



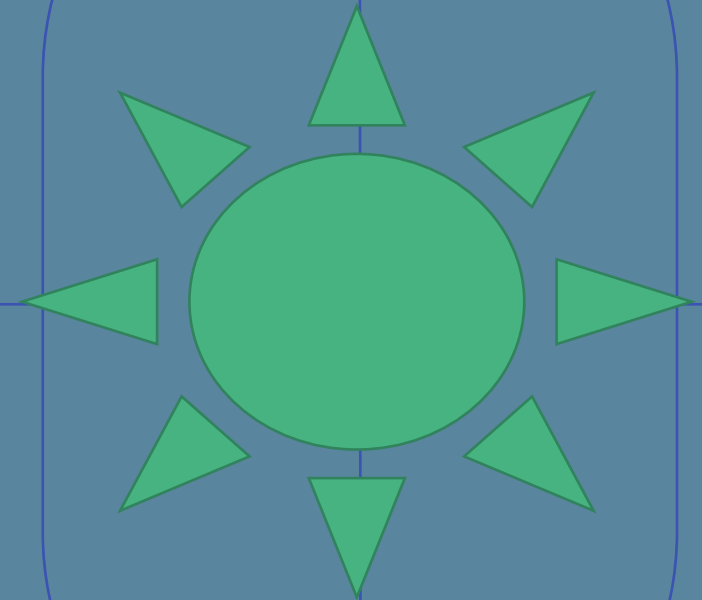
# Title 5 Enforcement Procedures

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Current Title 5 Topics ~ MEHA Seminar  
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Taunton



# Disclaimer

- This presentation pertains solely to 310 CMR 15.000, Title 5 of the State Environmental Code.
- Please note that municipalities may have regulations that are more restrictive than Title 5.
- Any reference to a proprietary technology in the presentation is solely for illustrative purposes and does not constitute an endorsement of or comment upon said technology by the presenter or MassDEP.
- The same applies to any questions posed to the presenter and the accompanying answers.



# Points to Ponder....



- Exactly what are violations of Title 5?
- What does Title 5 say about enforcement?
- When should BOHs take formal enforcement?
- What tools do local BOHs have to use in enforcement?
- But what if the pre-enforcement/enforcement tools don't head off the noncompliance?
- But what if there is continued noncompliance or major noncompliance?

Exactly what are  
violations of Title 5?



# 310 CMR 15.024



LIST OF T5  
VIOLATIONS



EASY~TO~READ  
FORMAT



REGULATORY  
REFERENCES AS  
APPROPRIATE

# Violations of Title 5 – Part 1

- (1) construction or use of a system in any manner that is not in compliance with an applicable Disposal System Construction Permit, Certificate of Compliance, or the terms and conditions of any other approval or order issued by the Approving Authority or the Department;
- (2) construction or use of a system prior to obtaining the applicable Disposal System Construction Permit, Certificate of Compliance, or any other approval or order issued by the Approving Authority or the Department;
- (3) use, modification, or alteration of a facility in such a way that a larger system is required under 310 CMR 15.000 using the design flows at 310 CMR 15.203 without the approval of the Approving Authority in accordance with 310 CMR 15.000;
- (4) aggregation of facilities or division of a facility into separate facilities without complying with the provisions of 310 CMR 15.010;

# Violations of Title 5 – Part 2

- (5) construction, upgrade, or expansion of a system without the prior approval of the Approving Authority or the Department in the form of a Disposal System Construction Permit or approval of an emergency repair;
- (6) failure to upgrade systems or to take other necessary corrective actions as ordered or otherwise directed by the Approving Authority or the Department in accordance with 310 CMR 15.000;
- (7) failure to obtain an inspection in accordance with 310 CMR 15.000 when and as required by 310 CMR 15.301;
- (8) discharge of effluent directly or indirectly to the surface of the ground through ponding or surface breakout above the disposal area or to a surface water of the Commonwealth;
- (9) violation of any other provision of 310 CMR 15.000;

# Violations of Title 5 – Part 3

- (10) violation of the terms and conditions of a deed restriction, covenant or easement recorded or imposed pursuant to 310 CMR 15.000;
- (11) failure to submit a soil evaluation to the Approving Authority as required by 310 CMR 15.018(2);
- (12) failure to submit an inspection form to the Approving Authority as required by 310 CMR 15.301(10);
- (13) making any false, inaccurate, incomplete or misleading statement in any submission required by 310 CMR 15.000;
- (14) making any false, inaccurate, incomplete or misleading statement in any record, report, plan, file, log, register, or other document required to be kept pursuant to 310 CMR 15.000; or
- (15) failure to provide any information required by the Approving Authority under 310 CMR 15.000.



# Evolution of the Violation Section

- 1995 5 basic violations
- 2006 expanded to 10 violations  
with greater explanation  
and scope of violations
- 2013 the current 15 violations



What does Title 5 say  
about enforcement?



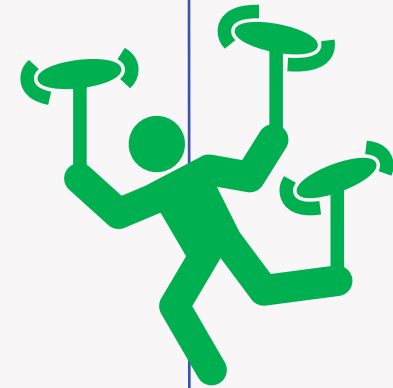
# 310 CMR 15.025

- Title 5 shall be implemented by the BOH with oversight/assistance by MassDEP.
- BOH may enforce Title 5 in same manner that other health rules and regs are enforced.
- MassDEP may enforce Title 5 and may require any person to submit information for MassDEP to determine if there is a violation.
- BOH or MassDEP may issue a notice of noncompliance (non-appealable) requesting the recipient come into compliance.
- If BOH fails to enforce Title 5 within a reasonable timeline, MassDEP may step in.

When should BOHs  
take formal  
enforcement?

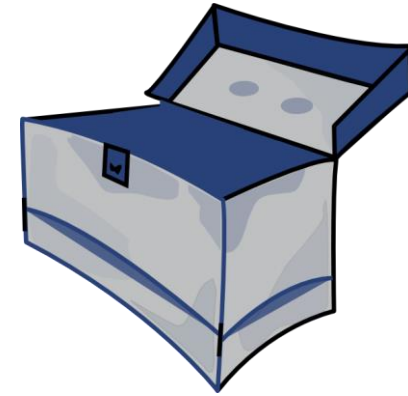


- It is a bit discretionary.
- There is a need to balance the frequency of the violation by that actor with the severity of the violation and the available personnel resources to deal with the violations.
- Some BOHs may draw a line in the sand and take some type of formal action for every violation.
- Others may have a local regulation that is more dogmatic in the approach.
- While still others may give some violators a warning the first time.
- Regardless of the BOH's approach, consistency is key.





What tools do BOHs  
have to use in  
enforcement?



# Pre~enforcement/Enforcement Tools

- Building checkoff list with all municipal licensing departments
  - Early warning if proposed project poses an issue (setbacks from an addition to septic system components, etc.)
- Database for DSCPs, CoCs, Installers Licenses, Haulers Licenses
  - Renewal letters or an email blast issued to installers, etc.
  - Notification that DSCPs are expiring, etc.
- Spreadsheet or database of failed systems (regardless of whether the SI reports are reviewed by the BOH) with date of failure
  - Possible letter/order to persons with failed systems outlining timeline
  - Searchable/sortable to check for upcoming deadlines, etc.

But what if the pre-enforcement/  
enforcement tools don't head off  
the noncompliance?

# Potential Enforcement Scenarios\* . . . .

## *One verbal warning first*

- Late hauling report
- Late Soil Evaluation Report
- Failure to perform interim measures in a timely manner (i.e. pumped septic tank after 3 weeks instead of 2 as ordered) – there was no breakout or back-up that resulted

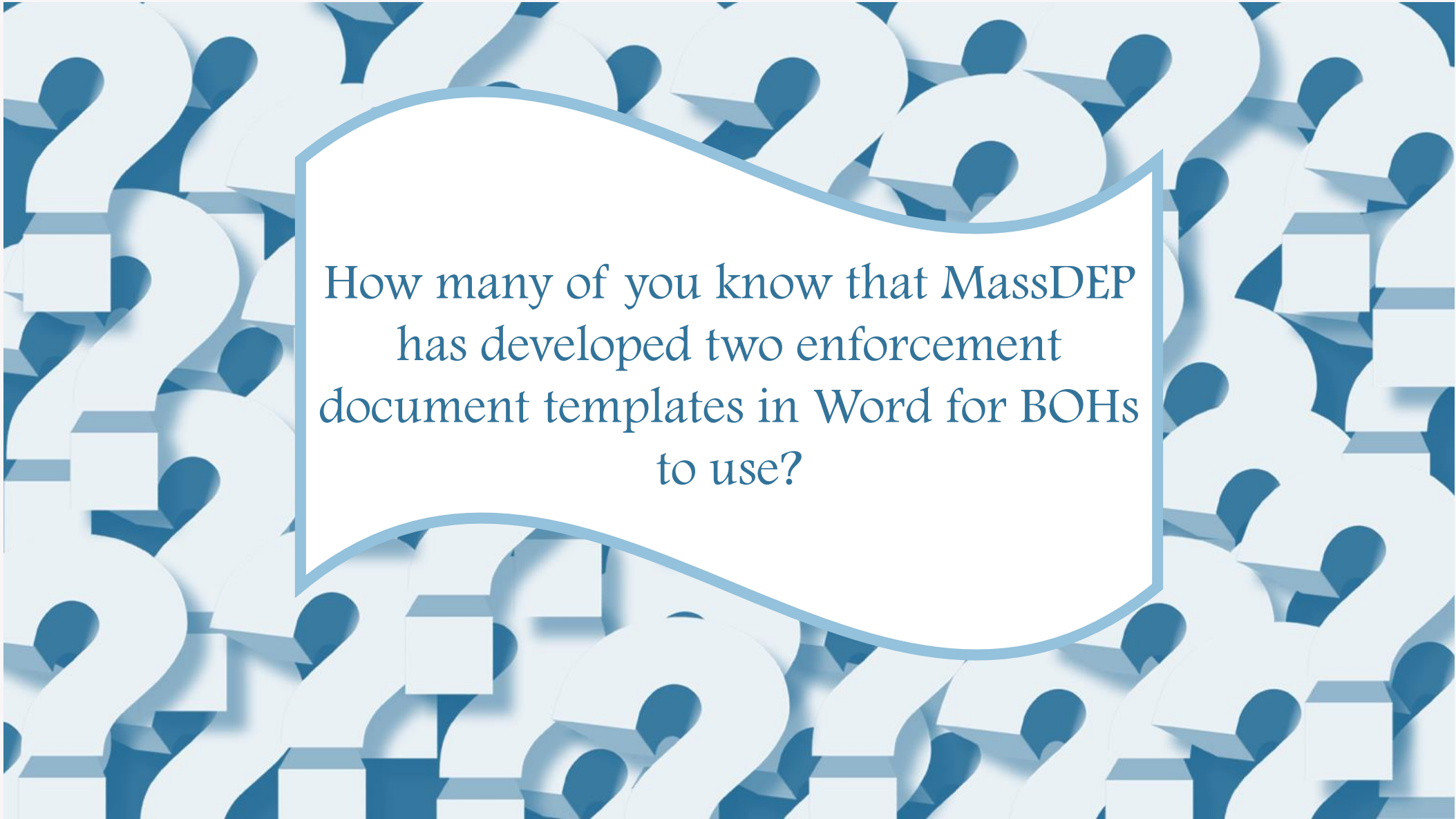
## *Immediate formal enforcement*

- Installation/repair without a permit
- Continued use of a failed septic system > 2 years after failure determination
- Use of a septic system above the approved capacity or for industrial wastewater

*\* These are some ways a BOH may elect to triage non-compliance to not overwhelm their department. These are not formal suggestions by MassDEP.*

But what if there is  
continued noncompliance or  
major noncompliance?



The background of the slide features a repeating pattern of three-dimensional, light blue question marks. These question marks are rendered with soft shadows, giving them a sense of depth and volume. They are arranged in a dense, overlapping manner across the entire slide area.

How many of you know that MassDEP  
has developed two enforcement  
document templates in Word for BOHs  
to use?

# And where will you find them?

<https://www.mass.gov/lists/title-5-septic-system-forms#title-5-enforcement-forms->

Please remember:

- Optional.
- Suggested format and language.
- BOHs may adopt their own format.



Commonwealth of Massachusetts  
City/Town of \_\_\_\_\_  
**Title 5 Letter of Non-Compliance**  
Form 7

DEP has provided this form for use by local Boards of Health if they choose to do so.

**CERTIFIED MAIL**

Dear \_\_\_\_\_

Name

It has come to the attention of \_\_\_\_\_

Approving Authority

That the on-site sewage disposal system owned/operated by you and located at \_\_\_\_\_

Address \_\_\_\_\_

City/Town \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Is not being properly maintained in accordance with 310 CMR 15.300 (and/or any Local Inspection and Maintenance Plan or Local Requirements):

Specify Local Requirements \_\_\_\_\_

The following items have been found to be in non-compliance with Title 5 - the State Environmental Code.

I hereby certify that the following action(s) be taken within \_\_\_\_\_

number of days

And that you inform this office when those actions have been completed.

Please be advised that failure to perform the specified actions may result in further enforcement actions.

Approving Authority Signature \_\_\_\_\_

Approving Authority Name \_\_\_\_\_

Date \_\_\_\_\_

## Title 5 Letter of Noncompliance Template

- Name [property owner, licensed/unlicensed installer, licensed/unlicensed hauler, tenant, T5 System Inspector, T5 Soil Evaluator]
- Town/City BOH/Health Dept/etc.
- Address where violation occurred
- Violations of T5 or local maintenance requirements (including conditions of a DSCP or CoC)
- T5 regulatory violations (310 CMR 15.024 is a good starting point) and add local violations too
- Deadline to come into compliance
- Actions to achieve compliance and notification to BOH
- Signature/date



Commonwealth of Massachusetts  
City/Town of [REDACTED]  
**Title 5 Enforcement Order**

**Form 8**

DEP has provided this form for use by local Boards of Health if they choose to do so.

**A. Enforcement Information**

FROM Name  
TO Name  
Date of Issuance  
On-Site System Location (Street Address)  
City/Town  
Address of Owner (if different)  
Street Address  
City/Town  
Telephone Number  
Extent and Type of Activity in Violation

**B. Determination**

Approving Authority  
Has determined that the activity described above is in violation of the State Enforcement Order, CMR 15.000, because:  
☐ The system is failing to protect public health and the environment.  
☐ The system has not been maintained in accordance with the Certificate of Compliance issued on:  
☐ The system is being installed or was installed in noncompliance with the Disposal System Construction Permit issued on:  
☐ Other (specify):



Commonwealth of Massachusetts  
City/Town of [REDACTED]  
**Title 5 Enforcement Order**

**Form 8**

DEP has provided this form for use by local Boards of Health if they choose to do so.

**C. Enforcement Order**

G.L. c. 111, sec. 124, the following action:

Title 5 or local regulation to be complied with:

for legal action. M.G.L. c. 21A, sec. 13  
[Environmental] Code in the same manner in

himself or by his servant or agent, or as the servant or  
agent, violates any reasonable health regulation, made  
penalty by way of fine or imprisonment or both, is  
fine of not more than two hundred dollars."

continues shall be considered a separate offense.

**D. Determinations by Local Approving Authority (310 CMR 15.421)**

Any person aggrieved by any order, variance, issuance or denial of a Disposal System Construction Permit, Local Upgrade Approval or Certificate of Compliance issued by a local approving authority may appeal to any court of competent jurisdiction as provided for by the laws of the Commonwealth of Massachusetts."

Issued By:

For:

Signature



Commonwealth of Massachusetts  
City/Town of [redacted]  
**Title 5 Enforcement Order**

**Form 8**

DEP has provided this form for use by local Boards of Health if they choose to do so.

**A. Enforcement Information**

FROM Name

TO Name

Date of Issuance

On-Site System Location (Street Address)

City/Town

State

Zip Code

Address of Owner (if different from location):

Street Address

City/Town

State

Zip Code

Telephone Number

Extent and Type of Activity in Violation of the State Environmental Code, 310 CMR 15.000 (Title 5):

**B. Determination**

Approving Authority

Has determined that the activity described above is in violation of the State Environmental Code, 310 CMR 15.000, because:

☐ The system is failing to protect public health and the environment.

☐ The system has not been maintained in accordance with the Certificate of Compliance issued on:

☐ The system is being installed or was installed in noncompliance with the Disposal System Construction Permit issued on:

☐ Other (specify):

# Title 5 Enforcement Order (EO) Template (1/2)

If used, here is what is included:

- Name of person issuing EO
- Name of property owner
- Date of Issuance
- Address of septic system
- Address of owner (if different)
- Explanation of Title 5 violations
- Town/City BOH/Health Dept/etc.
- Address where violation occurred
- Determination checklist with dates:
  - Failing to protect public health/environment
  - Not maintained in accordance with CoC
  - Installed in noncompliance with DSCP
  - Other





Commonwealth of Massachusetts  
City/Town of [redacted]  
**Title 5 Enforcement Order**

**Form 8**

DEP has provided this form for use by local Boards of Health if they choose to do so.

**C. Enforcement Order**

Approving Authority

Hereby Orders pursuant to M.G.L. c. 111, sec. 124, the following action:

Describe required compliance and specify provision of Title 5 or local regulation to be complied with:

Failure to comply with this Order may constitute grounds for legal action. M.G.L. c. 21A, sec. 13 provides: "Local Boards of Health shall enforce [the Environmental] Code in the same manner in which local health rules and regulations are enforced."

M. G. L. c. 111, sec. 31 provides: "Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any reasonable health regulation, made under authority of this section, for which no penalty by way of fine or imprisonment or both, is provided by law, shall be punished by a fine of not more than two hundred dollars."

Every day in which said violation continues shall be considered a separate offense.

**Appeals from Determinations by Local Approving Authority (310 CMR 15.421)**

"Any person aggrieved by any order, variance, issuance or denial of a Disposal System Construction Permit, Local Upgrade Approval or Certificate of Compliance issued by a local approving authority may appeal to any court of competent jurisdiction as provided for by the laws of the Commonwealth of Massachusetts."

Issued By:

For:

Signature

## Title 5 Enforcement Order (EO) Template (2/2)

- Name of person issuing EO
- Actual order – steps to be undertaken to achieve compliance
- Description of required compliance and appropriate T5 and/or local regulations
- Legal references and language  
Note: this may need to be expanded if there is a local regulation with violations
- Appeal language
- Signature of Issuing Authority

# A Few Parting Thoughts...

- Not every BOH is going to undertake enforcement the same way.
- Factors affecting enforcement capacity of a BOH include:
  - staffing;
  - involvement of BOH itself, not just staff;
  - computer/database capabilities;
  - whether the BOH reviews the system inspection reports; and
  - local regulations/bylaws.
- BOHs need to figure out what approach to enforcement works for them.
- It's advisable to use any and all tools available to be consistent.
- MassDEP Regional Staff are available for technical assistance and advice.



# MassDEP Regional Contacts

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