

CCSCA Minutes
Wednesday, February 25, 2015, 6:00pm

One Cape: Designing Solutions for Clean Water
All Cape Selectmen and Councilors Session
Cape Cod Resort and Conference Center at Hyannis
35 Scudder Avenue, Hyannis, MA

Barnstable Town Council Members Present: Ann Canedy, Fred Chirigotis, James Crocker, William Crocker, Sara Cushing, Debra Dagwan, Paul Hebert, John Norman, Jessica Rapp Grassetti, Phillip Wallace

Bourne Board of Selectmen Present: Stephen Mealy, Donald Pickard, Linda Zuern

Chatham Board of Selectmen Present: Seth Taylor

Dennis Board of Selectmen Present: Wayne Bergeron, Paul McCormick, Sheryl McMahon, John Terrio

Eastham Board of Selectmen Present: Elizabeth Gawron, John Knight, Martin McDonald

Falmouth Board of Selectmen Present: Mary Pat Flynn, Rebecca Moffitt, Susan Moran, Samuel Patterson

Harwich Board of Selectmen Present: Larry Ballantine, Peter Hughes, Angelo LaMantia

Mashpee Board of Selectmen Present: Andrew Gottlieb, Michael Richardson, Carol Sherman, Wayne Taylor

Orleans Board of Selectmen Present: David Dunford, Alan McClennon, Sims McGrath

Provincetown Board of Selectmen Present: Thomas Donegan

Sandwich Board of Selectmen Present: R. Patrick Ellis, Susan James, Frank Pannorfi, Jim Pierce

Truro Board of Selectmen Present: Jay Coburn, Robert Weinstein

Wellfleet Board of Selectmen Present: Paul Pilcher

Yarmouth Board of Selectmen Present: Tracy Post

Summary of Actions Taken

An overview of the Clean Water Act Section 208 update was given by Paul Niedzwiecki. There was a panel discussion of section 208 and waste management agency requirements of the Clean Water Act by Johanna Hunter, Acting Director of Surface Water Branch, US EPA, Martin

Suuberg, Commissioner of the Massachusetts Department of Environmental Protection, and Christopher Killian, Vice President and Director of the Clean Water and Healthy Forests Program, Conservation Law Foundation. The panel was expanded and there was a discussion about Section 208 and the process for identifying and convening Waste Management Agencies that took place among speakers, agencies' staff and Town Officials.

List of Documents Used/Received

Section 208 Plan Update PowerPoint Presentation: Paul Niedzwiecki

Meeting began

The Meeting began at 6:00pm with opening remarks by Larry Ballantine, Chair of the Cape Cod Water Protection Collaborative.

Larry Ballantine made opening remarks about the structure, funding, history and priorities of the Cape Cod Water Protection Collaborative. He summarized the Conservation Law Foundation lawsuit and recent settlement against the EPA regarding the 208 Plan. He said that tonight's discussion is intended as a forum for conversation and discussion for local officials regarding the region-wide water quality issues and solutions. He stated that the discussion tonight will be used to provide input for the 208 Plan for the EPA's review and approval. He noted that comments and questions would be limited to Selectmen and Councilors, but that the public would be allowed to participate in the all-day conference the following day that would cover the same topics/issues.

Speaker: Massachusetts State Senator, Dan Wolf

Senator Wolf was unable to attend and did not speak.

Overview of Section 208 Plan Update

Paul Niedzwiecki gave a presentation with the aid of a PowerPoint presentation. A copy of the PowerPoint is attached.

The presentation included the following background: In January 2013, the government instructed the Cape Cod Commission to update the 208 plan. Since 1951, the Cape has had unprecedented growth and has increased by 400% between 1950 and 1990. The biggest environmental problem on the Cape is nitrogen and the biggest source of that nitrogen is people. Cape Cod has less than 4% of the population in Massachusetts, but has 20% of the Title V systems. There are 53 embayment watersheds and 32 shared watersheds of concern in Barnstable County. The problem is predominantly in the Nantucket Sound area, so it is a regional problem.

Niedzwiecki presented a summary timeline for the updated 208 Plan, including the Draft Submission in June 2014, Public Draft Plan Release in August 2014, Final Plan Submission in March 2015 and Designation of WMAs in June 2015. He then went into a brief review of each of the eight chapters in the updated 208 Plan: (1) People, The Cape Cod Model, People and

Process; (2) The Problem, Cape Cod, Baseline, People and Place; (3) Policy and Regulations; (4) Solution, Nutrient Mitigation Technologies and Policies; (5) Evaluation, The Cape Cod Model, Technical Review; (6) Money, Cost and Financial Affordability; (7) Forecast, Planning and Growth Management; (7) Forecast, Planning and Growth Management; and (8) Strategy, Recommendations and Implementation.

Discussion of Clean Water Act/WMA/208 by Guest Speakers

Paul Niedzwiecki introduced **Martin Suuberg**, Commissioner of Mass DEP, **Johanna Hunter**, Acting Director of Surface Water Program, US EPA and **Christopher Kilian**, Vice President of the Conservation Law Foundation.

Martin Suuberg stated that he has read the draft of the 208 Plan and spoken to his staff about it. He complimented the work that has been done on the plan, in particular the tools that have been developed and used. He noted that when his predecessor, Ken Kimmell, wrote the letter that kicked off some of the funding for the 208 Plan, he focused on a few points in particular: 1) that the plan had to be a regional approach and collaborative effort; 2) recognition that one size doesn't fit all and that there should be tailored solutions for certain areas; and 3) it should deal with the local governments closest to the issues. He stated that the draft that he read, successfully met those expectations. He highlighted some of the legislative regulatory changes that Paul Niedzwiecki mentioned in his presentation, specifically regulatory permitting.

Suuberg stated that he recognized that the 208 Plan is in a new stage, where the plan has been developed and will be submitted for DEP review and then ultimately will be submitted to the EPA for adoption. He stated that the DEP will collaborate with stakeholders on management issues and other issues in terms of timing and implementation.

Johanna Hunter recognized the Cape Cod Commission, stakeholders and towns for the efforts in dealing with the issues of the 208 Plan. She noted that real threat to the Cape is nutrients and that these pollution issues are a problem that crosses boundaries and is not the type of thing that stops at town borders. She pressed that it is really important for all the stakeholders to act together, and that there is a history of local activism and involvement concerning environmental issues on the Cape, citing the adoption of the original 208 Plan on Cape Cod in 1978. She also noted that there is an urgency to act because the Cape is at a tipping point and updating the 208 Plan is an important step in addressing these problems. She briefly summarized the Conservation Law Foundation lawsuit and settlement, DEP and EPA's role in the future of the 208 Plan, and milestones and respective obligations with respect to the settlement and finalization of the plan, including designation of WMA's. She noted that the final 208 Plan update should use a combination of tested, traditional and pilot approaches. She noted that the settlement with CLF provides a good opportunity for Cape Cod, and that the Cape is one of the highlights of New England in terms of having an opportunity to make real change in these water issues. She cited EPA's involvement with addressing phosphorus issues in Lake Champlain as another example in New England of successes with water quality improvements.

Christopher Kilian noted that this is a very hopeful time for the pollution issues that people on the Cape are concerned about. He explained that the Conservation Law Foundation (CLF) is an environmental law advocacy organization based out of Boston, with offices throughout New England. He stated that CLF's members and supporters wanted to see action in terms of finding a framework in the Clean Water Act that could be brought forward that required action to clean up the bays. Kilian went into details about the Clean Water Act that is the subject of the lawsuit that CLF brought against the EPA and how it pertains to Cape Cod. He stated that CLF's core argument is that all sources of pollution on the Cape are subject to permitting jurisdiction of the federal Clean Water Act. He argued that the Section 208 planning process should to be used. He stated that CLF is happy that their argument about regulations and permitting could be put on hold while we give the 208 planning framework a chance to work. He stated that the settlement agreement is essentially creating a window of opportunity to give the 208 planning process a chance. He said that in the end they don't want a plan that collects dust on the shelf; he said that the worst outcome here on the Cape would be a failure to take advantage of this opportunity, go back to litigation on these issues and not take any action to move forward on these issues.

Discussion of Section 208 and the Process for Identifying and Convening Waste Management Agencies Among Speakers, Agencies' staff and Town Officials

Paul Niedzwiecki introduced the following speakers for the discussion panel: **Bethany Card** and Assistant Commissioner of MassDEP, **Gary Moran**, Deputy Director of MassDEP, **Kristy Senatori**, Deputy Director of the Cape Cod Commission and **Erin Perry**, Special Projects Coordinator at the Cape Cod Commission. **Johanna Hunter** of the US EPA and **Christopher Killian** of the Conservation Law Foundation were also part of the panel. Paul Niedzwiecki was the moderator.

For purposes of the discussion on implementing 208, Paul Niedzwiecki explained that the 15 towns and about 13 independent water and sewer districts are, by definition, what qualify as waste treatment management agencies. He noted that the Cape Cod Commission does not meet the qualifications to be a waste treatment management agency. Niedzwiecki explained that the Commission picked 5 particular shared watersheds (Waquoit Bay, Lewis Bay, Bass River, Pleasant Bay, Wellfleet Harbor) to discuss because it would give the best opportunity to get most of the towns in the same room and get the most out of the discussion. He noted that a key issue of discussion is how to determine nitrogen responsibility when there is more than one town contributing to the problem.

Ann Canedy of the Barnstable Town Council asked if release of the MEP report for Barnstable Harbor could be fast-tracked, and also when the report is released, would the 208 Plan be revised to include the MEP report.

Gary Moran of MA DEP responded that he was not sure of the status of the MEP report.

Paul Niedzwiecki stated that as far as the updating, there is annual updating required once the 208 Plan is approved so that would be the appropriate time to bring in any new information, such as newly released MEP reports.

Peter Hughes, Harwich Board of Selectmen, stated that Harwich has been working on a CWMP. He stated that what they care about at the local government level is cash flow and what they will tax the people and asked what will drive the pace as to when they will have to spend money. He also asked that as Harwich moved forward with their plan, which agency will be monitoring the progress of their plan as far as the pace of the project.

Kristy Senatori stated that the cost question is an important one. She also said that said that the Cape Cod Commission has no authority to fine at this point in time.

Paul Niedzwiecki explained that because enforcement could happen in so many different ways from different entities, it's difficult to say exactly which enforcement path that will be used at this time.

Seth Taylor, Chatham Board of Selectmen, directed his question to Christopher Killian of CLF, stating that the elephant in the room is the September 15th date. He asked if CLF would be responsive to and accepting of 15 different towns that have created CWMPs, if all 15 towns decide to take this on individually, is CLF going to be accepting of that or will CLF want to see plans that are regionalized and create an independent bureaucratic organization that is in addition to the current town governments.

Christopher Killian answered that it would be hard for him to imagine that the "15 town go-it-alone solution" would actually work given what he knows from several agencies analysis of the issues. If that were the case however, they would have to look at the details of those plans. But he reiterated that he thought 15 towns going it alone is unlikely to satisfy the requirements in the statute. He stated he didn't want to get in the way of any creative solutions, but that they were viewing the solutions on the Cape with some sort of regionalism.

Seth Taylor stated that the town of Chatham has spent over \$100,000,000.00 on this issue and is so far ahead of the curve that he and the other people in Chatham will be very unhappy after committing that amount of resources to deal with this problem if CLF tells them they don't like what they have done. He stated that would be unreasonable for the people in the town of Chatham.

Jim Pierce, Sandwich Board of Selectmen referenced multiple watersheds in the Town of Sandwich and referenced Joint Base Cape Cod's partial location in the Town of Sandwich. He asked for clarity about what pollution is coming from Joint Base Cape Cod, and how the Base would contribute to watershed solutions.

Erin Perry responded that the Commission has engaged representatives from Joint Base Cape Cod in all the watershed work that they did.

Paul Niedzwiecki responded that if a town doesn't have jurisdictional control over a watershed, they should not be the responsible party for that watershed.

Linda Zuern, Bourne Board of Selectmen, directed two questions/statements towards Christopher Killian: 1) Zuern stated that Killian said that the waters in the Bay were polluted and Zuern suggested that that was bad information because they have good water in the bays; 2) Zuern asked who hired CLF to bring the lawsuit.

Christopher Killian responded that he was referring to the nitrogen problem, not to other things like bacterial pollution or toxins. He stated that the cape is aware of the nitrogen issue and that it has caused problems in terms of the ecosystem, such as eelgrass disappearing and the impacts on the fish. He stated he was not referring to specific location water qualities. As far as the second question, Killian said that the CLF is a tax-exempt charitable organization and that the water quality issue on Cape Cod was identified as a problem that was of significant concern to CLF and its board, including members and supporters from Cape Cod. He explained that CLF is not an organization that is hired by a client; they brought the lawsuit on behalf of the organization and its members.

Alan McClennon, Orleans Board of Selectmen, stated that this problem will take 40+ years to solve. He noted that Orleans is somewhat "ahead" of its neighbors in terms of a wastewater solutions and asked what the panel thought about a shared watershed approach such as Pleasant Bay that has four towns involved. He inquired into how WMA's are designated in towns with shared watersheds.

Gary Moran responded that Mr. McClennon's comment is consistent with what they are looking at. He explained that ultimately when you look at the requirements for a waste management agency, the towns have the powers and the next step is how you will deal with the shared watersheds and what type of arrangement you will decide to go with, whether it's making a different entity or just a necessary arrangement between towns. There can be a range of approaches that the towns can agree on themselves.

Johanna Hunter responded That EPA and DEP oversee WMA designation, and that after designation, EPA would assess the efforts of the WMA moving forward with solutions under the 208 Plan, including collaboration with other WMA's in shared watersheds.

James Crocker, Barnstable Town Council, commented that the only way to get a stay from a judge is to show a great change in direction so in his mind we as the Cape have to move forward with the 208 plan. He noted that the town council just came back from Mass Municipal Association and it seems that the town of Barnstable is going to have to hire a professional person to assist them with the two EPA issues, the first being stormwater and the second being the wastewater issue. He also discussed how to fund improvements, and stated that they will

need someone on their side to protect the tax payers of Barnstable because they expect that they will have to develop further water quality and sewer solutions and infrastructure in Barnstable.

Robert Weinstein, Truro Board of Selectmen, commented that after hearing other town's comments, he hopes towns aren't looking at this problem as "stasis." He said that all of the towns in Barnstable County already have a process in addressing these issues and that is where the pushback is coming from since you have tax payers from some towns that have paid for maintenance to localized wastewater management plans on a town basis and he thinks that's important for all the speakers from the various agencies to understand this-- that people are trying to address these issues. His question comes from the fact that Truro shares a watershed with Wellfleet and stated that they are about to enter a process of saltwater marsh restoration and wanted to know how that plays into the 208 plan so that their communities don't have to double the effort later.

Bethany Card from MA DEP stated that to the extent that towns are already taking large environmental projects underway, they want you to make that part of the adaptive management plan that you use, so when the MassDEP talks about you using traditional technologies and non-traditional innovative technologies, they want to be able to build those projects into your town plans.

Johanna Hunter responded that marsh restoration is related and should be addressed as part of the overall 208 approach and not as a separate unrelated project. She emphasized the importance of monitoring solutions like marsh restoration for their efficacy in addressing water quality improvements, and whether the solutions impose other effects on natural resources. She noted that there are great local efforts underway.

Kristy Senatori responded that that is the type of project for which the town would receive credit.

Paul Niedzwiecki responded that we know that it is not "stasis" and that the purpose of the 208 plan is to try to remove those barriers for nontraditional projects so we hope that we have done that. He stated that the marsh project is a restoration and that is an important distinction and in the 208 process. We want towns to get credit for that because of the nitrogen removal associated with it, so it is a great example of how we hope the 208 plan helps remove those barriers and make it easier for towns to solve this problem.

Motion to adjourn was made, approved and the meeting adjourned at 9:07 pm.