HOW LOCAL UPGRADE APPROVALS & VARIANCES ARE HANDLED UNDER TITLE 5

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On-site Wastewater for Local Environmental Health Officials
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DISCUSSION POINTS

- Regulations
- Process
- Title 5 Compliance
- Maximum Feasible Compliance & Local Upgrade Approvals
- Variances
- Appeals
- Closing Remarks
REGULATIONS

SUBPART E: PROCEDURES FOR SEEKING AND RECEIVING LOCAL UPGRADE APPROVALS AND VARIANCES FROM THE PROVISIONS OF SUBPARTS B AND C OF 310 CMR 15.00

310 CMR 15.401 - 310 CMR 1.5422

• Provides the framework for how to review/process LUA and variances
• Specifically eliminates new construction (including increased in flow) from LUA and requires variance (see 310 CRM 15.402(2)
• Maximum feasible compliance
• Contents of LUA
FULLY COMPLYING SYSTEM

- 100% SAS – exceptions re: I/As
  - 4 or 5 feet to gw
  - 4 feet NOPM
- Reserve area, if new construction
- Meets nitrogen loading, if applicable
DESIGN PLAN SUBMITTED

T5 COMPLIANCE?

LOCAL BYLAW/REG

DECISION

APPROVAL

DENIAL
LUA?

NO

NEW CONSTRUCTION?
MFC & LUA

- Goal is full compliance for upgrades
  - Fully complying system
  - I/A
  - Shared system
  - Connection to municipal sewer
- If SI failure caused by one component, upgrade component
- If full compliance is not possible, LUA
LUA

Compliance must not be feasible [310 CMR 15.404(1)and 15.405(1)].
Best feasible upgrade.
Protection of water resources and treatment of the sewage should be emphasized.
Reductions are in the order they are to be considered.

1. Property line setback*
2. Foundation, slab, swimming pool setback
3. 25% SAS area reduction;
4. If in Zone II or 100 feet of private well, relocation of the well
5. BVW setback
6. Various wetland resource areas
7. Water supply setback (line, well and surface WS/tributary)
8. Depth to groundwater**

* Notification to affected abutter(s), if applicable, is required.
** Pre-conditions must be met.
DEPTH TO GW LUA

ALLOWANCES

• For slower than 2 mpi soils, gw separation may be reduced from 4 feet to 5 feet provided....

• For faster than 2 mpi soils, gw separation may be reduced from 5 feet to 4 feet provided....

CONDITIONS

• A SE who is a member or agent of BOH determines ESHWL.

• The allowances are maintained.

• Existing system is failed or non-conforming with design flow < 2,000 gpd.

• No increase in design flow.

• No reduction in SAS area, setbacks to wells, BVS, wetland resource areas, PWS, surface water supplies, etc.
DECISION

YES

LUA?

NO

VARIANCE ?
VARIANCES

• Standards of Review:
  • Upgrades/Repairs
  • New Construction
  • Schools – still handled by MassDEP

• Process

• Conditioning of Variances

• Variance Prohibition – 4 feet NOPM
  • Prohibited for new construction
  • Permitted for upgrades/repairs with conditions
STANDARDS OF REVIEW

• Upgrades/Repairs [310 CMR 15.410(1)]
  • Proponent establishes that enforcement of the provision from which variance is sought would be manifestly unjust;
  • Equivalent environmental protection is provided without strict enforcement of the provision from which variance is sought.

• New Construction [310 CMR 15.410(2)]
  • Same as for upgrades/repairs PLUS
  • Manifest unjust proof must include a demonstration that enforcement of the provision from which variance is sought would deny the proponent of substantially all beneficial use of the property

• Schools – still handled by MassDEP [310 MCR 15.416]
PROCESS AND CONDITIONS

• Process
  • Notification to abutters
  • Public hearing
  • Decision
    • Approval
    • Denial

• Conditions
  • Monitoring and reporting
  • Deed recording
  • Financial assurances
  • Anything else necessary to protect public health safety and the environment
VARIANCE PROHIBITION

• Variance Prohibition – 4 feet NOPM
• Prohibited for new construction
• Permitted for upgrades/repairs with conditions
Any person aggrieved by any order, variance, issuance or denial of a Disposal System Construction Permit, Local upgrade approval or Certificate of compliance may appeal to a court of competent jurisdiction as provided for by the laws of the Commonwealth.
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THANK YOU