



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

The Honorable Charlie D. Baker  
Massachusetts State House  
Office of the Governor  
Room 280  
Boston, MA 02133

**SEP 15 2015**

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Re: Approval of Cape Cod Water Quality Management Plan Update and  
Acceptance of Waste Management Agencies

Dear Governor Baker:

On June 12, 2015, the Commonwealth of Massachusetts (the "Commonwealth") submitted a letter to EPA Region 1: (1) certifying that the Cape Cod Water Quality Management Plan Update ("Plan Update") is consistent with all other parts of the Commonwealth's Water Quality Management Plan, in accordance with Clean Water Act § 208(b)(3) and 40 C.F.R. § 130.6(e) (the "Certification"), and (2) reaffirming the existing designations of the Cape Cod Towns<sup>1</sup> as waste management agencies for the Plan Update, in accordance with CWA § 208(c)(1) (the "Designations"). See Attachment 1 (Letter from Governor Charlie D. Baker to Curt Spalding, Regional Administrator, dated June 10, 2015, re: Cape Cod Water Quality Management Plan Update). The Certification and Designations followed submission of the Plan Update by the Cape Cod Commission (the "Commission") to the Massachusetts Department of Environmental Protection ("MassDEP") on March 16, 2015. Upon review, and based on the administrative record, I approve the Certification pursuant to my authority under CWA § 208(b)(3) and 40 C.F.R. § 130.6(e), and accept the Designations under CWA § 208(c)(2).

Without significant actions to reduce nitrogen pollution, Cape Cod's embayments will continue to degrade, and we will lose the recreational, aesthetic and economic value of waters that have for so long been the focal point of life on the Cape. All levels of government—federal, state, county, municipal—as well as other stakeholders, from the business community to the Cape's residents and its visitors, must act to ensure that we never reach this point. I am acutely aware of the complexities inherent in fashioning a solution to the Cape's nitrogen pollution problem, particularly coordinating pollution abatement activities among multiple Towns and ensuring the ultimate approach is effective on a regional basis. The Plan Update does not ignore these complexities, but instead embraces them, detailing a process for forging comprehensive watershed-based solutions while balancing individual Town interests. It provides the Cape Cod Towns, as designated waste management agencies, with a shared, systematic framework to address the challenge, which is a departure from more fragmented approaches that have been pursued historically. Still, in reaching their objectives, the Towns will be provided with a reasonable opportunity to innovate and to finely tune pollution abatement measures to fit local environmental, political and economic circumstances.

---

<sup>1</sup> The "Cape Cod Towns" means the Massachusetts towns of Falmouth, Sandwich Bourne, Mashpee, Barnstable, Brewster, Harwich, Chatham, Orleans, Eastham, Wellfleet, Truro, Dennis, Yarmouth and Provincetown.

Given the scope of the Cape's nitrogen problem, and the environmental public policy complexities associated with solving it, I find the approach adopted by the Commonwealth in the Plan Update to be reasonable and appropriate.

By voluntarily opting to update the existing Section 208 Cape Cod Water Quality Management Plan, which was originally approved in 1978, the Commonwealth has demonstrated its commitment to facilitate, support, and participate in a regionally-based solution to the Cape's nitrogen pollution problem. The Commonwealth specifically directed an update "to facilitate a regional approach" to nitrogen pollution problems on Cape Cod. *See* Attachment 2 (Letter from Ken Kimmel, Commissioner, MassDEP, to Paul Niedzwiecki, Cape Cod Commission, dated January 30, 2013). Further, in directing the Plan Update be prepared, the Commonwealth specifically identified funding and implementation as topics that should be addressed. In its Certification, the Commonwealth expressly reaffirmed this commitment, stating, "MassDEP is committed to developing a watershed-based permitting program to address nitrogen management measures in accordance with the Massachusetts Legislature's directive of Chapter 259 of the Acts of 2014, Section 2A, item 2200-0135."<sup>2</sup> *See* Attachment 1. MassDEP has already commenced work on developing this program. *See* Attachment 3 (Letter Report, dated April 22, 2015, re Massachusetts Department of Environmental Protection's Report to the Joint Committee on Environment, Natural Resources and Agriculture on Statutory Changes Necessary to Implement a Watershed Permitting Approach). The Letter Report, at p. 2, concluded:

"The Department reports that it has identified adequate authority to establish such a new watershed-based permitting program under existing Massachusetts Clean Waters Act and that it does not anticipate a need for any statutory changes at this time to fully implement a watershed-based permitting approach for Cape Cod."

Furthermore, at EPA's request, MassDEP has detailed the measures it could take to ensure timely implementation of the Plan Update, including the timeframe envisioned for taking such actions. *See* Attachment 4 (Letter from Gary Moran, Deputy Commissioner, MassDEP, to Deborah Szaro, Deputy Regional Administrator, EPA Region 1, dated August 14, 2015, re: Section 208 Cape Cod Areawide Water Quality Management Plan Update). In approving the Certification and accepting the Designations, I have taken note of the Legislature's directive to MassDEP to develop a watershed permitting program, as well as the Commonwealth's representations regarding the creation of any additional authorities beyond those already possessed by the Cape Cod Towns to implement necessary nitrogen controls, as well as the commitment to take other appropriate actions, in the event they are found to be necessary as the complex process of implementation unfolds.<sup>3</sup>

In coming to my decision, I have also considered the ongoing role that will be played by the Cape Cod Commission during the implementation phase.

---

<sup>2</sup> In Chapter 259 of the Acts of 2014, Section 2A, item 2200-0135, the Massachusetts Legislature requires that "[MassDEP] shall develop a watershed permitting approach to address and optimize nitrogen management measures intended to restore water quality to meet applicable water quality standards in watersheds included in an approached area wide nitrogen management plan developed pursuant to 208 of the federal Clean Water Act[.]"

<sup>3</sup> The Commonwealth has in addition committed \$250,000 dollars toward monitoring and pilot nutrient reduction projects on Cape Cod, which I regard as further evidence of the Commonwealth's commitment to implementation.

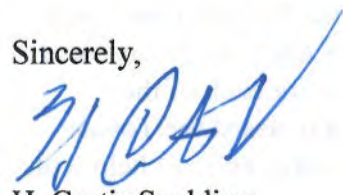
The Commission is available to help the Towns coordinate planning, monitoring and implementation, and will assist with the creation of intermunicipal agreements, as appropriate, in order to facilitate a regionally effective solution to the Cape's nitrogen problem. This process of planning and implementation is already underway, as described in Chapter 8 of the Plan Update. Upon certification of the Section 208 Plan Update by the Governor, the Cape Cod Towns have 12 months to develop "watershed reports" that outline potential scenarios for each of the watersheds for which they are responsible. The Commission has offered to assist the Towns with the development of watershed reports and creation of Watershed Teams, and can help with nutrient reduction scenario development, watershed agreements, permitting of technologies, monitoring and financing. Towns that use a Watershed Team will receive the benefit of an expedited regulatory review by the Commission based on its consistency with the Plan Update, and access to new funding sources available for implementation. If Towns do not complete a watershed report or request a team, the Commission will complete an interim report for the area, and will require those Towns to submit their plans to the Commission for a 208 Plan Update consistency review as part of the Commission's development review process. The Commission will issue an implementation report in June 2016 describing the actions of waste management agencies to date. The role the Commission will play during the implementation phase is described in greater detail in Attachment 5 (Letter from Paul Niedzwiecki, Cape Cod Commission, to Ken Moraff, EPA Region 1, dated August 25, 2015, re Cape Cod Water Quality Management Plan Update), the representations in which I specifically considered in approving the Plan Update and accepting the Designations.

Supplementing the foregoing, the Region will assess at reasonable intervals the actions being taken by the Commonwealth and Towns to implement the procedures and actions called for in the Plan Update to reduce nitrogen loads for a period of six years beyond the date of the Region's acceptance of the Cape Cod Towns as wastewater management agencies designated under CWA § 208(c)(2). Based on such assessments, and in the Region's sole discretion, the Region may notify the Commonwealth of additional actions to implement the approved Section 208 plan/update, or that a new update of the Section 208 Plan is needed (and resubmission to the Region of one or more designated Management Agencies for EPA acceptance). The Commonwealth, Commission and Cape Cod Towns should be aware that EPA specifically intends to track plan implementation utilizing the recommended milestones set forth in the Commission's August 25 letter. See Attachment 5 at pp. 8-9. EPA committed to assess implementation in the Settlement Agreement, filed November 17, 2014, in United States District Court for the District of Massachusetts, in connection with *Conservation Law Foundation v. United States Environmental Protection Agency, et al.*, Action No. 1:13-12704, and *Conservation Law Foundation, et al. v. United States Environmental Protection Agency, et al.*, Action No. 1:11-cv-11657. To carry out the assessment, the Region will in part rely on quarterly progress reports commencing January 15, 2016 by the Commission and MassDEP, which may be submitted jointly or separately. The Region has also agreed to participate in semi-annual meetings and a Technologies Summit on the Cape to be convened by the Commission to evaluate implementation progress.

The Region expects close contact and cooperation with the Commonwealth, the Commission, Barnstable County, the Cape Cod Towns and other stakeholders as the process of implementing the Plan Update progresses through its initial stages.

Please do not hesitate to contact Johanna Hunter of EPA's Office of Ecosystem Protection at (617) 918-1041 or Samir Bukhari of the Office of Regional Counsel at (617) 918-1095 if you should have any questions regarding this letter.

Sincerely,



H. Curtis Spalding  
Regional Administrator

cc:

Senator Ed Markey, Member of United States Senate  
Senator Elizabeth Warren, Member of United States Senate  
Mr. Bill Keating, United States House of Representatives  
Secretary Matthew A. Beaton, Executive Office of Energy and Environmental Affairs  
Commissioner Martin Suuberg, Massachusetts Department of Environmental Protection  
Deputy Commissioner Gary Moran, Massachusetts Department of Environmental Protection  
Ms. Mary Pat Flynn, Commissioner of Barnstable County  
Ms. Sheila Lyons, Commissioner of Barnstable County  
Mr. Leo Cakounes, Commissioner of Barnstable County  
Mr. Paul Niedzwiecki, Executive Director of Cape Cod Commission  
Mr. Tom Lynch, Town Manager of Barnstable  
Ms. Jessica Rapp Grassetti, President of Town Council, Town of Barnstable  
Mr. Tom Guerino, Town Administrator of Bourne  
Mr. Stephen Mealy, Chairman of Board of Selectmen, Town of Bourne  
Mr. Charles Sumner, Town Administrator of Brewster  
Mr. Ben deRuyter, Chairman of Board of Selectmen, Town of Brewster  
Ms. Jill Goldsmith, Town Manager of Chatham  
Mr. Jeffrey Dykens, Chairman of Board of Selectmen, Town of Chatham  
Mr. Richard White, Town Administrator of Dennis  
Mr. Paul McCormick, Chairman of Board of Selectmen, Town of Dennis  
Ms. Sheila Vanderhoef, Town Administrator of Eastham  
Ms. Elizabeth Gawron, Chairman of Board of Selectmen, Town of Eastham  
Mr. Julian Suso, Town Manager of Falmouth  
Mr. Doug Jones, Chairman of Board of Selectmen, Town of Falmouth  
Mr. Christopher Clark, Town Administrator of Harwich  
Mr. Peter Hughes, Chairman of Board of Selectmen, Town of Harwich  
Mr. Rodney Collins, Town Manager of Mashpee  
Mr. John Cahalane, Chairman of Board of Selectmen, Town of Mashpee  
Mr. John Kelly, Town Administrator of Orleans  
Mr. David Dunford, Chairman of Board of Selectmen, Town of Orleans  
Mr. David Panogore, Town Manager of Provincetown  
Mr. Thomas Donegan, Chairman of Board of Selectmen, Town of Provincetown  
Mr. George Dunham, Town Manager of Sandwich

Mr. Frank Pannorfi, Chairman of Board of Selectmen, Town of Sandwich  
Ms. Rae Ann Palmer, Town Administrator of Truro  
Mr. Paul Wisotzky, Chairman of Board of Selectmen, Town of Truro  
Mr. Harry Terkanian, Town Administrator of Wellfleet  
Mr. Paul Pilcher, Chairman of Board of Selectmen, Town of Wellfleet  
Mr. William Hinchey, Town Administrator of Yarmouth  
Mr. Erik Tolley, Chairman of Board of Selectmen, Town of Yarmouth  
Mr. Andrew Gottlieb, Executive Director of Cape Cod Water Protection Collaborative  
Mr. Christopher Kilian, Vice President and Director of Conservation Law Foundation Vermont  
Ms. Caitlin Peale Sloan, Staff Attorney of Conservation Law Foundation Massachusetts



OFFICE OF THE GOVERNOR  
**COMMONWEALTH OF MASSACHUSETTS**

STATE HOUSE • BOSTON, MA 02133

(617) 725-4000

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR

June 10, 2015

Curt Spalding, Regional Administrator  
USEPA Region 1 - New England  
5 Post Office Square  
Mail Code: ORA01-4  
Boston, MA 02109-3912

Re: Section 208 Cape Cod Areawide Water Quality Management Plan Update

Dear Administrator Spalding:

I am writing to submit for approval the Cape Cod Area Wide Water Quality Management Plan Update ("Plan Update") developed by the Cape Cod Commission ("CCC"). CCC submitted the Plan Update to the Massachusetts Department of Environmental Protection ("MassDEP") for review on March 16, 2015. The Plan Update builds upon the 1978 Water Quality Management ("WQM") Plan prepared by the Cape Cod Planning and Economic Development Commission, predecessor to the CCC.

Based on MassDEP's review, I hereby certify the Plan Update pursuant to § 208(b)(3) of the Federal Clean Water Act, 33 U.S.C. § 1288(b)(3), and 40 C.F.R. § 130.6(e). My certification is subject to the following:

1. The Plan Update includes a number of recommendations, some of which call for legislative action, some of which call for action by other agencies and entities outside of the purview of the MassDEP, and some of which call for actions by the MassDEP, including changes to MassDEP rules and regulations. MassDEP is committed to developing a watershed-based permitting program to address nitrogen management measures in accordance with the Massachusetts Legislature's directive in Chapter 259 of the Acts of 2014, Section 2A, item 2200-0135. However, this certification of the Plan Update should not be construed as necessarily approving or endorsing every aspect of the Plan Update or any specific recommendation therein.
2. This correspondence also affirms that the local communities identified as the designated management agencies ("DMAs") under the 1978 WQM Plan will continue as the DMAs

# ATTACHMENT 1

for purposes of the Plan Update. My certification of the Plan Update should not be construed as waiving or otherwise affecting the Governor's right to de-designate any DMA or to designate any additional DMAs, as warranted, or otherwise affecting the rights of any DMA or other entity in this regard.

For additional information, please contact Martin Suuberg, Commissioner of the Department, at (617) 292-5856.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles D. Baker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles D. Baker  
Governor

## ATTACHMENT 2



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK  
Governor

RICHARD K. SULLIVAN JR.  
Secretary

TIMOTHY P. MURRAY  
Lieutenant Governor

KENNETH L. KIMMELL  
Commissioner

January 30, 2013

Paul Niedzwicki  
Executive Director  
Cape Cod Commission  
3225 Main Street  
Barnstable, MA 02630

Dear Mr. Niedzwicki:

On behalf of Governor Patrick and Secretary Rick Sullivan of the Executive Office of Energy and Environmental Affairs, I am writing to direct the Cape Cod Commission to prepare an update to the 1978 Water Quality Management Plan for Cape Cod to address a critical problem—the degradation of Cape Cod’s water resources from excessive nutrients. This directive accompanies the Commonwealth’s commitment to provide the Cape Cod Commission with \$3,350,000 from the Water Pollution Abatement Trust to fund this update.

As you are well aware, nutrient contamination is one of the the most pressing environmental challenges facing Cape Cod. Increased population and development in those areas surrounding Cape Cod’s estuaries have resulted in excessive amounts of nutrients being discharged into these sensitive resources, causing eutrophication and prompting the accelerated growth of nuisance plants, weeds and algae, using up much of the oxygen in the water. This forces out finfish, shellfish, and indigenous plant species. The result - water bodies that violate state water quality standards, are visually displeasing, smell bad, and cannot support the natural uses that the estuaries have historically offered. This is not only an environmental problem—if left unchecked, it is likely to harm the Cape’s economy through a decline in fishing, shellfishing, tourism, and property values.

The primary water quality problem on Cape Cod stems from nitrogen contamination. Nitrogen from septic systems, wastewater treatment plants, lawns and stormwater leaches into groundwater and flows underground and is discharged to surface water bodies. While nitrogen comes from a variety of sources, on Cape Cod the predominant sources are on-site septic systems. Approximately 85 percent of the wastewater flow into Cape Cod’s embayments comes from on-site septic systems.



## ATTACHMENT 2

Over the past decade, the Massachusetts Department of Environmental Protection (MassDEP) has been working closely with Cape Cod communities and the University of Massachusetts, through the Massachusetts Estuaries Project, to provide communities with the scientific studies they need to effectively address the specific water quality issues impacting each estuary. These studies clearly demonstrate the need to take action now. Based on the analyses performed to date, we estimate that more than 90 percent of the Cape's estuaries do not meet water quality standards.

It has become equally clear that the most effective and affordable approach to this problem is a regional effort. Nitrogen-loading is a Cape-wide problem, with estuaries and watersheds often crossing municipal boundaries. A regional approach to these problems will:

- Facilitate a more holistic, watershed-based approach to addressing nitrogen impacts;
- Limit the amount of infrastructure needed by sharing of wastewater facilities targeted towards areas of greatest need;
- Allow greater opportunity for solutions involving decentralized and innovative approaches, and continued use of conventional septic systems where appropriate; and
- Achieve greatest economies of scale, and spread costs over the largest number of users.

To most effectively facilitate a regional approach, MassDEP is directing the Cape Cod Commission, as the successor agency to the Cape Cod Planning and Economic Development Commission ("CCPEDC"), to prepare an update to the 1978 Water Quality Management Plan for Cape Cod.

Section 208 of the federal Clean Water Act authorizes State Governors to identify areas that have substantial water quality control issues and designate a planning entity to develop effective water quality management plans. Before a State Governor may forward such a plan to EPA for approval, § 208 also requires the Governor to designate suitable management agencies to implement the plan, based upon the plan's recommendations. The intent of this process is to generate a unified framework for activities to abate water pollution in a geographic area and integrate technical needs for pollution control with management arrangements capable of implementing those controls.

In 1975, Governor Dukakis designated the CCPEDC to create a regional water quality management plan for Cape Cod waters. The 1978 Plan, created by CCPEDC, was certified by the Governor and approved by EPA in accordance with § 208. The Plan relies primarily on designating existing local authorities for implementation and identified the need for further investigation into the possibility of strengthening the regional role in areas under the authority of the towns.

Since 1978, extensive scientific study has demonstrated that nutrient pollution on Cape Cod, especially nitrogen pollution, has become a far more serious problem, giving rise for the need to develop new cost-effective and environmentally sound approaches to managing water quality in

## ATTACHMENT 2

the region. The updated plan should include a comprehensive analysis of the factors contributing to water quality degradation, but prioritize management of controllable nutrients due to the current conditions in the region. The updated plan should:

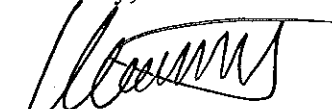
- Prioritize water resources, identifying the most impaired or endangered, and the actions to achieve water quality goals as quickly as possible;
- Limit the amount of infrastructure needed by prioritizing those areas requiring “shared” systems to restore water quality;
- Provide an opportunity to more fully evaluate decentralized and innovative approaches, as well as the continued use of conventional septic systems, where appropriate;
- Identify preferred solutions for nutrient management in nitrogen sensitive watersheds;
- Achieve greatest economies of scale, and identify methods to equitably share costs among all parties benefitting from the improvements;
- Feature a robust public participation process, including a facilitated outreach effort, watershed level advisory committees, and extensive public input opportunities to fully consider all views and input, and to build consensus for identified solutions;
- Identify ways in which solving the wastewater problem could also address other challenges facing the Cape. As one example, the updated plan should explore the use of anaerobic digesters at new or existing wastewater treatment plants to generate low-cost, renewable energy and help the Cape address organic waste disposal challenges; and
- Identify funding and implementation mechanisms.

The development of the updated regional plan is a substantial undertaking that will require significant resources. The Executive Office of Energy and the Environmental Affairs and MassDEP are committed to working with the Cape Cod Commission as it undertakes this critical task. We are pleased that the Massachusetts Water Pollution Abatement Trust voted on January 16, 2013, to authorize \$3.35 million to support the development of the updated regional plan and related efforts subject to the signing of a Memorandum of Understanding regarding the scope of services, corresponding project plan and budget, and disbursement of funds. MassDEP will play a significant role in development of the plan, providing input, specific requirements, and general oversight. We look forward to meeting with you in the near future to discuss the plan scope and contract in more detail.

On behalf of the Patrick-Murray Administration, I want to commend Barnstable County, the Cape Cod Commission, the Cape Cod Water Protection Collaborative, and the Cape Cod legislative delegation for your efforts to assist Cape communities in addressing these issues on a regional, watershed basis. We are pleased that the Commonwealth is able to provide additional resources to support your efforts. We look forward to continuing to work with you, Cape elected officials, communities, stakeholders, and residents in this critical effort to develop a plan that will restore and protect Cape Cod’s water resources in an acceptable phased approach that integrates affordability, appropriate infrastructure and growth management.

## ATTACHMENT 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Kimmell', written over a horizontal line.

Ken Kimmell  
Commissioner

Cc: Senate President Therese Murray

Treasurer Grossman

Scott Jordan

Senator Wolf

Representative Peake

Representative Madden

Representative Turner

Representative Vieira

Representative Hunt

Representative Mannal

Secretary Sullivan

Andrew Gottlieb

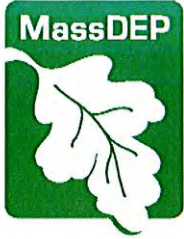
Mary Flynn

Sheila Lyons

Bill Doherty

Curt Spalding

# ATTACHMENT 3



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

April 22, 2015

Anne M. Gobi, Chairwoman  
Joint Committee on Environment, Natural Resources and Agriculture  
State House, Room 513  
Boston, MA 02133

Paul A. Schmid, III, Chairman  
Joint Committee on Environment, Natural Resources and Agriculture  
State House, Room 473F  
Boston, MA 02133

Re: Massachusetts Department of Environmental Protection's Report to the Joint Committee on Environment, Natural Resources and Agriculture on Statutory Changes Necessary to Implement a Watershed Permitting Approach

Dear Chairwoman Gobi, Chairman Schmid and Honorable Members of the Committee:

In Chapter 259 of the Acts of 2014, Section 2A, in item 2200-0135, the Massachusetts Legislature requires that "the department shall develop a watershed permitting approach to address and optimize nitrogen management measures intended to restore water quality to meet applicable water quality standards in watersheds included in an approved area wide nitrogen management plan developed pursuant to section 208 of the federal Clean Water Act; and provided further, that the department shall report to the joint committee on environment, natural resources and agriculture by March 31, 2015 on any statutory changes it deems necessary to fully implement said watershed permitting approach." I am submitting this letter in response to the Legislature's directive.

As you are aware, in mid-March, the Cape Cod Commission submitted its Section 208 Water Quality Management Plan Update to MassDEP. The submittal followed a public review and comment period that included public hearings in each region of the Cape last September and October. Recently, the Cape Cod Commission hosted the One Cape Forum, a conference attended by over 300 people, including the majority of elected officials on the Cape, focusing on how to effectively implement the final plan. MassDEP is now reviewing the Update.

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

## ATTACHMENT 3

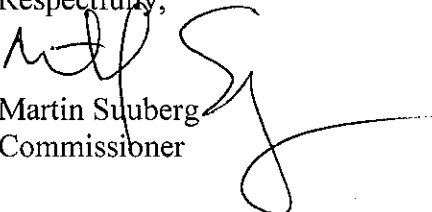
The Department is in the process of developing a new watershed-based permitting approach to address and optimize nitrogen management measures intended to restore water quality on Cape Cod. This is an approach that, in recent years, many communities have been asking be offered as an option. This new permitting mechanism will facilitate the comprehensive and innovative wastewater solutions envisioned in the 208 plan. These permits will:

- Allow communities increased opportunity to employ a greater range of solutions to address their water quality needs, including not only traditional centralized wastewater systems, but also alternative approaches, such as green infrastructure, aquaculture, inlet widening, or permeable reactive barriers.
- Allow communities to consider and employ long-term remedial strategies. Rather than the traditional 5-year permit covering discharge points and limits, the watershed permit will cover up to 20-year periods, incorporating a range of traditional and non-traditional strategies.
- Apply an adaptive management approach, acknowledging the uncertainties that may be associated with some projects, carefully monitoring performance and assessing progress in a transparent fashion---and, if necessary, making changes in the approach or recalibrating plans and projects to achieve water quality goals in a timely manner.

The Department reports that it has identified adequate authority to establish such a new watershed-based permitting program under the existing Massachusetts Clean Waters Act and that it does not anticipate a need for any statutory changes at this time to fully implement a watershed-based permitting approach for Cape Cod. I appreciate the opportunity to update you on our progress and welcome any suggestions, questions, or additional conversation as we proceed.

If you have any further questions regarding this matter, please contact Gary Moran, Deputy Commissioner, at (617) 292-5775.

Respectfully,

  
Martin Suuberg  
Commissioner

# ATTACHMENT 4



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

August 14, 2015

Deborah Szaro, Deputy Regional Administrator  
US EPA Region 1  
5 Post Office Square  
**Mail Code:** ORA01-4  
Boston, MA 02109-3912

Re: Section 208 Cape Cod Areawide Water Quality Management Plan Update

Dear Deputy Regional Administrator Szaro:

I am writing in response to your letter of July 20, 2015 regarding the Massachusetts Department of Environmental Protection's ("MassDEP") efforts related to the update to the Cape Cod Section 208 Areawide Waste Treatment Management Plan (Plan Update). In your letter you ask us to provide: (i) information concerning the identity of potential designated management agencies ("DMAs") and the timing of designation; (ii) information concerning the measures MassDEP could take to ensure timely implementation of the final 208 Plan Update, and the timeline MassDEP envisions for taking such measures; and (iii) information concerning how MassDEP intends to address the nitrogen problem on Cape Cod on a watershed basis.

Over the past decade, MassDEP has been diligently working with the Cape Cod Commission ("Commission") and the University of Massachusetts at Dartmouth ("UMass Dartmouth") on the Massachusetts Estuaries Project ("MEP") in order to provide the scientific studies communities need to effectively address the specific water quality issues impacting Cape Cod's estuaries. Over \$6.9 million in state funds and \$4 million in matching funds from Cape Cod communities and UMass Dartmouth have been expended on this effort. Based on the MEP studies conducted to date, it has become increasingly clear to MassDEP that the most effective and affordable approach to solving Cape Cod's water quality problem is through a regional, watershed-based management approach.

## ATTACHMENT 4

To facilitate such an approach, in 2013 MassDEP directed the Commission to prepare an update to the 1978 Water Quality Management (WQM) Plan for Cape Cod in accordance with §208 of the Federal Clean Water Act (“CWA” or the “Act”). The Plan Update was submitted to MassDEP on March 16, 2015 after an extensive public participation process that included numerous public meetings across the Cape and input from hundreds of residents, community officials and stakeholders. As expected, the Plan reflects a watershed-based approach, as watersheds, not town boundaries, define the scope of the problem and possible solutions. On June 10, 2015, Governor Charles D. Baker certified the Plan Update pursuant to § 208(b)(3) of the Federal Clean Water Act and submitted the plan to EPA. The Plan Update examines the causes of water quality issues on Cape Cod and provides options for communities to consider, including new planning tools to use in making local decisions about potential solutions. The Plan Update also offers greater flexibility and discusses financing and funding options to help implement those solutions. In addition, it offers details on the following:

- Opportunities for communities to share systems to reduce costs;
- Analysis and planning tools, such as GIS mapping, to further understand if alternatives to large sewer systems and sewage treatment plants can work in certain locations and circumstances;
- The potential use of enhanced septic technologies; and
- Natural solutions in areas near the water’s edge, such as the creation of wetlands, to help absorb nitrogen.

In submitting the Plan Update, Governor Baker also affirmed that the local communities identified as the designated management agencies (“DMAs”) under the 1978 WQM Plan will continue as the DMAs for the purposes of the new Plan Update. These local communities have the requisite legal, institutional, managerial and financial capability to carry out their responsibilities in accordance with section 208(c)(2)(A) through (I) of the Act, including responsibilities:

- to carry out the area wide waste treatment management plan;
- to manage waste treatment works and related facilities;
- to design and construct new works, and to operate and maintain new and existing works as required by the 208 Plan;
- to accept and utilize grants, or other funds from any source, for waste treatment management purposes;
- to raise revenues, including through the assessment of waste treatment charges;
- to incur short- and long-term indebtedness;
- to assure in implementation of the 208 Plan that each participating community pays its proportionate share of treatment costs;
- to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of the 208 Plan; and
- to accept industrial wastes for treatment.

Given the shared nature of the water resources on Cape Cod, collaboration across town boundaries is appropriate and often necessary in order to fulfill the requirements of §208. An examination of the essential requirements of a DMA suggests that one or more town(s) could implement watershed-based solutions utilizing existing inter-municipal collaboration tools to

## ATTACHMENT 4

carry out the final 208 Plan Update. Doing so would keep the process of decision making local, a goal MassDEP understands is shared by communities across Cape Cod. To assist communities in developing the management programs to address shared watersheds, the Plan Update includes a breakdown of subembayment and nitrogen reduction responsibility by town.

Regarding the timing of implementation of the Plan Update, the proposed approach includes a requirement that within 12 months of certification of the Plan Update, DMAs will develop “watershed reports” that outline potential scenarios for each of the watersheds for which they are responsible. In the event that a DMA does not develop a watershed report for a given area, the Cape Cod Commission will issue a report, which will stand as the DMA plan for that watershed unless and until a study is completed by the DMA and an alternative watershed report consistent with the Plan Update is developed by the DMA. MassDEP is supportive of this approach and, continuing our work in close coordination with the Commission, we are prepared to give communities sufficient time to establish their programs consistent with this collaborative framework.

The Baker Administration is also committed to providing resources to assist communities with efforts to implement the Plan Update. We are committed to providing support through loans and other forms of assistance from the Clean Water Trust’s State Revolving Fund. This Fund will be used for planning and construction projects that are consistent with the Plan Update. In addition, a key element of the plan will be the implementation of an effective monitoring program. To assist communities with this effort, Energy and Environmental Affairs Secretary Matt Beaton has committed to supporting the Cape Cod Water Quality Monitoring Initiative, which will involve four years of extensive water testing at stations situated along Cape Cod Bay, Buzzards Bay and Nantucket Sound. A commitment has been made to provide \$250,000 per year allocated over four years by the Executive Office of Energy and Environmental Affairs and will be equally matched by funds appropriated by Barnstable County. In addition, we are committed to continuing to work with the Cape Cod Commission to provide technical assistance to Cape communities as they move forward with planning and implementing solutions.

MassDEP also recognizes that successful implementation of the final 208 Plan Update will depend on the issuance of strong watershed permits – permits that result in the achievement of incremental nitrogen reductions targets over a 20-year permit duration. Under the watershed permit approach, nitrogen loads will be allocated on a watershed by watershed basis. MassDEP is working diligently to devise a watershed permitting program, including new regulations as necessary, to establish an adaptive management approach with performance standards. The watershed permit will identify all technology options considered for the particular watershed as well as each permittee’s specified annual discharge limit. This approach will allow permittees to consider non-traditional treatment alternatives in addition to traditional treatment alternatives, provided that the traditional and non-traditional alternatives are identified in a plan that establishes the conditions for implementation, monitoring for effectiveness and, in the event of any under-performing technologies, any necessary changes in approach needed to achieve water quality goals in a timely manner.



## ATTACHMENT 4

MassDEP believes the 208 Plan Update provides a unique opportunity to empower the Cape communities to develop and implement the most affordable and effective solutions to the water quality problems facing Cape Cod. The Plan Update discusses several existing authorities that are available to MassDEP and could be used if needed moving forward. These include the following:

### **Designation of Nitrogen Sensitive Areas (“NSAs”)**

MassDEP regulates wastewater flows less than 10,000 gallons per day under 310 CMR 15.000 (commonly known as “Title 5”). Title 5 typically covers such uses as conventional on-site septic systems, alternative systems, such as denitrifying systems, as well as composting toilets and other kinds of systems in use on individual properties or cluster developments. MassDEP is authorized by Title 5 to identify certain areas as particularly sensitive to pollution from on-site wastewater systems and, therefore, require the imposition of loading restrictions. MassDEP may consider watersheds to embayments on Cape Cod that exceed their critical load to be “nitrogen sensitive,” and it could proceed to designate, as needed, watersheds as NSAs if needed to support the goals of the 208 Plan.

### **Formation of Water Pollution Abatement Districts (“WPADs”)**

Under M.G.L. c. 21, § 28, MassDEP is authorized to form WPADs consisting of one or more cities or towns, or designated parts, or require the enlargement or consolidation of a district, if necessary “for the prompt and efficient abatement of water pollution.” After formation, the district would be an independent legal entity administered by a “district commission,” and it would be responsible for developing watershed plans, applying for the requisite permits, and constructing and operating the treatment works necessary to meet permitting requirements. The establishment of districts for those watersheds remains a tool available for consideration in the appropriate circumstances. These districts could serve as regional management agencies for purposes of carrying out the 208 Plan Update.

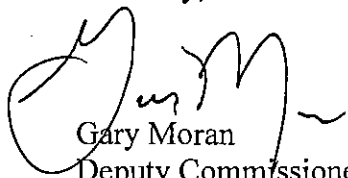
### **Eliminate Title 5 Exemption in Groundwater Discharge Regulations**

Discharges of pollutants to the ground waters of the Commonwealth are regulated through Massachusetts’ Groundwater Discharge Permit Program. Currently, the Groundwater Discharge regulations, at 310 CMR 5.05(1)(a) exempt on-site septic systems that receive less than 10,000 gallons per day provided they are approved, constructed and maintained in accordance with the Title 5 regulations, 310 CMR 15.000. This exemption is based on a presumption that compliant Title 5 systems meet water quality standards. Based on evaluation of Cape Cod’s waterbodies, MassDEP could consider and adopt revisions to Title 5 and groundwater discharge regulations for septic systems in certain areas, where there is sufficient evidence to demonstrate that septic systems are a significant contributor to nonattainment. Septic systems could continue to be presumed to be protective if the town in which the system is located has a MassDEP-approved Comprehensive Water Resources Management Plan and/or is part of a plan deemed consistent with the 208 plan.

## ATTACHMENT 4

In closing, it is important to reinforce that Governor Baker's certification of the 208 Plan Update is a key milestone – the culmination of over two years of intensive work by the Commission's staff, consultants and 170 stakeholders from across the Cape. It's also a continuation of years of effort to address excessive nitrogen entering Cape Cod embayments, mainly from residential septic systems, through the Massachusetts Estuary Project. While there are certainly many challenges ahead, MassDEP applauds the Commission and citizens and stakeholders of Cape Cod for laying the groundwork through the draft 208 Plan Update for tailoring a management program that will support the Cape's water quality goals, financial interests, and governance style for generations to come.

Sincerely,



Gary Moran  
Deputy Commissioner

# ATTACHMENT 5

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



CAPE COD  
COMMISSION

---

(508) 362-3828 • Fax (508) 362-3136 • [www.capecodcommission.org](http://www.capecodcommission.org)

August 25, 2015

Ken Moraff, Director, Office of Ecosystem Protection  
United States Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109

Re: Section 208 Cape Cod Areawide Water Quality Management Plan Update

Dear Mr. Moraff,

In 2013 the Massachusetts Department of Environmental Protection (MassDEP) directed the Cape Cod Commission to prepare an update to the 1978 Water Quality Management Plan for Cape Cod, pursuant to Section 208 of the Clean Water Act. The Plan Update was certified by Governor Charles D. Baker on June 12, 2015 and submitted to EPA. As requested, this memorandum provides additional information regarding the designation of Waste Treatment Management Agencies (WMAs) and the institutional arrangements between WMAs and the designated areawide planning and management agency, including a progress update, a detailed schedule for implementation actions between June 12, 2015 and June 12, 2016 and a summary of areawide enforcement options.

## **Institutional Arrangements**

The Cape Cod Commission is the designated areawide planning and management agency and the 15 municipalities of the planning area have been designated as WMAs. The general division of responsibilities between these two programs is as follows:

- **Regional Role:**

- Planning

- The identification and designation of nitrogen sensitive watersheds, assignment of nitrogen load responsibility for each WMA, identification of applicable technologies and strategies for development of Targeted Watershed Management Plans, including existing wastewater systems and treatment levels, and an overall plan for disposal of residual wastes will be included in areawide planning.

# ATTACHMENT 5

## Management

- Maintain and update a land use and water quality database.
- Support the development of Targeted Watershed Management Plans with locally deployed watershed teams.
- Establish a regulatory program to determine consistency of all water quality plans with the 208 Plan Update, the development of preliminary watershed reports, and the establishment of water quality performance criteria including regional standards and watershed permits.
- Receive and manage financial resources necessary for water quality projects determined consistent with the 208 Plan Update.
- **Role of WMAs:** The preliminary designs and studies related to Targeted Watershed Management Plans including detailed evaluation surveys, surface and sub-surface investigations of sites for treatment types, and preliminary design and detailed cost-effectiveness studies including the environmental assessment of individual treatment types.

## Areawide Planning and Management

The Cape Cod Commission has developed and will implement a comprehensive management plan to meet the responsibilities of Section 208 of the Clean Water Act. The plan encompasses the broader tasks of collecting, organizing, and disseminating information, providing technical assistance, and enforcing solutions. A comprehensive management approach to meeting the responsibilities set forth in Section 208 of the Clean Water Act. Responsibilities can be grouped into four main categories, outlining actions necessary to implement the 208 Plan Update and restore water quality: Information, Support, Regulatory Reform, and Funding.

### Information Program

#### *CCC Water Quality Data Center*

The Cape Cod Commission's Strategic Information Office (SIO) maintains an extensive database that includes parcel specific land use, water use, wastewater flow, and nitrogen load data, as well as buildout projections, zoning, and assessed values. The database stores a variety of static and dynamic spatial data, including planimetric features, watersheds, ponds, drinking water wells, groundwater contours, and wellhead protection areas and serves as the backbone of the regional water quality data center.

The center provides a centrally-located, stable platform for the performance monitoring data of the myriad of potential nutrient reduction, remediation and restoration technologies and approaches. Annual updates to the Technologies Matrix will be

## ATTACHMENT 5

maintained in this water quality data center and made available to the region. This information loop will provide a platform for a sustainable dialogue on information available to address the region's water quality problems.

The center's information and resources facilitate the development, implementation, and tracking of adaptive management plans for water quality improvements, in addition to a range of other capital improvements needed throughout the region.

The information hosted by the Commission is available and freely accessible to the public.

### Establish Support

#### *Watershed Teams*

The Cape Cod Commission will assist WMAs as they develop Targeted Watershed Management Plans. Staff expertise includes and is not limited to water resources and hydrology, land use planning, legal and regulatory, public participation and outreach and economic development planning. Staff is familiar with the information and resources of the regional water quality center and can assist in applying that data at different planning scales, targeted watersheds, sub-regional and regional.

Utilizing a Watershed Team positions a WMA to align their watershed planning efforts with the Section 208 Plan Update early in the process. The Watershed Team format will allow WMAs to expedite the regulatory review that would otherwise be required.

#### *Status Updates*

WMAs will be required to provide periodic status updates on their activities to ensure effective tracking of implementation and progress. This information will be used to develop annual reports, maintain a status website, and for early identification of areas that are failing to meet the requirements set forth in the 208 Plan Update.

### Establishment of a Regulatory Program

The 208 Plan Update outlines a framework for regional collaboration with the specific development of Targeted Watershed Management Plans remaining with WMAs. The many local planning efforts resulting from this process will be coordinated through a regulatory program to ensure implementation and encourage efficiencies. The regulatory program is detailed below.

#### *208 Consistency Review*

All nutrient management planning in the region will be subject to review for consistency with the 208 Plan Update. The review will include, but not be limited to, community engagement, hybrid watershed planning approach, nutrient growth management plan, applicable minimum performance standards and best management practices for siting technologies.

## ATTACHMENT 5

### *Capital Development of Regional Impact (“CDRI”) Review*

Currently municipal wastewater management plans are reviewed by the Commission as Developments of Regional Impact (DRI) – by the same standards and best practices as single parcel commercial developments as set forth in the Cape Cod Commission Act and Regional Policy Plan (RPP). The Section 208 Plan Update recognizes the need to modify existing Commission regulations in order to accommodate the unique nature of wastewater management planning.

The Commission will be proposing for adoption and incorporation into the RPP and regulations, a new Capital Development of Regional Impact (CDRI) review process for larger, systemic phased projects such as comprehensive wastewater management plans and targeted watershed management plans. The CDRI process will require a 208 Consistency Review and any CDRI approval decision will include conditions requiring progress updates, an adaptive management plan and monitoring requirements, forming the basis for a watershed permit.

### *Development Agreement*

Pursuant to Section 14 of the Cape Cod Commission Act, a development agreement is a binding contract, the purpose of which is to negotiate and establish the development regulations that will apply to the subject property during the term of the agreement and to establish the conditions to which the development will be subject. The Commission, municipalities, state agencies and qualified applicants may enter into a development agreement. A development agreement takes the place DRI review and is typically appropriate for projects that involve a large area of development including multiple uses or structures, where construction is anticipated in phases, and where a project would benefit from comprehensive review of the foreseeable and planned development to allow for planning of efficient infrastructure. This would be an alternative to the CDRI review.

To address nitrogen impacts, a comprehensive management plan and/or targeted watershed management plan(s) for one or more nitrogen impacted subembayment watersheds, developed by one or more WMAs, would potentially be eligible for consideration as a development agreement. The agreement will be executed by the municipalities, the Commission, and appropriate state agencies if participants. The development agreement process will require a 208 Consistency Review and the voluntary binding contract will require progress updates, and an adaptive management plan and monitoring requirements, forming the basis for a watershed permit.

### *Watershed Permit*

The Massachusetts Department of Environmental Protection is authorized to issue watershed permits. The discussion of the development of appropriate regulations determining specifics of the permitting process is in progress. The watershed permit, as contemplated in the 208 Plan Update is a comprehensive nutrient control permit,

## ATTACHMENT 5

establishing water quality goals and providing an expedited path for permitting solutions and a full accounting of collective nitrogen related efforts of WMAs.

The Commission anticipates piloting at least one watershed permit in 2016 and will issue permitted watershed nitrogen limits for each nitrogen-sensitive watershed identified in the 208 Plan Update. The permit will incorporate water quality performance criteria and limits necessary in evaluation of proposed Targeted Watershed Management Plans and referenced in CDRI review.

### *Nitrogen Impact Fees*

Pursuant to Section 15 of the Cape Cod Commission Act and accompanying regulations, impact fees may be assessed by municipalities. In pertinent part, the impact fee must have a rational nexus and be roughly proportional to an impact created by the development; it shall reasonably benefit the proposed development; it shall be used for the development or improvement of municipal capital facilities; and it shall be spent, used, or obligated within a reasonable period of time, not to exceed 10 years.

Additionally, it shall be paid to and held in a separate account for each type of impact fee assessed in the municipality in which the proposed development is located, and in the event that the proposed development is located in or impacts more than one municipality, the impact fee shall be rationally apportioned among the municipalities with a certified comprehensive plan in accordance with the land area of the proposed development in each municipality or in such other allocation as may be jointly agreed upon by the participating municipalities. Impact fee bylaws/ordinances may authorize the creation of a service area/benefit district which encompasses more than one municipality, in which case the bylaw/ordinance shall specify the boundaries of the service area/benefit district and shall further specify that such impact fee shall be administered consistent with a valid intergovernmental agreement.

In addition, the Commission may impose impact fees on proposed developments for improvements to capital facilities after holding a public hearing and adopting regulations. Nitrogen impact fees as discussed in Chapter 7 of the 208 Plan Update take into account the direct capital costs required to accommodate new developments with wastewater infrastructure and, to the extent measureable, the costs of other negative consequences that may impact the public. The 208 Plan Update sets forth guiding principles for establishing a nitrogen impact fee system.

### *District of Critical Planning Concern ("DCPC")*

Cape Cod Commission Act Section 10(a) enables the Commission to propose the designation of certain geographic areas which are of critical value to Cape Cod as DCPCs that must be preserved and maintained due to one or more of the following factors:

- (1) The presence of significant natural, coastal, scientific, cultural, architectural, archaeological, historic, economic or recreational values of regional, state-wide or national significance; or

## ATTACHMENT 5

- (2) The presence of substantial areas of sensitive ecological conditions which render the area unsuitable for development; or
- (3) The presence or proposed establishment of a major capital public facility or area of public investment.

A DCPC is a planning tool that allows for the adoption of special regulations to protect, preserve or promote an area. With the district designation, comes a 12-15 month moratorium on certain development as deemed necessary to support the purposes of the district. A DCPC could be used to specify growth expectations in watersheds that are shared by more than one town. A DCPC could also be nominated by a municipality for land within a shared watershed to a nitrogen-sensitive embayment that is contained within a neighboring jurisdiction.

### Financial Program

The Commission will continue to develop the financial resources outlined in the 208 Plan Update and will provide additional detail in a financial resources chapter of the July 2016 implementation report.

The Commission will complete a financial model for WMAs to use in evaluating Targeted Watershed Management Plans.

The Commission will establish and administer a Cape Cod Capital Trust Fund. The Fund will be authorized to receive and manage financial resources necessary for the design and implementation of water quality projects determined consistent with the 208 Plan Update.

### **Waste Treatment Management Agencies**

The 15 towns of Barnstable County have been designated waste treatment management agencies (WMAs) consistent with their designation as designated management agencies (DMAs) in the 1978 Plan. Each town has the ability to meet the requirements set forth in Section 208(c)(2)(A-I) of the Clean Water Act and are the appropriate entities to develop and implement local decisions regarding technology selection and placement.

The town designations focus on developing watershed reports, building consensus through a public process at the local level, and operationalizing projects. The municipalities have traditionally been the responsible party for planning, design, construction and management of wastewater infrastructure and these efforts should continue.

### Progress to Date

Over the past decade or more Cape Cod communities have worked to address water quality issues identified by the Massachusetts Estuaries Project (MEP) technical reports and Total Maximum Daily Loads (TMDLs). However, the regulatory and funding schemes have encouraged town-wide solutions to watershed-based problems. The Cape Cod 208 Plan Update facilitates a watershed-based management approach to create affordable and effective solutions that communities can support.



## ATTACHMENT 5

Since submission of the draft 208 Plan Update on March 16, 2015, the majority of Cape Cod communities have utilized Watershed Team technical assistance from the Cape Cod Commission to supplement municipal expertise and proactively address the need for consistency between local planning and the regional plan. Each local plan will be reviewed for consistency with the 208 Plan Update and engaging with Commission staff early in the process will help to ensure compliance with this requirement.

The towns of Dennis and Eastham, both of which are working toward the development of their Comprehensive Wastewater Management Plans (CWMPs) requested staff meetings with their local consultants to discuss conceptual plans and the use of decision-support tools to develop scenarios, consider alternatives, and engage the community. Water Resources and GIS staff has assisted both communities.

The Pleasant Bay Alliance, representing the towns of Brewster, Chatham, Harwich, and Orleans, has requested assistance with data analysis to inform ongoing management efforts for the entire Pleasant Bay watershed and estuary. Planning, Water Resources, and GIS staff has been assisting this group. In addition, the Town of Brewster has submitted their Integrated Water Resources Management Plan (IWRMP) to the Cape Cod Commission for a 208 Plan Update consistency review.

The Town of Orleans initiated a Water Quality Advisory Panel (WQAP) to revisit their approved CWMP, re-evaluate alternatives, and develop a conceptual plan, which was funded at the spring 2015 Town Meeting. The WQAP met monthly and was modeled after the stakeholder process utilized to develop the 208 Plan Update. Cape Cod Commission staff, including Water Resources, legal staff and the Commission's Deputy Director, as well as MassDEP, sat at the table with local stakeholders, who worked together to develop a hybrid plan that has the potential to save 40% over the original plan developed for the town.

Most recently, the Town of Barnstable has requested that the Cape Cod Commission and MassDEP, participate on their reconstituted Citizen Advisory Committee (CAC). In addition, Three Bays Preservation, Inc. has provided funding for Commission staff and consultants to identify approaches that could be used throughout the Three Bays watershed, including the development of conceptual level designs for select projects. Early in 2014 the Town of Falmouth received a MEPA Certificate of Adequacy and a DRI approval from the Cape Cod Commission for their CWMP. Spring 2014 Town Meeting approved funds to construct the Little Pond watershed collection system and implement pilot projects, including the Bournes Pond inlet widening, installation of eco-toilets, and aquaculture, with the intent to develop a more detailed adaptive management plan moving forward.

Other communities are moving forward with CWMPs, including the Town of Mashpee, which is in the MEPA/DRI review process now and the Town of Harwich, which anticipates submitting their CWMP for review in the fall of 2015. Both will be subject to a 208 Plan Update consistency review. The Town of Mashpee has engaged Commission staff

## ATTACHMENT 5

in discussions around nitrogen allocation and the Town of Harwich engaged Commission staff early in the process to discuss opportunities and methods for public engagement.

### **Implementation Schedule**

A 12 month implementation schedule is described in the 208 Plan Update and adhering to this schedule is important to success. Achieving the goals of the 208 Plan Update will require continued participation from the WMAs, the Cape Cod Commission, MassDEP and EPA. Deliberate EPA involvement might include semi-annual progress meetings, involvement in the technologies matrix update and the Technologies Summit, and ongoing participation on the Monitoring Committee. The following implementation schedule is suggested:

September 2015: Issue technical guidance on disposal and monitoring protocols

October 2015: Formalize a Monitoring Program

The ad hoc Monitoring Committee is scheduled to provide technical guidance on monitoring protocols in September 2015, following which the mission and structure of the committee will be revisited and future tasks will be outlined.

November 2015: Issue Capital Development of Regional Impact regulations

January 2016: Joint EPA, MassDEP, CCC, WMA meeting

An EPA-sponsored joint meeting to review progress toward watershed plan development will allow for an evaluation of the status of watershed planning and the level of effort required to ensure milestones will be met.

January 2016: Technologies Panel and Technologies Matrix Update

The Cape Cod Commission will convene an ad hoc panel of experts to review and update the Technologies Matrix. It is anticipated that the panel will meet several times prior to the Technologies Summit in May and review the Matrix for both structure and content.

February 2016: Launch Regional Water Quality Data Center website

May 2016: Technologies Summit

The Cape Cod Commission anticipates holding the first annual Technologies Summit in May, with the participation of the WMAs, EPA and MassDEP, among others.

## ATTACHMENT 5

June 2016: Joint EPA, MassDEP, CCC, WMA meeting

An EPA sponsored joint meeting to review progress toward watershed plan development, review draft watershed plans, and discuss the draft implementation report detailing progress made in the first 12 months of implementation.

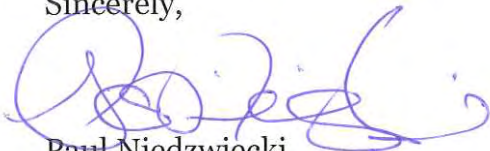
July 2016: Implementation Report

As described in the 208 Plan Update, the Cape Cod Commission will submit an implementation report to MassDEP and EPA describing the actions of WMAs to date. The report will include watershed reports that outline conceptual scenarios for each of the 53 watersheds. These watershed reports will outline a traditional and non-traditional scenario for each watershed and, in some cases, may begin to consider a hybrid scenario. Combined, these scenarios can form the basis for an adaptive management plan and a watershed permit. It is anticipated that Boards of Selectmen will sign off on each of the watershed reports for which their town has jurisdiction as a starting point for more detailed planning. In the event that a WMA does not provide a watershed report the Cape Cod Commission will issue a report pursuant to the watershed planning approach identified in chapter 5 of the 208 Plan Update, which will stand as the WMAs plan for that watershed unless or until a study is completed and an alternate watershed report consistent with the 208 Plan Update, is developed by the WMA.

July 2016: Release nitrogen impact fee schedule for all nitrogen sensitive watersheds

Participation by and coordination between all of the parties described in this memo will be necessary to ensure implementation of the 208 Plan Update and compliance with the schedule set forth. However, the Commission recognizes that EPA has the authority to request an update if implementation milestones are not achieved or if compliance is not adequate.

Sincerely,



Paul Niedzwiecki  
Executive Director