



**Town of Mashpee**  
BOARD OF HEALTH  
16 GREAT NECK ROAD NORTH  
MASHPEE, MASSACHUSETTS 02649  
(508) 539-1426 \* Fax (508) 477-0496

[boh@mashpeema.gov](mailto:boh@mashpeema.gov)




**Public Health**  
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## MEMORANDUM

**To:** Rodney C. Collins, Town Manager

**cc:** Wayne Taylor, Assistant Town Manager  
Terrie Cook, Administrative Assistant

**From:** Glen E. Harrington, C.H.O, Health Agent 

**Date:** November 4, 2021

**Re:** Status of Santuit Pond Abutter Septic System Inspection/Pumping Survey

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At your request and that of the Select Board, the Board of Health ordered septic inspections and pumpings for 121 abutters whose property falls within 300' of Santuit Pond. Order letters were sent via First Class and Certified Mail on September 9, 2021.

As of the date of this memo, a total of 17 certified letters were returned undelivered with the following outcomes:

- Three (3) properties have since fully complied
- One (1) property owner has two affected properties, one of which has fully complied and the other has not performed pumping but is an automatic failure due to being on a cesspool
- Two (2) properties have since complied with the inspection component only
- One (1) property has a new owner and the order was sent to the new owner
- One (1) property owner has updated their address and the order was sent to the new address
- Nine (9) properties require additional research as to the current ownership/ mailing address

As of the date of this memo, 27 of the 121 affected properties have fully complied with the order to inspect and pump, and two (2) additional properties are considered to have fully complied because they have satisfied the pumping requirements and are automatic failures due to being on cesspools. One (1) "other" property is considered to have fully complied for reasons explained below. An additional 30 affected properties have complied with the inspection component of the order, five (5) of which are considered to have complied because they are automatic failures due to being on cesspools.

Purposes”, and report submittal fees have been waived, per a vote of the Board of Health at a regularly scheduled meeting.

Of the 121 affected properties, 48 properties have complied with the pumping requirement. In other words, our office has received evidence from either the septage hauler or the property owner that those systems have been pumped within the past three (3) years.

With respect to compliance, it is important to note that inspectors and haulers have notified this office that, due to overall demand and weather delays, work on these properties is being scheduled well into November. While we have not collected a specific number of inspections/pumpings scheduled in the coming weeks, we are confident that there are a number of other property owners who are working toward full compliance. We also need to take into account any delays on the part of the inspectors and haulers in submitting their inspection reports and pumping records to our office. Per Title 5, inspectors have 30 days from the date of inspection to submit their report.

If you have any questions or comments, please do not hesitate to contact me at x8553.



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**Date:** November 4, 2021

**Re:** Scope of Board of Health Authority with Respect to Upgrading Failed Septic Systems and Requiring Sewer Tie-Ins

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The Board of Health derives its authority to order the repair or replacement of on-site septic systems from several different laws and regulations, but primarily from Title 5 of the State Environmental Code. Title 5, 310 CMR 15.000, is the regulation that provides the requirements for the siting, repair, upgrade, and replacement of septic systems.

Title 5 also has protocols for emergency upgrades but, for the most part, septic inspections performed at time of property transfer encounter the most failed systems. The failure criteria of septic systems is outlined within the inspection section of the regulation. Title 5 provides that the Board of Health or DEP can require an inspection of a septic system *at any time*. This is the provision that the Board of Health used when it issued the inspection and pumping order to property owners within 300' of Santuit Pond.

Systems that are deemed in failure by inspection or under our local Cesspool Regulation must be upgraded or repaired within certain timeframes. Below is an excerpt from Title 5 that describes the required timeframes.

### **15.305: Deadlines for Completion of Upgrades**

- (1) If a system is failing to protect public health, safety, welfare or the environment as set forth in 310 CMR 15.303(1) or 15.304(1), the owner or operator shall upgrade the system within two years of discovery unless:

- (4) Except as provided in 310 CMR 15.004(3), all systems shall be abandoned in accordance with 310 CMR 15.354 and the buildings served by the systems shall be connected to a sewer when a sewer becomes available, unless:
- (a) the system is an alternative system approved for such use pursuant to 310 CMR 15.280 through 15.287;
  - (b) the Department has made the determination in approving either the remedial use of an alternative system pursuant to 310 CMR 15.284 or in certifying an alternative system for general use pursuant to 310 CMR 15.288 that any person using such system need not connect the facility to a sanitary sewer if such connection is feasible; or
  - (c) the owner of an existing system has obtained a variance from this requirement pursuant to 310 CMR 15.410 through 15.415. All systems shall be abandoned in accordance with 310 CMR 15.354 and the buildings served by the systems shall be connected to a sewer when directed to do so by the Board of Health pursuant to M.G.L. c. 83, § 11, by the Department pursuant to 310 CMR 15.000, or by court order.

To review, property owners of Title 5 systems have two years from date of inspection to complete repairs. A shorter timeframe can be ordered by the Board of Health if an imminent health hazard occurs. An imminent health hazard is usually a considered when raw sewage backs up into a dwelling or breaks out onto the ground surface, drainage or water body. ***The Board has the authority, per 310 CMR 15.305 (1)(b), to extend the repair timeframe if sewers are proposed.*** An enforceable agreement can be executed by the homeowner and the Board of Health to extend the timeframe with certain requirements to tie into a sewer system in five years. An extension to five years must come from DEP. It is my understanding that a fiscal commitment and plan must be in place for extensions to be granted. ***Per 310 CMR 15.305 (4)(a), the Board of Health cannot require properties with approved innovative/alternative septic systems to connect to sewer.***

In the case of Santuit Pond, where those properties are in Phase 2 of the sewer plan, a fiscal commitment does not yet exist; therefore, any necessary repairs or upgrades would need to be performed, per 310 CMR 15.305 (1). However, funding for Phase 2 is proposed to be requested in May 2023 and, assuming that occurs, the timing would be such that we would still be "within the two years of discovery" allowed by Title 5. In that case, the Board of Health may be able to issue extensions with the requirement to tie into sewer within a specified timeframe.

In summary, the question put forth to this office was whether the Board of Health has proper authority to require septic repairs or replacements, and to require connection to the proposed sewer system. As outlined above, the Board of Health has full authority under Title 5 to require replacement of failed septic systems. Additionally, M.G.L. c.83, §11 states that *"The board of health of a town may require the owner or occupant of any building upon land abutting on a public or private way, in which there is a common sewer, to connect the same therewith by a sufficient drain, and such owner or occupant who fails to comply with such order shall be*



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## MEMORANDUM

**To:** Rodney C. Collins, Town Manager

**cc:** Wayne Taylor, Assistant Town Manager  
Terrie Cook, Administrative Assistant

**From:** Glen E. Harrington, C.H.O, Health Agent 

**Date:** November 8, 2021

**Re:** Scope of Authority – Sewer Connections

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At your request and that of the Select Board, additional research was conducted on the Board of Health's authority to require sewer connections under M.G.L. c.83, §11, which states *"The board of health of a town may require the owner or occupant of any building upon land abutting on a public or private way, in which there is a common sewer, to connect the same therewith by a sufficient drain, and such owner or occupant who fails to comply with such order shall be punished by a fine of not more than two hundred dollars."*

The use of the word "may" in Chapter 83, Section 11 introduces a question, rather than an order to connect, and is not as strong legally as using the word "shall". Another flaw is that it imposes only a one-time penalty of \$200 for failing to connect.

Sewer regulations and by-laws were recently approved and implemented in the towns of Falmouth and Chatham.

- Falmouth has a sewer by-law that includes a comprehensive definition of a house, building, or property that is required to tie in. It sets a 90-day timeframe to connect, may require water conservation appliances, and issues a \$50/day fine for violations. Falmouth does not have a Board of Health Sewer Regulation.
- Chatham has a Board of Health Sewer Connection Regulation. There is a cross-reference to perform the connections in accordance with Sewer Commission



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**Date:** November 8, 2021

**Re:** Cesspool Count – All Water Bodies

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At your request and that of the Select Board, the Board of Health began identifying properties within 100' and 300' of Mashpee water bodies. Additionally, our staff has begun researching the type of on-site septic system currently servicing each of those properties, along with the most recent inspection and pumping records for those addresses. We are still compiling and reviewing records, but have the following information to submit.

In total, 59 cesspools have been identified as being within 100' of a waterbody.

- Santuit Pond
  - 121 properties within 300'
  - Seven (7) cesspools total, one (1) within 100'
- Ashumet Pond
  - 98 properties within 300'
  - Nine (9) cesspools total, seven (7) within 100'
- Mashpee/Wakeby
  - 116 properties within 300'
  - Nine (9) cesspools total, one (1) within 100'
- John's Pond
  - 164 properties within 100'
  - Five (5) cesspools within 100'
- Popponesset, Ockway & Shoestring Bays
  - 320 properties within 100'

- Nine (9) cesspools within 100'
- Mashpee River
  - 33 properties within 100'
  - Three (3) cesspools within 100'
- Great & Little Rivers, Jehu & Hamblin Ponds, Waquoit Bay
  - 239 properties within 100'
  - 17 cesspools within 100'

Please note that only Santuit Pond records have been fully vetted, as it was identified by the Select Board as the priority area of focus. That information was provided in a separate memo. Research is ongoing on the remaining areas of concern.

If you have any questions or comments, please do not hesitate to contact me at x8553.