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CAPE COD  
COMMISSION

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Minutes  
Upper Cape  
208 Workshop- Waste Management Agencies  
Thursday, April 16, 2015 8:30 a.m.  
Falmouth Public Library  
Falmouth, 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.

The Commission needs to submit WMA designations to MassDEP by June 1, 2015. MassDEP will submit the plan and designations to U.S. EPA on June 15, 2015. EPA has until September 15, 2015 to approve the plan.

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 thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and
- Accept for treatment industrial wastes.

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

Mr. Niedzwiecki said that the Commission is looking to receive feedback on the designation of WMAs from towns. He explained that there would be a series of three meetings that would focus on specific 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 likely 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 or jurisdictional issues. The second meeting in May or possibly June 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 1<sup>st</sup> designation and submission to MassDEP.

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 Childs River would be the example subembayment that would be discussed at the meeting. He explained that while 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 Childs River is 2,990 kg. This number represents how much nitrogen the subembayment can handle without becoming eutrophic. He said the existing load is shared by the towns of Falmouth (7,480 kg), Mashpee (2,548 kg) and Sandwich (574 kg). The percentage responsibility for attenuated existing load is 71% Falmouth, 24% Mashpee and 5% Sandwich. The total nitrogen that needs to be removed to meet water quality standards is 8,258 kg. Existing nitrogen responsibility in kilograms, or how much nitrogen each town needs to remove is 5,370 kg for Falmouth, 1,829 kg for Mashpee and 412 kg for Sandwich. The buildout unattenuated load increases to 9,333 kg for Falmouth, 2,965 kg for Mashpee and 1,128 kg for Sandwich. The percentage responsibility from unattenuated buildout is 70% Falmouth, 22% Mashpee and 8% Sandwich. The total nitrogen to be removed from buildout unattenuated load is 22,383 kg. The future nitrogen that needs to be removed is 7,255 kg for Falmouth, 2,305 kg for Mashpee and 877 kg for Sandwich.

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. Over the course of the next 12 months, 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.

Jerry Potamis, Falmouth Wastewater Superintendent, mentioned that the load presented was different than the TMDL load in the MEP report. Mr. Niedzwiecki said that the numbers in the presentation are from WatershedMVP, which uses the most current data available. The MEP report was based on data ten years old. The Commission would like MassDEP and US EPA to agree to use dynamic datasets so communities will not rely on old data and build capital facilities that do not meet current or future needs.

Mr. Potamis asked how Joint Base Cape Cod's nitrogen responsibility would be determined. Mr. Niedzwiecki said that if Joint Base Cape Cod has jurisdiction in a town, the town will not be responsible for any load coming from the base.

Tom Guerino, Bourne Town Manager, asked for clarification on what shared watersheds and embayments the town would be responsible for since a large percent Bourne is under JBCC jurisdiction. Mr. Niedzwiecki said that a posterized graphic showing shared watersheds and shared subembayments would be made available.

Linda Zuern, Bourne Selectman, asked for confirmation that total nitrogen load numbers in the MEP report contain nitrogen from the air. Mr. Niedzwiecki said that the total nitrogen load in MEP reports do include many sources of nitrogen, including atmospheric deposition. He said the number that is important for water quality planning is the controllable load, which only includes nitrogen from sources that can be addressed. He said that the Commission is aware that atmospheric deposition is declining and that this decline will be monitored to determine the effect it has on water quality.

Mr. Potamis asked if the WMA designation makes the town accountable, under federal law, to update the 208 plan and if the designation holds towns accountable if they do not comply with 208. Mr. Niedzwiecki said that the WMA designation does not add any liability to the towns that they don't already have. He said that the 208 Plan only has to be updated if there is a designation to update by the US EPA or the governor of Massachusetts. The Commission is required to check consistency of water quality plans with the 208 Plan as part of a technical review.

Frank Pannorfi, Sandwich Selectman, asked who is the responsible party for updating the 208 Plan. Mr. Niedzwiecki said that the Cape Cod Commission is the entity responsible for any updates to the plan. The towns are responsible for developing plans, implementing plans and day-to-day operations.

Ms. Zuern asked if towns could establish stricter requirements for new development, such as requiring that new developments not add to the existing

nitrogen load. Mr. Niedzwiecki said that in watersheds where 100% of the nitrogen needs to be removed this strategy would be appropriate. He said there are examples around Cape Cod where developments have been required to build treatment facilities and surrounding single-family homes have been hooked into these systems.

Stephen Mealy, Bourne Selectmen, asked if the towns have to agree with the percentage of responsibility in order for a WMA designation. Mr. Niedzwiecki said the towns do not have to agree to the percent responsibility to receive the WMA designation.

Mr. Guerino asked if the Cape Cod Commission would be willing to work with Bourne and their off Cape neighbors. Mr. Niedzwiecki said that the Commission would assist Bourne work towards water quality with their off Cape neighbors. He said Bourne would not be held responsible for the percentage load out of Bourne's jurisdiction.

Mr. Potamis asked how the towns could submit different percentage responsibility numbers. Mr. Niedzwiecki said that when a town goes through the 208 consistency review, a revised review that will be more supportive and less cumbersome, there will be an opportunity to review numbers. He said the Commission is working with a dynamic data set and this allows for changes to be made, which will lead to better water quality plans and greater flexibility.

Mr. Niedzwiecki thanked everyone for coming.

The meeting ended at 2:10.