

# **REAL ESTATE TRANSFER REGULATION**

The Harwich Board of Health adopts the following Regulation under the authority of MGL Chapter 111, §31. This Regulation was adopted on June 8, 1988 and shall become effective for all deeds recorded on or after November 1, 1988. This Regulation shall be required in addition to all items covered in 310 CMR 15.999 Title 5 Sections 15.301 – 15.340 “System Inspections”.

## **PURPOSE**

To protect the public health of the inhabitants of the Town of Harwich from potential and present sources of pollution to groundwater or fresh and salt water resources from existing sewage disposal systems.

## **REGULATION**

Prior to selling, conveying or transferring title to real property situated in the Town of Harwich, the owner shall have an inspection of the existing residential, commercial or industrial sewage disposal system. The inspection may only be performed by a Registered Professional Engineer, Registered Sanitarian, or a System Inspector. Only system inspectors who have successfully passed the Department of Environmental Protection Certification and the Harwich Board of Health exam will be allowed to perform inspections.

The open inspection of existing commercial and residential sewage disposal systems shall be the responsibility of the owner of the property prior to real estate transfer.

If it is determined by the Board of Health that the system constitutes a danger to the public health, the Board shall order the owner to make repairs or replace the system.

## **STANDARDS**

For the purpose of this Regulation, reference is made to the standards and provisions of Title 5 of the State Environmental Code, 310 CMR 15.000 and to existing Regulations of the Harwich Board of Health governing the disposal of sewage and design of septic systems.

In order for a system inspection to obtain a satisfactory rating of “passes” the system must conform to all aspects of 310 CMR 15.000 and Harwich Board of Health Regulations with the following exceptions:

1. Distance to Maximum Groundwater Elevation – All systems must conform to the following:

All septic system installations granted a disposal works construction permit prior to March 31, 1995 (1978 Title 5 and Harwich Regulation compliance) will be required to demonstrate a four foot separation to maximum high groundwater. All septic systems granted a disposal works construction permit after March 30, 1995 (1995 Title 5 and Harwich Regulation compliance) will be required to demonstrate a five foot separation to maximum groundwater.

For purposes of this Regulation, maximum groundwater must be calculated in accordance with Cape Cod Commission Technical Bulletin 92-001 “Estimation of High Ground-Water Levels for Construction and Land Use Planning – A Cape Cod Massachusetts, Example” – Updated 1991.

2. Non-standard systems (i.e. systems comprised in whole or in part of cesspools) are not grand-fathered and their continuance will not be allowed.
3. Owners of systems failing to meet the requirement of this Regulation will be required to correct any deficiencies identified regardless of whether a transfer is completed or the property is removed from the sales market.

For guidance, inspectors should refer to the document “Town of Harwich – Reference Chart for Certified Inspectors Engineers & Sanitarians Performing Septic System Inspections for Real Estate Transfer Purposes”, (6/4/97 et seq.)

### **INSPECTION PROTOCOL**

1. The DEP Subsurface Sewage Disposal System Inspection Form shall be the approved form. In addition, Town of Harwich “Addendum to DEP Septic System Inspection Report” (6-4/97 et seq.) shall be filed with every report.
2. An open inspection of all components of the system will be required. If a component can not be found or uncovered after a reasonable search, the inspector must provide evidence for the system’s success or failure.
3. The inspection should take place not more than 180 days nor less than 30 days prior to the transfer of property. The Board of Health must receive the signed inspection form within seven days of the inspection. In addition, the inspector should give copies to the owner and to any buyer or broker identified with the transfer. In the event there is no buyer at time of inspection, copies must be given by the owner to the buyer preferably before the property is put under agreement.
4. All systems shall be classified according to the following criteria:
  - a. Passes – System meets all requirements of Title 5 and Harwich Regulations.

- b. Conditionally Passes – System meets requirements of Title 5 and Harwich Regulations; however, minor repairs are necessary. Ex: garbage disposal not allowed; septic tank not watertight; tees missing, system distribution unequal.
  - c. Needs Further Evaluation by Local Approving Authority – (system inadequate for intended use) i.e. inadequate size; system location such as not on same lot; within 100 feet of wetlands or well; excessive pumping.
  - d. Fails – Criteria not met, Ex: Cesspools present; lack of required separation to groundwater; evidence of overflow or overload to system.
5. If the inspection shows evidence of a failed system, such as sewage on the ground surface or sewage draining into any waterways or wetlands, the Board of Health shall determine within 14 days after receiving the inspection form whether or not the system constitutes a danger to the public health and whether and to what extent the system should be repaired or replaced. The Board of Health shall notify the owner by certified mail within seven days of its determination, accompanied by any order requiring the system to be repaired or replaced.
6. If the inspection shows the system to be conditionally passed or needs further evaluation, the Board of Health shall decide within 14 days after receiving the inspection form whether or not the system constitutes a danger to the public health and whether and to what extent the system should be repaired, replaced or be subject to further inspection as the Board deems appropriate under the circumstances. The Board of Health shall notify the owner by certified mail within seven days of its determination accompanied by any order requiring the system to be repaired, replaced or subject to further inspection.
7. The amount of allowable time for the repair, replacement or further inspection shall be 45 days from receipt of the notice of violation.
8. Alternative to Inspection – The Board of Health will allow a property to be transferred without the inspection or installation provided that an escrow account covering the cost of replacement has been established. A notarized statement signed by all parties indicating financial responsibility shall be filed with Board. In no case shall the completion date be greater than 45 days beyond the date of transfer (see form “Town of Harwich Real Estate Transfer Regulation Alternative to Inspection”).

### **ENFORCEMENT & PENALTIES**

The Health Director is authorized to issue Notices of Violation, Cease and Desist Orders, or other administrative enforcement orders to compel compliance with the terms of these Regulations.

1. Non-criminal Disposition – Whoever violates any provision of these Regulations may be penalized by a non-criminal method in the District Court pursuant to the provisions of MGL Chapter 40 § 21D. For the purposes of this Regulation the following fine schedule will be imposed:

First Offense: Written Warning

Second Offense: \$50.00

Third Offense: \$100.00

Fourth and subsequent Offenses: \$300.00

2. Criminal Complaint – As provided in MGL Chapter 111 § 31 – Whoever violates any provision of these rules and Regulations may be penalized by indictment or complaint brought in the District Court except as may be otherwise provided by law and as the District Court may see fit to impose, the maximum penalty for any violation of these provisions shall be \$1,000 for each offense.

### **SEVERABILITY**

If any provisions of these Regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby, but shall continue in full force and effect.

### **VARIANCE PROCEDURE**

Variances from this Regulation may be granted by the Board of Health after a hearing at which the applicant establishes both of the following:

1. The enforcement thereof would do manifest injustice;
1. A variance contemplated from these Regulations will not in the opinion of the Board of Health adversely affect the purposed intent of this Regulation.

Adopted at a meeting of the Board of Health on 6/8/1988

Effective date: 11/1/1988

Amended: 3/22/1989

10/26/1989

4/30/1997

6/10/1998

Effective: 7/1/1998

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