

## TITLE 5 FAILURE DEFINED

The Board of Health defines two types of failed on-site wastewater disposal systems:

- Hydraulic Failure
- Technical Failure

### Hydraulic Failure Explained

- Ponding of surface water
- Back-up of sewage into the dwelling
- Evidence of flooding within the wastewater systems's distribution box, septic tank, cesspool or metal tank

### Repair Allowed for Hydraulic Failure Under ACO

- Temporary repair to meet minimum Title 5 Regulation
- Will NOT require nitrogen-reducing system
- "Band-Aid" repair to keep system functioning until municipal sewer is operational

### Repair Required for Hydraulic-Failure Under Title 5

**Immediate repair to remove public health threat**

### Technical Failure Explained

- Diminished distance to groundwater
  - Less than 6' in watershed protection zones
  - Less than 5' in non-watershed protection Zones, within 100' to private well
- Missing or undersized components
- Leach field within 100' of private well

### Repair Allowed for Technical Failure Under ACO

- A minimum 2' separation from groundwater
- No repair mandated as long as system is functioning

### Repair Required for Technical Failure Under Title 5

Full repair within two years



**Public Health**  
Prevent. Promote. Protect.

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## Administrative Consent Order Tool



**NOTE:** The above are "general" definitions. Each property will be evaluated, site specific, with absolute minimum repairs required at the direction of the Health Director under the ACO process

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## Administrative Consent Order

The Nantucket Board of Health, in conjunction with the Town Administration, and the Department of Public Works, is working towards developing a legal procedure to defer, defray or eliminate altogether mandatory on-site wastewater disposal system repair in areas where a municipal sewer system may be constructed in the near future. The example utilized here is Madaket.

Currently under 310 CMR 15.00, if you have an on-site wastewater disposal system that has failed inspection, you must upgrade, repair or replace the system at your cost—within a time frame based on the Commonwealth’s Title 5 Regulations. In addition, Nantucket local code has stricter parameters to meet, which can cause a system to fail an inspection, for example based on depth to groundwater that is greater than the Massachusetts Title 5 Regulations.

The Town is developing a TOOL (Administrative Consent Order-ACO) to help a property owner from having to pay for a costly Title 5 upgrade, as well as in the near future having to pay for municipal sewer—in essence paying twice within a short period of time for a wastewater solution. Without this ACO TOOL, Title 5 Regulations will mandate the repair, upgrade or replacement and time frame.

### YOU NOW HAVE A CHOICE

The Town is looking forward to helping property owners with failed Title 5 systems with a temporary solution until sewers become available. The Massachusetts Department of Environmental Protection (MassDEP) has approved the use of the ACO tool in Massachusetts communities, as described herein

### ACO PROVISIONS

Once a property owner’s on-site system fails a Title 5 inspection, and as long as the property is located within an identified Needs Area per the Town’s Comprehensive Management Plan (CWMP), and which is stated to move forward with sewer, as in the Madaket example, they are eligible to enter into an ACO with the Board of Health. The ACO allows the property owner:

- To defer a repair or upgrade to an on-site system
- To set-up an escrow account (installment payments over 20 years) with the Town that will either be credited towards the municipal sewer OR be returned at any time to repair, upgrade or replace the on-site system
- Upon sewer construction, all escrow monies are credited towards the property’s sewer capital costs
- In the case of a hydraulic failure with the ACO, a property owner may make a “Band-Aid” repair until municipal sewer is operational. Otherwise, Title 5 would mandate a major repair, upgrade or replacement.

### HOW DOES THE ACO TOOL WORK

Once it is determined that a property has failed Title 5 AND it is determined that the property is approved to be connected to municipal sewer within a CWMP Needs Area, the property owner can work with the Board of Health to enter into an ACO.

The property owner solicits an estimate to repair, upgrade or replace the on-site wastewater disposal system to meet Title 5. This estimate is then used as the escrow amount for the ACO. The escrow is set up as a 20-year installment account with the Town.

The ACO is duly executed by both the property owner and the Board of Health. Within five days of the execution, the ACO must be recorded with the property’s title at the Registry of Deeds.

Installment payments are made monthly until one of the following occurs:

1. Municipal sewer is operational; OR
2. Municipal sewer is ultimately NOT constructed in area ; OR
3. Property owner decides to repair, upgrade or replace their on-site wastewater system.

NOTE: If the property is sold within the time limits established in the ACO, the ACO stays with the property title.

***The ACO Respondent has the option, AT ANY TIME, to have escrowed funds refunded, but must meet one of the three criteria above.***