surface Water Quality Standards* to support the ecosystem and restore and maintain indicator habitats, such as eel grass and benthic species, associated with nutrient impacts;

(d) analyses of watershed nutrient loading reductions that will be necessary to achieve at least the minimum nutrient threshold concentrations in the waterbody and restore and maintain the indicator habitats; and

(e) site-specific, calibrated, watershed-waterbody model(s) that can be used to simulate the efficacy of strategies towards restoration and maintenance of the waterbodies.

(A TMDL is not required to complete the Scientific Evaluation.)

Surface Waters – All waters other than ground waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands and coastal waters.

Surface Water Quality Standards – The Massachusetts Surface Water Quality Standards set forth in 314 CMR 4.00: *Massachusetts Surface Water Quality Standards*.

Targeted Watershed Management Plan or TWMP – A plan that is consistent with a 208 Plan, if a 208 Plan exists, as determined by the designated areawide planning agency under § 208 of the CWA, 33 U.S.C. § 1288, and that contains all elements of a CWMP or a CWRMP developed to address the waterbody impairments or impacts identified in a TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation, or to implement a TMDL or Alternative Restoration Plan, in a watershed or sub-watershed.

Total Maximum Daily Load or TMDL – The sum of a receiving water's individual waste load allocations and load allocations and natural background, which, together with a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, represents the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards in all seasons.

Updated Nitrogen Load – The sum of the Baseline Nitrogen Load and any changes in that load that occur between completion of the applicable TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation and the filing of an application for either a Watershed Permit or a *De Minimis* Nitrogen Load Exemption.

Watershed – The boundary of the area described by either surface hydrology, subsurface hydrology, or both, delineating a drainage divide to a specific body of water.

Watershed Management Plan or WMP – A plan that:

(a) is consistent with a 208 Plan, if such plan exists, as determined by the designated areawide planning agency under § 208 of the Clean Water Act, 33 U.S.C. § 1288;

(b) includes or is supplemented with the information and documentation specified in 314 CMR 21.03(2), unless the Department determines otherwise;

(c) is based on one or more CWMPs, CWRMPs, or TWMPs, which may serve as the WMP if all requirements of this definition are met; and

(d) provides a schedule and description of actions to achieve Necessary Nitrogen Load Reductions. Unless otherwise determined by the Department, the WMP may address pollutants other than nitrogen.

Watershed Permit – A permit issued by the Department pursuant to 314 CMR 21.00 for one or more watersheds with a term of no longer than 20 years, including the Pleasant Bay Watershed Permit (Permit No. 001-0) that was issued August 3, 2018, by the Department prior to the promulgation of 314 CMR 21.00.

21.03: Application for a Watershed Permit

(1) Any Local Government Unit seeking a Watershed Permit may file an application with the Department. A Watershed Permit application or a Notice of Intent for a Watershed Permit must be filed pursuant to 310 CMR 15.215(2) to suspend any Title 5 New Construction requirements under 310 CMR 15.215(2)(b) or to prevent any applicable Title 5 system upgrade requirements under 310 CMR 15.215(2)(a) from going into effect. Multiple Local Government Units that share a watershed or sub-watershed may apply jointly for a Watershed Permit, provided they have entered into a mutually enforceable agreement among the parties that confirms each applicant's percentage share of the Necessary Nitrogen Load Reductions and provides a framework to coordinate resource management decision-making and arrangements relating to the receipt and expenditure of funds for implementation. Unless otherwise stated in the mutually enforceable agreement among the parties, each Local Government Unit is only responsible for the proportion of the Controllable Attenuated Nitrogen Load that originates from within its political boundaries. Authority to enforce the Watershed Permit is reserved to the Department.

(2) Contents of an Application. An application for a Watershed Permit shall contain sufficient information for the Department to evaluate whether the application meets the applicable review criteria. Unless otherwise determined by the Department, the application shall include:

- (a) a complete application using a form provided by the Department for such purposes;
- (b) a Watershed Management Plan, signed and stamped by a Massachusetts Registered Professional Engineer, for the watershed or sub-watershed that is the subject of the application and includes:
  1. maps depicting the watershed boundary, including each parcel of land within the area proposed for coverage, and a narrative describing the area proposed to be covered under a Watershed Permit;
  2. a description of the current and historic water quality conditions, including short-term (daily/seasonal) and long-term (annual) variability;
  3. any earlier planning approaches taken prior to filing the application, including any related findings and recommendations;
  4. the types, locations, and timing of any ongoing and proposed TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation implementation activities within the watershed or sub-watershed proposed for coverage, including a table identifying:
    - a. the Updated Nitrogen Load that the area proposed for coverage under the Watershed Permit contributed to the Surface Waters of the watershed, specifying and accounting for implementation of all nitrogen reduction measures;
    - b. projected loads for the following 20 years (projections must include scenarios for proposed nitrogen-load reducing activities; a MEP Report or other Scientific Evaluation buildout scenario may suffice);
    - c. the percentage of Necessary Nitrogen Load Reductions to be attained during the term of the permit and a concise description of the means of achieving those specified reductions;
    - d. the Conventional Control Technologies and Alternative Control Approaches or Technologies selected for pollutant load reductions and identification of each permittee that will be responsible for implementing each activity;
    - e. the area each selected Conventional Control Technology and Alternative Control Approach or Technology would service;
    - f. the apportionment of Necessary Nitrogen Load Reductions for each of the selected Conventional Control Technologies and Alternative Control Approaches or Technologies;
    - g. the implementation schedule for each Alternative Control Approach or Technology proposed, including a timeframe for demonstration, testing, and acceptance or abandonment of such approaches or technologies;
  5. maps depicting the watershed boundary, including each parcel of land within the area proposed for coverage, and a narrative describing the Core Sewer Area, if applicable, and the service areas prioritized for wastewater collection and treatment after accounting for implementation of the selected Alternative Control Approaches and Technologies;
  6. documentation of what each permittee proposes to do to reduce its pollutant load in the watershed or sub-watershed and when those reductions would occur;
  7. if Alternative Control Approaches and Technologies are proposed, a contingency plan for a back-up Conventional Control Technology in the event that the Alternative Control Approaches and Technologies selected do not function as predicted;

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8. a description of each of the proposed pollutant reduction actions to reduce current and projected loads identified above;
  9. cost estimates for the infrastructure and programs associated with the proposed actions, if available;
  10. an implementation schedule, not to exceed 20 years, currently envisioned by the applicant(s), including a designated set of activities that will occur in each five-year period and a methodology for analyzing the results of those activities and making necessary adjustments for each subsequent five-year period of the permit to meet required load reductions;
  11. a watershed or sub-watershed scale monitoring plan that defines the goals of the monitoring plan, the selected water quality parameters, the method(s) of monitoring to be employed, the sampling frequency, locations, timing and duration, and a Quality Assurance Program Plan;
  12. the information sources relied upon to develop the proposed Watershed Management Plan;
  13. if the application seeks a Watershed Permit based on a Watershed Management Plan that will not attain Necessary Nitrogen Load Reductions during the permit term, documentation showing the financial costs and environmental impact of:
    - a. complete compliance with those goals and
    - b. a proposed alternative that makes reasonable progress toward achievement of the goals in accordance with 314 CMR 21.04(1)(a); and
- (c) if there is more than one applicant, an inter-municipal agreement or other legally binding and appropriate agreement among the applicants that confirms each permittee's percentage share of the aggregate pollutant reduction responsibility and provides a framework to administer implementation of the Watershed Management Plan, including arrangements for the receipt and expenditure of funds.

21.04: Application Review Process

- (1) Permit Review Standard. The Department shall not issue a Watershed Permit if the proposed Watershed Management Plan does not provide for either achievement of the Necessary Nitrogen Load Reductions during the permit term or reasonable progress in achievement of those Necessary Nitrogen Load Reductions within the permit term. The Department will make a finding of reasonable progress if it determines that:
  - (a) the Applicant's proposed alternative provided under 314 CMR 21.03(2)(b)13. is reasonable considering the financial costs and environmental impacts of the complete and proposed alternative compliance scenarios provided under 314 CMR 21.03(2)(b)13;
  - (b) the Applicant cannot reasonably achieve the Necessary Nitrogen Load Reductions within the permit term; and
  - (c) either:
    1. at least 75% of the Necessary Nitrogen Load Reduction will be achieved within 20 years, or
    2. an alternative schedule is appropriate based on watershed-specific issues (*e.g.*, number or complexity of watersheds, proportion of community's land area in watershed, total nitrogen load to be reduced, logistical and financial planning for wastewater infrastructure, complexity of achieving nitrogen reduction targets). The alternative schedule must, at a minimum, include planning and a schedule to achieve all Necessary Nitrogen Load Reductions.
- (2) Tentative Determination and Preparation of Draft Permits
  - (a) After receiving a complete application, the Department will issue for public comment a draft permit or a tentative determination to deny a permit.
  - (b) If the Department issues a draft permit, the draft permit shall contain such terms and conditions as the Department deems necessary to ensure that the permitted discharges, activities and facilities will comply with all applicable requirements of 314 CMR 21.00.
  - (c) The Department may determine to withdraw a draft permit before issuing a final permit. The Department may provide a written statement to the applicant and any other person who requests it stating why the Department has withdrawn the draft permit and whether the Department intends to issue a revised draft permit for public comment in the future.

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(d) Public Notice. The applicant shall provide public notice of the draft Watershed Permit or tentative determination to deny a permit at the applicant's expense in accordance with the requirements of 314 CMR 21.04(2)(d)1. through 6. Public notice shall afford a period of at least 60 days after the date of publication during which the public may comment or request a public hearing. The Department may elect to extend the public comment period. If the Department provides such an extension, the applicant shall provide notice thereof in the same manner as the original notice.

1. The applicant shall publish public notice of the Watershed Permit proceeding in the Environmental Monitor and in a local or regional newspaper with the largest readership distribution both online and in hardcopy, if hardcopy exists, within the area that will be affected by the Watershed Permit. The applicant will also request that notice be published in the local town or city hall and on the website of the community or communities that may be affected. The Department will post the notice on the Department's webpage. The applicant shall send a copy of the public notice to the Department at least two business days before the date of publication.

2. In municipalities with Environmental Justice Populations where the preceding manner for publishing public notice does not specifically serve the Environmental Justice Population(s), the applicant shall provide public notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the Watershed Permit. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.

3. Within seven days after the date of publication, the applicant shall submit to the Department a copy of the public notice as published in the Environmental Monitor and the name and address of the newspaper(s) in which it was published and the date the notice appeared in the newspaper(s).

4. The Department will post the notice on the Department's webpage and shall send a copy of a public notice to any person who has submitted a written request for notice of the proceeding.

5. The date of publication in the Environmental Monitor shall constitute the date of publication of public notice for purposes of 314 CMR 21.00.

6. The public notice shall contain the following minimum information and any additional information the Department deems appropriate:

- a. the name and address of the applicant;
- b. identification of the watershed or sub-watershed to be addressed by the Watershed Permit;
- c. the statutory and regulatory authority under which the final determination will be made;
- d. the name, telephone number, and e-mail address of the person from whom a copy of the draft Watershed Permit or tentative determination may be obtained; and
- e. the time within which the public may comment or request a public hearing.

(3) Public Hearings. If the applicant requests a public hearing, or if the Department determines a public hearing to be in the public interest, then the Department shall schedule and conduct such hearing either remotely or in a community within the area that may be affected by the Watershed Permit. The applicant shall provide public notice of the public hearing in accordance with 314 CMR 21.04(2)(d)1. through 6. at least 30 days prior to the hearing. Where a public hearing is held, the public comment period shall be extended to the conclusion of the public hearing or such later date as may be established by the Department.

(4) Issuance or Denial of Permit. After the conclusion of the public comment period, the Department may issue or deny a final Watershed Permit. The Department's determination shall be effective upon the date of issuance or denial of the permit, unless an appeal is filed during the 21-day period following issuance or denial, pursuant to 314 CMR 21.11 and 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection*. If the filing of the Watershed Permit application or a Notice of Intent for such application operated to suspend the application of any applicable Title 5 upgrade or New Construction requirements under 310 CMR 15.215(2), then within 28 days of a permit denial becoming effective, the Department will publish notice of the denial and that the mandatory Title 5 upgrade and New Construction requirements are invoked in accordance with the timeframes established in



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310 CMR 15.215(2)(d) as if a Watershed Permit had been terminated or revoked, effective on the date the Department publishes the notice of denial. The Department shall publish the notice: in the forthcoming Environmental Monitor; on the Department's website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the Title 5 upgrade and New Construction requirements. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the Department must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.

21.05: Required Elements of a Watershed Permit

(1) Approved Watershed Management Plan and Implementation Schedule. A Watershed Permit shall establish a schedule for the permittee's implementation of the pollutant reduction actions identified in the Watershed Management Plan approved by the Department. The proposed activities, schedule, and facilities set forth in the applicant's Watershed Management Plan, with Department-approved modifications, shall be enforceable requirements of, and incorporated within, the Watershed Permit. The Department may modify the Watershed Management Plan or the approved implementation schedule in accordance with the terms and conditions of 314 CMR 21.00 and the Watershed Permit.

(2) Monitoring and Reporting. The permittee shall monitor water quality in accordance with the monitoring requirements contained in the Watershed Permit and shall report the results annually to the Department, or as otherwise required by the Department.

(3) Adaptive Management Framework.

(a) The Watershed Permit shall establish an adaptive management framework in which the permittee will make future decisions, subject to the approval of the Department, as part of an ongoing science-based process that is consistent with:

1. any applicable TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation and
2. the Permittee's progress in attaining Necessary Nitrogen Load Reductions during the permit term.

(b) The permittee shall implement the framework, as set forth in the approved Watershed Management Plan, to evaluate the results of the permittee's water quality management program and adjust and modify the strategies and practices, as needed, to address conditions that are causing the water quality impairments.

(c) The permittee shall provide a contingency plan in its approved Watershed Management Plan that relies on Conventional Control Technologies to achieve Necessary Nitrogen Load Reductions. The contingency plan shall be updated whenever the approved Watershed Management Plan or implementation schedule is modified.

(d) Subject to Department approval, a permittee may assume pollutant reduction credit for Alternative Control Approaches and Technologies only if the permittee or other responsible party implements and maintains such approaches and/or technologies and the related reductions in accordance with the terms and conditions of the Watershed Permit.

(4) Identification of Other Permits Incorporated by Reference. The Department shall identify any other permits previously issued by the Department that comprise a component of the implementation activities described in the approved Watershed Management Plan. Any such permits shall be incorporated into the Watershed Permit by reference.

(5) Conditions.

(a) The Watershed Permit shall include the General Conditions described at 314 CMR 21.10.

(b) The Watershed Permit may contain other conditions deemed necessary or appropriate by the Department to attain and maintain Necessary Nitrogen Load Reductions.

21.06: Modification, Revocation, Termination, and Renewal of a Watershed Permit

(1) The Department may propose and determine to modify or revoke any Watershed Permit, in whole or in part, for cause including, but not limited to, violation of the permit, obtaining the permit by misrepresentation, or failure to disclose fully all relevant facts or any change in or discovery of conditions relevant to the permit. Revocation of a permittee's coverage shall operate as a termination of the Watershed Permit with respect to that permittee and the terms of 310 CMR 15.215(2)(d) requiring Title 5 system upgrades and Best Available Nitrogen Reducing Technology for New Construction shall become effective in the watershed area for each permittee to whom the termination is applicable. Termination of a permit because

- (a) its term expires without attainment of the Necessary Nitrogen Load Reductions and
- (b) it has not been continued pursuant to 314 CMR 21.07 or renewed pursuant to 314 CMR 21.06(5), will cause the requirements of 310 CMR 15.215(2)(d) for system upgrades and New Construction to become effective in the watershed area to which the termination applies.

(2) If the Watershed Permit operated to suspend the effectiveness of any applicable Title 5 upgrade or New Construction requirements under 310 CMR 15.215(2), then within 28 days of the Department issuing a notice of termination for cause and any other termination that operates to invoke the mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d), the Department will publish notice of the termination and that the mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d) are invoked, effective on the date the Department issues the notice of termination to the Local Government Unit. The Department shall publish notice of the termination and invocation of the Title 5 upgrade and New Construction requirements: in the forthcoming Environmental Monitor; on the Department's website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the requirements. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the Department must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.

(3) The Department may modify the permit at the request of the permittee upon a showing, satisfactory to the Department, that the requested modification is appropriate in view of circumstances for which the permittee is not at fault.

(4) The Department shall process a significant modification or revocation of the Watershed Permit in the same manner as an application for a Watershed Permit under 314 CMR 21.04, but the public comment period for significant modifications will be limited to 30 days. Unless otherwise determined by the Department, significant permit modifications are those that would materially change:

- (a) the permit's required pollutant load reductions and require an extension in the permit schedule or a permit renewal to achieve the revised reductions;
- (b) the method or technology to achieve Necessary Nitrogen Load Reductions if such method or technology was not part of the approved Watershed Management Plan; or
- (c) the timeframe to achieve said reductions. Unless otherwise determined by the Department, other modifications are minor modifications and not subject to the requirements of 314 CMR 21.04. The Department may revise a Watershed Permit to accommodate minor modifications. Only the significant permit modifications shall be subject to a request for an adjudicatory hearing pursuant to 314 CMR 21.11. Significant permit modifications shall not be implemented until the Department issues the revised Watershed Permit that includes those modifications.

(5) Renewal of a Watershed Permit shall be processed in accordance with the provisions of 314 CMR 21.03 through 21.05, except as provided in 314 CMR 21.06(5)(c).

- (a) The Department may renew a Watershed Permit.
- (b) To seek renewal, the permittee must file an application for renewal at least six months before the expiration date of the existing Watershed Permit.
- (c) The Department shall not renew a Watershed Permit if the proposed Watershed Management Plan provided with the renewal application does not provide for attainment of Necessary Nitrogen Load Reductions.

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(d) If the Department withdraws a draft permit renewal, in accordance with 314 CMR 21.04(2)(c), the existing permit will remain in effect in accordance with 314 CMR 21.07.

(6) The Department may modify, revoke, reissue, or terminate a Watershed Permit it issued prior to the effective date of these regulations, consistent with the terms of these regulations, the previously issued permit, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53.

### 21.07: Continuation of an Expiring Watershed Permit

(1) In accordance with M.G.L. c. 30A, § 13, a Watershed Permit shall not expire until the Department has issued a decision denying or approving the permittee's renewal application if:

- (a) the permittee submitted a complete renewal application at least six months prior to the date of expiration of the Watershed Permit; and
- (b) the Department, through no fault of the permittee, does not issue or deny a renewed permit on or before the expiration date of the previous permit.

(2) Effect. Watershed Permits continued under this section remain fully effective and enforceable until the Department issues a decision denying or approving the permittee's renewal application.

### 21.08: Signatories to Permit Applications and Reports

(1) Applications. All permit applications shall be signed by either a principal executive officer or ranking elected official with authority to legally bind the applicant.

(2) Reports. All reports required by a Watershed Permit and other information requested by the Department shall be signed by a person described in 314 CMR 21.08(1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in 314 CMR 21.08(1);
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility; and
- c. The written authorization is submitted to the Department.

(3) Certification. Any person signing a document under 314 CMR 21.08 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

### 21.09: Enforcement, Violations, and Right of Entry

(1) The Department may take enforcement action pursuant to applicable law to enforce the provisions of 314 CMR 21.00 and any Watershed Permit issued thereunder. Such action may include, without limitation, the following:

- (a) Requiring a permittee to provide information, within a timeframe specified by the Department, to enable the Department to determine whether such permittee is subject to, in violation of, or has violated 314 CMR 21.00 or any Watershed Permit issued thereunder;
- (b) Revoking the Watershed Permit in accordance with 314 CMR 21.06;
- (c) Assessing civil administrative penalties pursuant to M.G.L. c. 21A, § 16, and M.G.L. c. 21, § 42; and
- (d) Taking any other actions authorized by these regulations or any other authority by which the Department may act.

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- (2) Without limitation, it shall be a violation of 314 CMR 21.00 to:
  - (a) Make any false, inaccurate, incomplete, or misleading statement in any submission required by 314 CMR 21.00 or a Watershed Permit;
  - (b) Make any false, inaccurate, incomplete, or misleading statement in any record, report, plan, file, log, register, or other document which the permittee is required to keep under 314 CMR 21.00 or a Watershed Permit;
  - (c) Fail to meet deadlines established by, or otherwise fail to comply with an implementation schedule established by 314 CMR 21.00 or a Watershed Permit;
  - (d) Fail to conduct water quality monitoring in accordance with a permittee's monitoring plan;
  - (e) Fail to report monitoring results as required by 314 CMR 21.05(2) and 314 CMR 21.10(8);
  - (f) Fail to file a five-year report pursuant to 314 CMR 21.10(10); or
  - (g) Fail to comply with any other term, requirement, or provision of 314 CMR 21.00, an approved Watershed Management Plan or other Department approval, or a Watershed Permit.
  
- (3) Without limitation, the owner, operator, or other person in charge of the permittee's property, facility, operation, or activity, upon presentation of proper identification, shall give the Department and its authorized representatives free and unrestricted access to conduct inspections to verify compliance or investigate suspected violations relative to 314 CMR 21.00, a Watershed Permit, or other Department approvals issued pursuant to 314 CMR 21.00, by:
  - (a) entering the permittee's premises at all reasonable times to examine and copy any records pertaining to the implementation of pollutant reduction actions authorized by an approved Watershed Management Plan or Watershed Permit and any records that must be kept under the conditions of the Watershed Permit;
  - (b) entering and examining the permittee's properties, facilities, equipment, operations or activities regulated or required under the approved Watershed Management Plan or Watershed Permit; or
  - (c) sampling or monitoring at reasonable times for the purpose of determining compliance with the terms and conditions of the approved Watershed Management Plan and Watershed Permit.

#### 21.10: General Conditions

The following general conditions apply to all Watershed Permits and shall be included therein:

- (1) Duty to Comply. Except as provided in 314 CMR 21.10(2), each permittee shall comply with all terms and conditions of this permit, 314 CMR 21.00, M.G.L. c. 21, §§ 26 through 53, and all other applicable state and federal statutes and regulations. Noncompliance with any of the foregoing is grounds for enforcement action, permit termination, permit revocation, permit modification, or denial of a permit renewal application.
  
- (2) Treatment of Co-permittees. Notwithstanding 314 CMR 21.10(1), each co-permittee is severally liable for those activities they agree to carry out under the approved Watershed Management Plan.
  
- (3) Notification of Delays. Each permittee shall promptly notify the Department, in writing, upon learning of any delay in compliance with the implementation schedule established by this permit. Such notice shall state the anticipated length and cause of the delay, the measure or measures to be taken to minimize the delay, and a timetable for implementing the measure or measures. The permittee shall take appropriate measures to avoid or minimize any such delay. Notification will not shield the permittee from liability associated with noncompliance with the permit's implementation schedule.
  
- (4) Proper Operation and Maintenance. Each permittee, at all times, shall properly operate and maintain all Conventional and Alternative Control Approaches and Technologies and related appurtenances which are installed or used by the permittee pursuant to, or to achieve compliance with, the terms and conditions of this permit.

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(5) Duty to Mitigate. Each permittee shall take all reasonable steps to minimize or prevent any significant adverse impact on human health or the environment that may result from non-compliance with this permit.

(6) Relationship to Other Permits. This permit shall not be construed to relieve the permittee, individually or collectively, of the obligation to comply with the terms and conditions of any other permit, order or approval, including any Section 401 Water Quality Certificate, issued by the Department.

(7) Duty to Monitor. Each permittee shall carry out the approved monitoring activities established by this permit. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. Monitoring information required by this permit shall be retained for five years following the life of the permit, or as otherwise approved by the Department. Records of monitoring information include:

- (a) the date, exact location, and time of sampling or measurements;
- (b) the individual(s) who performed the sampling or measurements;
- (c) the date(s) analyses were performed;
- (d) the individual(s) who performed the analyses;
- (e) the analytical techniques or methods used; and
- (f) the results of such analyses.

Monitoring must be conducted according to test procedures approved by the Department or the EPA for such purposes, unless other test procedures are specified in the permit.

(8) Duty to Report Monitoring Results. Each permittee shall report to the Department the results of monitoring required by this permit pursuant to 314 CMR 21.05(2). Each permittee shall report to the Department the results of monitoring performed for purposes of this permit at the intervals specified in this permit or in the permittee's approved monitoring plan. All reports prepared in accordance with the terms and conditions of this permit shall be available for public inspection.

(9) Toxics Control. In conducting activities under this permit, each permittee shall not discharge any pollutant or combination of pollutants in toxic amounts. Any toxic components of such activities shall not result in any demonstrable harm to aquatic life or violate any state or federal law, regulation, or water quality standard.

(10) Five-year Reporting. Each permittee shall submit reports to the Department every five years. The initial five-year report is due five years from the effective date of this permit and every five years thereafter until the end of the permit term. The reports shall contain information regarding activities of the previous five years. The following information shall be contained in each five-year report:

- (a) a description, including dates, of the installation of any treatment and control systems and facilities, or approaches taken, during the reporting period;
- (b) a summary of results of any monitoring information that has been collected and analyzed during the reporting period;
- (c) a performance evaluation of the treatment and control systems and facilities, and approaches taken, during the reporting period, including identification of any non-compliance, performance shortcomings, or challenges along with recommended corrective actions and optimization activities, as necessary;
- (d) a discussion of the activities planned, and the associated critical path for the next five-year reporting cycle, consistent with the implementation schedule;
- (e) a self-assessment review of compliance with the terms and conditions of this permit during the reporting period; and
- (f) a progress report which describes the progress made in achieving the Necessary Nitrogen Load Reductions and water quality and habitat quality restoration goals required to achieve the designated uses for the waterbody, including an evaluation of the results of the permittee's water quality management program to date, any proposed adjustments and modifications to the strategies and practices under the approved Watershed Management Plan, pertinent sampling and monitoring results, including sentinel station monitoring results (if applicable), as well as other data pertinent to the technologies installed and approaches taken under the approved Watershed Management Plan as of the date of the report, any proposed nitrogen

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reduction credits for Alternative Control Approaches and Technologies, any changes requested to the approved implementation schedule, and any other information requested by the Department.

(11) Modification of the Approved Watershed Management Plan or Implementation Schedule. A request for any modifications to the approved Watershed Management Plan or the implementation schedule established by this permit must be in writing. A modification of the plan or schedule shall become an effective and enforceable requirement under this permit upon the Department's approval of that modification in accordance with 314 CMR 21.06.

(12) Notification of Contract Changes. In the event the permittees agree to amend an Intermunicipal Agreement or other mutually binding agreement governing their obligations under the Watershed Permit or one or more of the permittee(s) unilaterally rescinds, terminates or otherwise withdraws from the agreement, then the permittees shall promptly notify the Department in writing of such action. A permittee's withdrawal, termination, or rescission with respect to the agreement shall operate as a termination of the Watershed Permit with respect to that permittee and the terms of 310 CMR 15.215(2)(d) requiring individual system upgrades and Best Available Nitrogen Reducing Technology for New Construction shall go into effect in the corresponding watershed area for each permittee to whom the termination is applicable pursuant to 314 CMR 21.10(14).

(13) Duty to Provide Information. Each permittee shall furnish to the Department any information which is requested to determine compliance with this permit or whether cause exists for modifying, revoking, reissuing, or terminating the permit. Each permittee shall also furnish the Department, upon request, copies of records required to be kept by this permit.

(14) Termination of Permit Coverage. Any one or more of the permittees may terminate coverage under this permit by providing written notice to the Department at least 60 days in advance of the date such termination is to take effect. Such notice shall include public notice of a public hearing to be held at least 30 days prior to the termination date. At least 30 days before the hearing, the permittee terminating coverage shall publish notice of the public hearing in the Environmental Monitor and in a local or regional newspaper with the largest readership distribution both online and in hardcopy, if hardcopy exists, within the area that may be affected by the termination and in accordance with the provisions in 314 CMR 21.04(2)(d) for Environmental Justice Populations. The permittee terminating coverage will also request that notice be published in the local town or city hall and on the website of the community or communities that may be affected. The Department will post the notice on the Department's webpage. Such notice will not be construed to relieve any permittee, individually or collectively, of the obligations to comply with the terms and conditions of this permit while such coverage remains in effect. A permittee's termination of coverage under this permit shall operate as a termination of the Watershed Permit with respect to that permittee and the terms of 310 CMR 15.215(2)(d) requiring individual system upgrades and Best Available Nitrogen Reducing Technology for New Construction shall go into effect in the corresponding watershed area for each permittee to whom the termination is applicable.

(15) Facility Closure Requirements. Each permittee shall notify the Department in writing at least 30 days prior to the closure of any treatment or control system or facility covered by this permit. The Department may require specific measures during deactivation of such systems to prevent any significant adverse health or environmental impacts.

(16) Planned Changes. Each permittee shall notify the Department in writing as soon as possible of any planned alterations or additions to any treatment or control system or facility covered by this permit, provided that such alterations or additions are not subject to any other permit issued by the Department pursuant to 314 CMR 3.00: *Surface Water Discharge Permit Program* or 314 CMR 5.00: *Ground Water Discharge Permit Program*, or any Section 401 Water Quality Certificate issued by the Department. The Department may require specific measures to prevent any significant adverse health or environmental impacts that may result from such changes.

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(17) Anticipated Noncompliance. The permittee shall give advance notice to the Department of any planned changes in the treatment, facilities, operations or activities authorized by the permit which may result in noncompliance with permit requirements within 30 days of acquiring knowledge or information that may result in noncompliance with the permit requirements.

(18) Permit Actions. This permit may be modified or revoked by the Department in accordance with 314 CMR 21.06. The filing of a request by the permittee for a permit modification or a notification of planned changes or anticipated noncompliance does not stay any permit term or condition.

(19) Inspection and Entry. Each permittee shall allow the Department and its authorized representatives to enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records required by this permit are kept, to: access and copy, at reasonable times, any records pertaining to the implementation of pollutant reduction actions authorized by the approved Watershed Management Plan or the permit and any records that must be kept under the conditions of the permit; inspect at reasonable times any properties, facilities, equipment, activities, or operations regulated or required under this permit; and sample or monitor at reasonable times for the purpose of determining compliance with the terms and conditions of the approved Watershed Management Plan and this permit. In addition, each permittee shall make reasonable efforts upon request of the Department to secure from the owners and operators of premises owned or operated by third parties access at all reasonable times to conduct such activities.

(20) Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, or authorize any injury to private property, or any invasion of personal rights.

(21) Compliance with Laws. The issuance of this permit does not relieve the permittee of the permittee's obligations to comply with applicable federal, state, and local laws, regulations, ordinances and bylaws.

(22) Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

(23) Duty of Public Availability. The permittee shall make all documents identified in 314 CMR 21.00 (including but not limited to: the application, draft permit, final permit, requests for modification, and annual reports) available to the public on the permittee's public website. The permittee shall put all documents on the website within five days of providing them to or receiving them from the Department, and all posted documents shall remain on the website throughout the permit term.

(24) Permit Renewal. Any Watershed Permit issued under 314 CMR 21.00 may be renewed pursuant to 314 CMR 21.06. To seek renewal, the permittee must file an application for renewal at least six months before the expiration date of the existing permit in accordance with the provisions of 314 CMR 21.06(5).

(25) Other Permits and Authorizations Unaffected. To the extent that any permittee is subject to a permit or legal authorization more stringent than the terms and conditions of the Watershed Permit, the permittee shall comply with the more stringent requirements. Further, the Department may issue permits and conduct other regulatory and enforcement activities as necessary within the watershed boundaries subject to the Watershed Permit without limitation.

21.11: Appeals

During the 21-day period following issuance of the Watershed Permit, the determination to deny the permit, or the issuance of significant permit modifications under 314 CMR 21.06(4) the applicant or any person aggrieved by the issuance or the determination, if that aggrieved person also filed comments during the public comment period or provided testimony at a public hearing, may file a request for an adjudicatory hearing. The appeal of a significant permit modification(s) shall be limited to the significant modification(s). The requirement to file written comments or provide testimony at a public hearing may only be excused if the final Watershed Permit reflects significant changes from the Department's tentative determination that could not be reasonably anticipated. If the Department revokes or terminates a Watershed Permit, the permittee may request an adjudicatory hearing within 21 days following issuance of the revocation or termination. The standing of a person to request an adjudicatory hearing and the procedures for filing such request are governed by M.G.L. c. 30A and 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection*.

21.12: De Minimis Nitrogen Load Exemption

(1) Any Local Government Unit may apply for a *De Minimis* Nitrogen Load Exemption. Within 28 days of filing the application, the applicant shall publish notice of the suspension of any applicable Title 5 upgrade and New Construction requirements under 310 CMR 15.215(2) in the forthcoming Environmental Monitor; on the applicant's official website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the exemption. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the applicant must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.

(2) Contents of an Application. The application shall contain sufficient information for the Department to evaluate whether it meets the applicable review criteria. At a minimum, the application shall include:

- (a) A complete application form provided by the Department for such purpose;
- (b) Any planning documents, such as a CWMP, TWMP, or equivalent wastewater planning document applicable to the area for which the exemption is sought, if available;
- (c) Sufficient evidence (*e.g.*, MEP, TMDL, or other Scientific Evaluation) to show that the Baseline Nitrogen Load attributed to the applicable watershed or sub-watershed area, as applicable, is less than or equal to 3% of the Controllable Attenuated Nitrogen Load for the entire watershed or sub-watershed, as applicable; and
- (d) Sufficient evidence (*e.g.*, records of water usage, building permits, zoning information, census data and, if necessary, modelling) demonstrating that the applicant's Updated Nitrogen Load does not exceed 3% of the Controllable Attenuated Nitrogen Load for the watershed or sub-watershed, as applicable.

(3) Approval of a *De Minimis* Nitrogen Load Exemption. The Department shall approve a *De Minimis* Nitrogen Load Exemption application and issue an exemption approval letter to the applicant if it satisfies the requirements of 314 CMR 21.12(1) and (2).

(4) Conditions for *De Minimis* Nitrogen Load Exemption. The exemption shall continue unless it is terminated by the Department or the Local Government Unit and shall be conditioned on the following requirements:

- (a) Upon request by the Department, the exempt Local Government Unit shall provide:
  1. the Department with all requested information that is pertinent to nitrogen loading in the exempt area and within the Local Government Unit's possession, custody, or control and
  2. access to inspect the exempt area to verify compliance.
- (b) The Local Government Unit shall not increase its Updated Nitrogen Load.



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(c) If the Local Government Unit gains knowledge of any increase in the Updated Nitrogen Load, it shall promptly report that to the Department. The report shall include an assessment (deemed sufficient by the Department) of the extent to which the Updated Nitrogen Load has increased or may increase in the future.

1. If the assessment demonstrates the Updated Nitrogen Load has increased after considering any proposed attenuated load reduction strategies, the exemption shall terminate.

2. Such termination shall operate to cause any applicable mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d) to become effective.

(d) If the *De Minimis* Nitrogen Load Exemption operated to suspend the effectiveness of the Title 5 upgrade and New Construction requirements under 310 CMR 15.215(2), then within 28 days of the Department issuing a notice of termination to the exempt Local Government Unit or the Department receiving notice that the exempt Local Government Unit has terminated the exemption, the Department will publish notice of the termination and that the mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d) are invoked, effective on the date the Department issues the notice of termination to the Local Government Unit. The Department shall publish notice of the termination and invocation of the Title 5 upgrade and New Construction requirements: in the forthcoming *Environmental Monitor*; on the Department's website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the Title 5 upgrade requirement. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the Department must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.

(5) Withdrawal or Denial. If the applicant withdraws from the *De Minimis* Nitrogen Load Exemption application process or is denied an exemption, the Department will issue notice of the withdrawal or denial and invocation of the mandatory Title 5 upgrade and New Construction requirements under 310 CMR 15.215(2), if applicable, in conformity with the notice publication requirements in 314 CMR 21.12(4)(d).

#### REGULATORY AUTHORITY

314 CMR 21.00: M.G.L. c. 21, § 27; St. 2014, c. 259, § 2A.