



Town of Fairhaven

Board of Health

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January 24, 2023

Massachusetts Dept. of Environmental Protection
Bureau of Water Resources,
Division of Watershed Management
One Winter Street, 5th Floor
Boston, MA 02108

ATTN: Proposed Title 5 Regulation Changes and Watershed Permitting

To the Department:

As the Board of Health for the Town of Fairhaven, we would like to take this opportunity to make general comments regarding the proposed revisions to the Environmental Code - Title 5 Regulations (310) CMR 15.00) and the promulgation of new regulations for "Watershed Permitting" under (314 CMR 21.00). Much of what we present herein is a rehash of items previously presented from these offices regarding the mandating of TMDL's in the New Bedford Inner Harbor, New Bedford Outer Harbor and the Nasketucket Bay Estuary Systems.

In our role, we are keenly aware of the sensitivities of these resources as well as their ecological and socio- economic values to the community and to the region. Also in our role, we can attest to Fairhaven being in the forefront in environmental protection and water quality improvement. In the nearly 40 years of professional experience in environmental evaluation, protection and in aquaculture, we have always tried to balance the needs of health, conservation and practicality in all projects. We speak here as veteran health and environmental professionals on behalf of the Town of Fairhaven and other Southcoast communities.

While we understand the need to limit nutrient inputs into our water resources, in this case nitrogen, to protect our coastal and estuarine waters, we are very concerned at the extremely targeted and limited approach being proposed by these proposed regulatory changes. Before targeting homeowners and municipalities, the Federal and Commonwealth's environmental and land-use agencies must look at the bigger picture, and review their own actions in regulating nutrient inputs across the broader spectrum of contributors (permitted For Profit Operations) prior to foisting the entire responsibility and costs onto the narrow range of homeowners and municipalities. The latter in many cases having no means to alter the overriding Federal or State permits being issued to the For Profits that are beyond their control, this being the key concern relative to "Watershed Permitting" at the local level; and further, with reduced public work

forces, how can the burdensome requirements of revised 310 CMR 15.000 (Title 5) 314 CMR 21.00 be properly administered and enforced? The de-nitrifying Soil Absorption Systems (SAS's) that are being proposed as requirements are extremely expensive to install (labor and materials), require more comprehensive annual maintenance, dramatically increasing operational costs above currently permissible SAS's, and further place newly required annual monitoring costs to the individual homeowner and the municipalities.

While these new regulations speak to groundwater protection(s) and watershed management within the realm of the environmental regulations, they do not appear to address the overriding Zoning and land-use exemptions and grandfathering that allow for lenient regulation of many uses, and in Fairhaven's case, the agricultural composting of organic wastes. The State's Zoning Enabling Act (Section 40A) is so outdated and caters to certain outdated business agendas (e.g. exempted uses such as agriculture, of which composting is considered), and is considered by many obsolete and indifferent to environmental land-use concerns at the national level. According to certain MA DEP data reviewed during recent presentations Fairhaven's Total Maximum Daily Limit of Nitrogen has not been established.

While being outdated, these data may not result in actual current trends, and also may not reflect any potential benefits gained from Fairhaven's' environmental and water quality enhancement efforts (e.g. open space acquisitions, wetland enhancements and enforcement, and ongoing infrastructural and treatment systems improvements (e.g. storm water, municipal sewer expansion and wastewater treatment). These issues were raised during the previous discussions regarding the assignment of the TMDL for the Fairhaven Estuaries with the same relatively limited and outdated dataset, and no real action response from the Department. Another issue raised to the Department during those previous discussions was that no consideration has been given to ongoing restricted tidal exchange issues of our coastal embayments related to ongoing shoaling at the mouths of these coastal waters.

What these data indicate is that the target culprits, Wastewater and Septic Systems in the Nasketucket Bay and Inner and Outer New Bedford Harbor cases, account for less than one-third of the Controllable Nitrogen into each system. What is interesting, and we do not mean to pick on agriculture per se, but combined Agricultural/Landscape uses make up more than one-third in both cases. The other significant inputs, impervious surfaces numbers differ greatly and can't be relied upon for establishing trends, and Atmospheric Depositions are not considered in the Fairhaven Watersheds.

Again in Fairhaven's case, there continues to be a disregard for the largely unregulated, but the permitted For Profit composting segment of the agricultural use, permitted by either the Departments of Agricultural Resources and/or Environmental Protection, for the uncontained composting facilities that stockpile volumes of organic food, seafood and agricultural wastes (e.g. unused cranberries and cranberry waste, and seafood wastes). All on sites with little to no monitoring, containment, little to no capping of the composted fill, no treatment for organic leachate discharges on and into the ground; and moreover into our surface and groundwater resources; and at sites without proper "Site Assignment" for solid waste disposal or groundwater discharge, as required for solid waste landfills back in the day before they were regulated out. Regulated out, now there is a new concept. These composting facilities continue to be protected

as such by antiquated Zoning provisions at the state level exempting these uses. Fairhaven is checker boarded with these uses in our lower sub watersheds discharging to Buzzard's Bay (e.g Nasketucket Bay) At least currently compliant SAS's provide some level of treatment and management prior to discharge, unlike these permitted composting operations.

Given their limited view, the new regulations represent a very naïve and reactive politically motivated, feel good approach to solving a broad spectrum environmental problems by targeting the easily identifiable low hanging fruit that will have a limited effect overall. There is no forward thinking to this approach. This approach lacks real current scientific underpinning to support it, and fails to address the real contributing problems of nutrient loading in the geologic setting of Fairhaven's coastal sub-watersheds. The real solutions lie in very difficult cultural/economic change decisions that reach well beyond the limited scope of home septic systems.

There is no singular standard for SAS functionality as the key variable is always their geological and hydrogeological settings. SAS's on the Cape and the Islands are set in far more sandy soils/sediments with generally greater porosity and subsurface movement than the systems in the tighter glacial outwash and glacial till of the South Shore, Southcoast, and the glaciated inlands of New England. Therefore, one SAS solution does not fit all.

The successful implementation of any program initiated relies on both management costs and resources. As mentioned previously, with rising costs swirling about them, both individual homeowners and municipalities are forced to streamline themselves for cost-cutting purposes. These new regulations target vulnerable parties, are going to be extremely expensive to implement and manage over time for both sectors public and private, and have a limited and possibly uncertain level for success. The bench-top theory does not always translate to application success in the field. This is a very expensive investment in uncertainty for less than a third of the contribution of Controllable Nitrogen to Fairhaven's inland and coastal waters and groundwater resources. While allowing for the continued largely unregulated For Profit uncontained composting industry to continue to discharge toxic levels of organics into our wetlands, surface- and groundwater resources with absolute impunity.

In Conclusion:

More regulations do not always guarantee the desired result. Proper enforcement of the regulations that are in place may be sufficient in many cases. Targeting individual homeowners and the municipalities, as opposed to other major contributor of Controllable Nitrogen by MADEP and MDAR permitted operations is ill-advised at this time. As concerned environmental regulation partners, we believe that several things need to be addressed prior to the promulgation of these new regulations that include, but are not limited to:

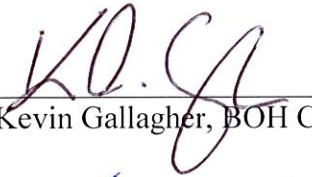
- 1) State and Federal agencies need to coordinate with each other on these matters with greater initiative than present.
- 2) There must be a need and effort to target the money making industries and not solely the homeowners and/or municipalities to solve every environmental woe.
- 3) All regulatory agencies at all jurisdictional levels need to properly enforce those regulations on the books within their jurisdictions, before promulgating new ones.

- 4) Collectively, we need to stop looking for new problems when we haven't solved the old ones.

While we commend the DEP for taking initiative on the issue of reducing nitrogen in impaired water bodies of the Southcoast, we would recommend that given the time of year and the complexities of this review of these new regulations the comment period should extend into next year. While there is some buzz out there right now, our rural communities need more opportunity to make their constituents more aware of this impending potential.

We would also like to express our thanks for the hard work of State Senator Mark C. Montigney, State Representative William M. Strauss and State Representative Christopher M. Markey.

Sincerely,



Kevin Gallagher, BOH Chair



Heidi Hacking, BOH Vice Chair

Michael Ristuccia, BOH Clerk

CC: Senator Montigney
Representative Strauss
Representative Markey
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