

Cape Cod Municipal Management Association

Massachusetts Department of Environmental Protection

July 14, 2022

Agenda

- Introductions
- \$200M Proposed Funding (H.4802)
- Proposed Regulatory Framework
- Septic Loan Program Overview
- Next Steps
- Discussion

Impacted Communities

Cape & Islands (& Southeast)

- Acushnet
- Aquinnah
- Barnstable
- Bourne
- Brewster
- Chatham
- Chilmark
- Dartmouth
- Dennis
- Duxbury
- Eastham
- Edgartown
- Fairhaven
- Falmouth
- Gosnold
- Harwich
- Kingston
- Marion
- Mattapoisett
- Mashpee
- Nantucket
- New Bedford
- Oak Bluffs
- Orleans
- Plymouth
- Provincetown
- Sandwich
- Tisbury
- Truro
- Wareham
- Wellfleet
- Westport
- West Tisbury
- Yarmouth

Cape Cod & Islands Water Protection Fund

- \$200M in [H.4802](#) (1595-1005)
- Directed through the Clean Water Trust
- Towns must be a member of the CCIWP Fund to access
- For costs associated with planning and implementing water pollution abatement projects
- Projects are subject to Cape 208 Plan consistency

Proposed Regulatory Framework

Proposed Changes

Revise Title 5 regulations
to establish **Nitrogen
Sensitive Areas (NSAs)**

*for watersheds draining into an
estuary that has an
EPA-approved Nitrogen TMDL*

Formal establishment
of **Watershed Permits**

*20-year permits based on
long-term wastewater plans*

Proposed Regulatory Framework

Background

- Nitrogen Sensitive Area (NSA) Subcommittee Stakeholder Group met in September 2020, February 2021, and June 3, 2022 to discuss potential changes to NSA provisions of Title 5 regulations
- Topics discussed
 - Expansion of definition of NSA
 - Defining how these areas might be determined
 - New nitrogen requirements for certain NSA areas
 - Compliance options
 - Implementation schedule for new requirements



Centerville River Embayment System, Barnstable

Proposed Regulatory Framework

Proposed Changes - NSAs

Revise Title 5 regulations to establish **Nitrogen Sensitive Areas (NSAs)**

*for watersheds draining into an
estuary that has an
EPA-approved Nitrogen TMDL*

- Natural Resource Area NSAs defined as:
 - (a) Any watershed to an embayment or sub-embayment that is the **subject of a Nitrogen TMDL approved by the USEPA** pursuant to the federal Clean Water Act **and an Area Wide Water Quality Management Plan pursuant to Section 208** of the Clean Water Act addressing nitrogen pollution
 - OR -
 - (b) Any watershed to an embayment or sub-embayment that is the subject of an EPA approved TMDL or **determined to be nitrogen sensitive by the Department based on scientific evaluation and adopted through a public process** involving public notice, including the scientific and regulatory rationale for the designation, and a 60-day public comment period.

Proposed Regulatory Framework

NSA Communities & Effective Dates

NSA Category

(a) TMDL + 208 Plan

(b) TMDL/Scientific
Evaluation + Public Process

Impacted Communities

30 watersheds on Cape Cod
have a nitrogen TMDL + and all
Cape Cod Communities are
subject to a 208 Plan

Communities subject to nitrogen
TMDL or determined by MassDEP
to be nitrogen sensitive with
public adoption process

Effective Dates

NSA Designation is effective
on the effective date of the
final regulations

NSA Designation is effective
upon completion of public
process & MassDEP issuance
of final designation

Proposed Regulatory Framework

New NSA Requirements

- Any system serving a new construction or an existing facility must **incorporate Best Available Nitrogen Reducing Technology within 5 years of the effective date of the designation** of the watershed where they are located
- **Exemption to this requirement:** if the community is subject to a **Watershed Permit**
 - If a Watershed Permit is terminated by the permittee or revoked by MassDEP, new systems installed after the date of termination/revocation would have to install Best Available Nitrogen Reducing Technology and existing systems would have to install such technology within 5 years from the effective date of the new NSA regulations or 2 years of the date of termination/revocation, whichever is longer

Proposed Regulatory Framework

Proposed Changes – Watershed Permits

- Watershed Permits are a new, innovative approach to implement effective and efficient water quality solutions
- Communities can employ a range of solutions, including alternative or innovative approaches
- Watershed Permits are 20-year permits with four 5-year reports
- Use adaptive management approach – permittees need to monitor, evaluate, and report results & adjust and modify strategies to address water quality issues

Formal establishment of Watershed Permits

*20-year permits based on
long-term wastewater plans*

Proposed Regulatory Framework

Watershed Management Plans



- Long term plan to address existing water quality impairment
- Must be approved at town meeting
- Is a schedule & description of actions to restore water body to Water Quality Standards (WQS)
- The Watershed Management Plan must achieve compliance with WQS in TMDL and demonstrate $\geq 75\%$ pollutant reduction within 20 years

Proposed Regulatory Framework

Watershed Permit Application

- Any local government or regional local government unit can file for a Watershed Permit, including groups of municipalities in Intermunicipal Agreements
- The Watershed Permit application must include the Watershed Management Plan for the watershed, including:
 - Map of watershed boundary and description of covered area
 - Description of current and historic water quality conditions
 - Earlier planning approaches
 - Info on ongoing or proposed TMDL implementation activities
 - Nitrogen contribution to surface water
 - Control technology and approaches (alternatives & backups)
 - Estimated load reductions
 - Technology implementation schedule
 - Core sewer/wastewater collection area
 - Proposed approach to control 100% of all future pollutant loads
 - Implementation schedule in 5-year blocks

Proposed Regulatory Framework

Watershed Permit Provisions

- The proposed activities, implementation schedule for such activities, and facilities set forth in the applicant's Watershed Management Plan shall be enforceable requirements, incorporated in a Watershed Permit
- Annual report submittal
- 5-year evaluation and review
- Public notice requirement and public meeting requirement for a permittee(s) to terminate permit coverage
- Any permits issued by MassDEP that comprise a component of the implementation activities or are applicable to the pollutant discharges in the watershed shall be incorporated by reference into the Watershed Permit (i.e., Groundwater Discharge Permit)

Proposed Regulatory Framework

Watershed Permit Issuance

- Public notice in the MEPA Environmental Monitor and in a local newspaper; MassDEP will post the notice on our website
- Minimum 60-day public comment period
- A public hearing will be held if requested by the applicant, or if MassDEP determines a public hearing to be in the public interest

Proposed Regulatory Framework

Watershed Permit Modification/Suspension/Revocation/Termination

- MassDEP may modify, suspend, or revoke a permit and will follow the same process for doing so as required during the Issuance process
- MassDEP may revise schedules in a Watershed Permit at the request of the permittee under certain circumstances
- Permittees may terminate permits by providing advanced written notice to MassDEP
 - Public notice and a public hearing are required
 - Upon termination, the **Best Available Nitrogen Reducing Technology requirement applies to the individual systems in the NSA**

MassDEP Next Steps

- Completed
 - Regulatory Revisions Announcement Letter & Fact Sheet
 - Development of [Informational Webpage](#)
- Ongoing
 - Secure \$200M in Funding
 - Development of Regulatory Revisions
 - Development of Funding Guidance
 - Scheduling meetings with Towns (**meeting scheduled ↓↓↓)

Cape & Island Communities	Southeast Communities
**Aquinnah, **Barnstable, **Bourne, **Brewster, **Chatham, **Chilmark, **Dennis, **Eastham, **Edgartown, **Falmouth, **Gosnold, **Harwich, **Mashpee, **Nantucket, **Oak Bluffs, **Orleans, **Provincetown, **Sandwich, **Tisbury, Truro, **Wellfleet, **West Tisbury, **Yarmouth	**Acushnet, **Dartmouth, Duxbury, Fairhaven, **Kingston, **Marion, Mattapoisett, New Bedford, Plymouth, Wareham, **Westport

State Revolving Fund (SRF) & Septic Management Program Loan

- The Massachusetts Clean Water Trust (Trust) dedicates \$5M a year in 2% interest rate loans to communities to fund their [Community Septic Management Program \(CSMP\)](#) which provides loans to homeowners to replace failed septic systems
- Over the past five years, the Trust has issued 29 loans totaling \$14.2M
 - The average loan to a community is \$450,000
- The Clean Water SRF has financed [Barnstable County's Septic Management Loan Program](#), which now operates as its own revolving fund

Septic Management Loan Program 101

Rolling applications
– towns apply for financing when there is homeowner demand

Town loan secured with a **general obligation pledge** approved at Town Meeting

Homeowners apply to town for financing, **town draws down funds** from Trust as needed

Homeowner loan secured with a **betterment agreement**

Homeowners **charged interest**; interest is used to cover admin expenses, creation of new loans

Draws against loan by town **do not accrue interest or fees**

Repayment begins in two years, sooner if all funds have been drawn

SRF Loan Process



Barnstable County Community Septic Management Loan Program

- Provisions here are included in [H.4802](#) (1595-1005)
- 50% principal forgiveness to borrowers with income below 120% of the median income
 - Barnstable County median income: [\\$76,863](#)
 - 120% of median income: \$92,235
- 25% principal forgiveness to borrowers with income below 180% of the median income
 - Barnstable County median income: [\\$76,863](#)
 - 180% of median income: \$138,353

Discussion

MassDEP Contacts & Information

- Comments on Proposed Regulatory Framework
 - Marybeth.Chubb@mass.gov; Courtney.Rainey@mass.gov
- Communication with Towns and Stakeholders
 - Millie.Garcia-Serrano@mass.gov; Courtney.Rainey@mass.gov
- Information on the [State Revolving Fund Program](#) and [ARPA & Bipartisan Infrastructure Law supplemental funding](#)
 - Maria.Pinaud@mass.gov