

3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Minutes
Mid Cape
208 Workshop- Waste Management Agencies
Thursday, April 9, 2014 1:00 p.m.
Innovation Room, OpenCape Building
Barnstable County Campus, Barnstable, 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 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 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 Kelleys Bay would be one of two example subembayments that would 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 Kelleys Bay is 1,409 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 Brewster (60 kg), Dennis (5,482 kg) and Yarmouth (1,129 kg). The percentage responsibility for attenuated existing load is 1% Brewster, 82% Dennis and 17% Yarmouth. Existing nitrogen responsibility in kilograms, or how much nitrogen each town needs to remove is 47 kg for Brewster, 4,324 for Dennis and 891 for Yarmouth. The total nitrogen that needs to be removed to meet water quality standards is 5,262 kg. The buildout unattenuated load increases to 66 kg for Brewster, 6,172 kg for Dennis and 1,192 kg for Yarmouth. The percentage responsibility from unattenuated buildout: 1% Brewster, 83% Dennis and 16% Yarmouth. The total nitrogen to be removed from buildout unattenuated load is 6,021 kg. The future nitrogen to be removed changes to 53 kg for Brewster, 5,002 kg for Dennis and 966 kg for Yarmouth.

Mr. Niedzwiecki reviewed information for the Mill Creek subembayment which is located in Lewis Bay. The TMDL target for Mill Creek is 8,154 kg. The existing attenuated controllable load for Barnstable is 2,085 kg and 9,843 for Yarmouth. The nitrogen that needs to be removed from the existing attenuated load is 3,774 kg. The potential growth for this area is much higher than the previous example. Barnstable needs to remove 17% (660 kg) and Yarmouth 83% (3,114 kg) of their existing attenuated loads.

Mr. Niedzwiecki said the Commission has come up with five principles that characterize the WMA designation:

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.

A meeting attendee said that the WMA process seems to limit economies of scale. Mr. Niedzwiecki said there are economies of scale, but the decision of two communities working together is a local decision. As long as responsibility can be allocated, water quality standards can be met without forcing political structures or even conversations that may not be productive. The goal is to not drive or devise optimal solutions but to frame the issues to make the conversations easier. Conversations are already taking place between communities across the Cape. The Commission will support economies of scale with watershed teams, tools, and information.

An attendee asked why a watershed shared between Mashpee and Barnstable was not included in the watersheds that would be looked at during the meetings. Mr. Niedzwiecki explained that the watersheds were chosen for practical reasons: they involved the most number of participants and least number of meetings. There are shared watersheds that will not be discussed at the meetings, but the issues represented in the chosen watersheds will be issues that will come up in other shared watersheds.

Peter Johnson-Staub, Assistant Town Administrator for Yarmouth, asked if the designation on WMAs change legal liability for enforcement. Mr. Niedzwiecki said a WMA designation does not create legal liability that the town doesn't already have. He said that lack of compliance or consistency with the 208 Plan might preclude a town from qualifying for certain funding streams.

An attendee asked if the 208 Plan discloses how the modeling was developed. Mr. Niedzwiecki said that the methodology is included in the plan and the Commission is willing to have conversations about methodology. He said that the Commission is also open to discussing that data that is being used and is willing to include new data as it becomes available.

Sue Leven, Brewster Town Planner, asked how a town would introduce new data such as actuals worked into the calculations where there are hypotheticals. Mr. Niedzwiecki said new data can be introduced during a 208 consistency review. He said that the Commission is willing to look at new data to ensure that the most accurate and current data is being used, as this will lead to more effective and efficient planning.

An attendee asked if EPA accepts the methodology of the 208 Plan and the process for nominating the 15 towns as WMA agencies. Mr. Niedzwiecki said that MassDEP and US EPA both affirm the methodology used in MEP reports. He said US EPA was initially skeptical of designating the 15 towns, but has been impressed with the collaboration and work done to date by towns across the region.

An attendee asked what will happen if there is no progress made by towns over the next few years. Mr. Niedzwiecki said the 208 Plan has already made it easier for towns to work together. He said towns are already collaborating across the Cape and working to solve water quality issues and it is likely that in a year or two many water quality projects will be implemented.

An attendee asked if there would be enforcement if projects were not implemented. Mr. Niedzwiecki said if a community with a nitrogen problem or one that is contributing significantly to a nitrogen problem, does not act there will most likely be enforcement from the state in the form of a water pollution abatement district. If a federal judge sees that there is no action being taken, federal funding to the state's SRF fund could be stopped. Enforcement could come at the state or federal level if the problem continues to get worse and there isn't any action.

Ann Canedy asked if alternatives could be used to reduce nitrogen while towns are looking at the more expensive and politically difficult options. Mr. Niedzwiecki explained that the Commission developed its hybrid process to look at both traditional and non-traditional

technologies to address water quality. Ms. Canedy asked if communities received credit for fertilizer ordinances and required three year septic inspections. Mr. Niedzwiecki said yes, watershed permits will allow for credits for efforts such as stormwater initiatives, dredging and culvert widening.

Mr. Johnson-Staub asked if the 25% principle relief on SRF funds was codified into law. Mr. Niedzwiecki said that as of June 2014 MassDEP has the ability to apply 25% principle forgiveness for communities under a 208 plan.

An attendee asked if MassDOT would revise their reviews based on stormwater needs. Mr. Niedzwiecki said the Commission is having discussions with MassDOT. He said the MS4 permits will have a nitrogen component. Patty Daley, Cape Cod Commission Deputy Director, said there was a discussion at the last MPO meeting on including a stormwater management component in all TIP projects.

Mr. Niedzwiecki thanked everyone for coming.

The meeting ended at 2:10.