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CAPE COD COMMISSION

Minutes
Lower Cape
208 Workshop- Waste Management Agencies
Wednesday, April 8, 2015 8:30 a.m.
Chatham Community Center
Chatham, MA

Paul Niedzwiecki, Executive Director of the Cape Cod Commission, welcomed everyone to the meeting. He said the purpose of the meeting was to discuss Waste Treatment Management Agency designations as prescribed by Section 208 of the Clean Water Act. He explained that the Commission is required to designate WMAs in the plan. A WMA refers to the entities, body or bodies that have been designated to be responsible for the implementation of the Clean Water Act Section 208 Plan Update. The Commission listed all of the existing eligible entities in the 208 Update. These entities include the 15 towns and around 20 other independent agencies, which are capable of meeting WMA federal requirements. It has always been the Commission's intent to nominate the 15 towns as WMAs. Mr. Niedzwiecki said that if a town has a Comprehensive Wastewater Management Plan, facilities plan or a facility then it is already the responsible party.

Mr. Niedzwiecki reviewed the responsibilities of a WMA:

- Carry out the areawide waste treatment management plan;
- Manage waste treatment works and related facilities;
- Directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;
- Accept and utilize grants, or other funds from any source, for waste treatment management purposes;
- Raise revenues, including the assessment of waste treatment charges;
- Incur short- and long- term indebtedness;
- Assure in implementation of an areawide waste management plan that each participating community pays its proportionate share of treatment costs;
- Refuse to receive any wastes from any municipality or subdivision therof, which does not comply with any provisions of an approved plan under this section applicable to such area; and
- Accept for treatment industrial wastes.

COUNTY OF BARNSTABLE MASSACHUSETTS

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Mr. Niedzwiecki said that all 15 towns meet the requirements.

Mr. Niedzwiecki said that the Commission would like town feedback on the designation of WMAs from towns. He explained that there would be a series of three Mid Cape meetings that would focus on two watersheds for discussion purposes.

Mr. Niedzwiecki said the timeline for WMA designations will begin in April with a meeting to discuss the principles for establishing allocation of nitrogen responsibility. There will be two meetings in May. The first meeting will cover the development of watershed scenarios, none of which are intended to be adopted as an actual plan. The scenarios are intended to show possibilities and address any political issues. The second meeting in May is to discuss organization and institutional structures. The Commission will bring in outside counsel and provide an opportunity for towns to ask questions of outside counsel and each other. The timeline ends with the June 1st designation.

Mr. Niedzwiecki said the first step in allocating nitrogen responsibility is to come to an agreement on terms. He introduced Erin Perry, Special Projects Coordinator who reviewed terms, all of which are included in the 208 Plan Update. The terms include:

- Natural attenuation of nitrogen: the naturally occurring retention or reduction of nitrogen in wetlands or ponds.
- Unattenuated load: the nitrogen load deposited within the watershed.
- Attenuated load: the nitrogen load from the watershed that reaches the embayment after the effect of natural attenuation in wetlands or ponds.
- Controllable load: wastewater, fertilizer and stormwater. The Commission calculates controllable load the same as Massachusetts Estuaries Project calculates it, but the Commission uses updated land use and water use information.
- Buildout: the total of new development and redevelopment that is projected to occur over a planning horizon, typically 20 years.
- Watershed: an area of land that drains to a common receiving body of water.
- Embayment: a bay or physical conformation resembling a bay.
- Sub-embayment: a cove within an embayment.

Mr. Niedzwiecki used the Commission's watershed viewer to show a map with the Cape's 101 watersheds, a map of the 53 shared watersheds and highlighted the shared subembayments. He said the shared subembayments are areas with municipal overlap. This overlap is the reason why there needs to be an agreement on terms and a discussion on nitrogen responsibility.

Mr. Niedzwiecki said for discussion purposes Namequoit River would be the example subembayment to be discussed at the meeting. He explained that existing nitrogen responsibility within the subembayment is calculated using existing attenuated controllable load, future responsibility will be calculated using buildout unattenuated controllable load.

He said the TMDL target for Namequoit River is 632 kg. This number represents how much nitrogen the subembayment can handle without becoming eutrophic. He said the existing nitrogen load (in kilograms) is shared by the towns of Brewster (29), Chatham (0), Harwich (0) and Orleans (866 ). The percentage responsibility for attenuated existing load is 3% Brewster, 0% Chatham, 0% Harwich, and 97% Orleans. Existing nitrogen responsibility in kilograms, or how much nitrogen each town needs to remove is 9 kg for Brewster, 0 kg. for both Chatham and Harwich and 254 kg. for Orleans. The total nitrogen that needs to be removed to meet water quality standards is 236 kg.

The buildout unattenuated controllable load in kilograms is 97 for Brewster, 0 for Chatham and Harwich and 1,1184 for Orleans. The unattenuated buildout responsibility is 16 kg. for Brewster, 0 kg for Chatham and Harwich and 472 kg. for Orleans. The percentage responsibility from unattenuated buildout: 8% Brewster, 0% Chatham, 0% Harwich and 92% Orleans. The nitrogen to be removed from buildout unattenuated load is 649 kg.

Mr. Niedzwiecki said the Commission has come up with five principles for allocating nitrogen responsibility:

1. Assign responsibility at the subembayment level
2. Start with unattenuated load and apply attenuation where available
3. Calculate existing responsibility from existing attenuated nitrogen load
4. Calculate future responsibility from unattenuated potential nitrogen load
5. Data updates every five years with option and process for local modifications

Mr. Niedzwiecki said the principles will be applied in the subembayments at the next meeting. The third meeting will be a discussion on legal issues. The Commission would like to meet with the 15 towns, share the watershed reports that have been prepared for the 53 shared watersheds and gather feedback. The designation will be submitted to MassDEP on June 1, 2015. The Commission does not have the authority to force a town to act. The 208 process is to help towns address the problem and make it an easier process with the tools and assistance from Commission staff.

Sandy Bayne, Eastham resident, asked if reducing the nitrogen in a subembayment has an effect on the entire watershed and how that would be calculated. Mr. Niedzwiecki said that when a subembayment's nitrogen load is reduced, there is a positive effect on the watershed in general. He said that addressing nitrogen removal at the subembayment level addresses the problem with more accuracy than looking at the watershed as a whole and that is why the subembayment is the appropriate and efficient planning level. He said the advantage of the 208 process in a streamlined regulatory system, watershed permits, and that communities can plan beyond sewers.

Carole Ridley, Pleasant Bay Alliance, said she understood the logic of planning based on existing attenuated load but asked what the reasoning was for not planning based on buildout unattenuated load. She also asked what the process would be moving from Principle 3 (calculate existing responsibility from existing attenuated nitrogen load) to Principle 4 (calculate future responsibility from unattenuated potential nitrogen load), and how future

load would factor into planning and decision making. Mr. Niedzwiecki said existing attenuated load is included in technical reports as is the total maximum daily load (TMDL).

Ms. Bayne asked how communities should plan for increases in year-round residents. Jay Detjens, Geospatial Architect, explained that the Commission will receive updated water use data that will show increases and decreases allowing for towns to plan accordingly. Mr. Niedzwiecki said that for communities without water use data, there are enough other data sets to determine changes. The data sets will be updated every five years.

Martin McDonald, Eastham Selectman, asked for a definition of a watershed permit. Mr. Niedzwiecki said that the Commonwealth of Massachusetts now has the ability to issue a permit. Prior to watershed permits communities would have to develop a Comprehensive Wastewater Management Plan to obtain permits. Communities using alternative technologies would have to obtain separate permits. With the calculation around the CWMP permits, you could not take credits for nitrogen load for strategies such as fertilizer or stormwater management plans. There was no easy way to account for those credits. The watershed permit is a single permit for the watershed for reaching nitrogen goals, and it will allow alternatives and conventional systems and take credits for things such as dredging, fertilizer management plans and stormwater projects. Mr. McDonald asked if there are criteria in the watershed permits. Mr. Niedzwiecki said MassDEP was tasked with developing guidelines on March 15, 2015 and will be developing the watershed permit over the next year. He said that any town can seek a watershed permit now. He said the permit is a huge advantage, it has the possibility of becoming a comprehensive permit. It was created to make it easier to plan for water quality at a watershed basis.

An attendee asked what stage the permit would be needed. Mr. Niedzwiecki said a permit would be needed before construction. He said that the goal is to have hybrid approaches for the 53 shared watersheds by next spring so that communities can show the state and federal governments the boundaries of the discussion. He said there are limited resources and cost and revenue need to be looked at and a prioritized schedule based on level of degradation, community readiness and suitability of pilot projects should be developed. He said some communities with watersheds that are degraded but not identified as critical may not begin implementation of plans for a few years.

An attendee asked how SRF funding relates to watershed permitting. Mr. Niedzwiecki said that communities that have a 208 consistent plan would qualify for SRF funding.

Mr. Niedzwiecki said that next session will include a discussion on possible scenarios and these scenarios will include planning that communities have already done.

Ms. Bayne asked how towns could work with the Cape Cod National Seashore. Mr. Niedzwiecki said that the Commission is discussing the best way towns can begin discussions with the Cape Cod National Seashore and Joint Base Cape Cod.

Bod Duncanson, Director of Chatham's Department of Natural Resources, asked how watersheds that are solely in one town are prioritized. He said, for example, Pleasant Bay is a highly degraded water body but it's addressed further out in Chatham's plan because the town

has watersheds that need 100% nitrogen removal and are a higher priority for the town. Mr. Niedzwiecki said that Chatham's plan is set and that while this will not change the phased plan, the town might want to move phases up if their were a financial incentive to do that.

Dave Dunford, Orleans Selectman, asked if the Cape Cod Commission would have a regulatory roll or a more of a supportive roll. Mr. Niedzwiecki said the Regional Policy Plan Update would include a new process to review large capital projects. This review will be a better process than what is currently required and will support towns with watershed teams. He said the Commission will review plans to nitrogen removal to determine if they are consistent with the 208 Plan. The Commission can deny a plan, but it cannot force towns to take any sort of action.

An attendee asked if the Commission would assist towns with Principle 5 (calculate future responsibility from unattenuated potential nitrogen load). Mr. Niedzwiecki said yes, the Commission would work with towns.

Ms. Ridley asked if the watershed team concept could be explained. Mr. Niedzwiecki said watershed teams already have an appropriate regional level plan and will help communities get to a starting point quickly to begin discussions. The teams will be a cafeteria plan, offer a variety of services- facilitation, hydrology, data, communications. These services will be matched with the needs of towns.

Mr. Duncanson asked if in shared watersheds the Commission would assign a watershed team to each town. Mr. Niedzwiecki said one watershed team would be assigned to the watershed. He said the team would support towns in developing a single plan or four separate plans that removed the required nitrogen.

An attendee asked when the capital review process would be used. Mr. Niedzwiecki said that in the past nitrogen removal plans which trip a MEPA threshold would have to be reviewed by the Cape Cod Commission. He said that now any nitrogen removal plan needs to be reviewed for consistency with the 208 Plan, even if a MEPA threshold is not tripped. Andrew Gottlieb, Executive Director of the Cape Cod Water Protection Collaborative, said that plans need to be reviewed for compliance and consistency in order to have access to financial resources.

An attendee asked for more information about WMAs. Mr. Niedzwiecki said towns have the capacity to meet the federal requirements of a WMA. He said the designation of the WMA recognizes the existing structure and that what is currently in place is sufficient.

Mr. Niedzwiecki thanked everyone for coming and to contact him or Commission staff with any questions.

The meeting ended at 9:30.