

Cape Cod and Islands Water Protection Fund FAQ

Updated 5/6/2019

The Cape Cod and Islands Water Protection Fund was signed into law as part of the short term rentals bill by the Governor on December 28, 2018:

<https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter337>

Some tweaks/fixes were made to the law in an FY19 Supplemental Budget signed by the Governor on March 29, 2019:

<https://malegislature.gov/Laws/SessionLaws/Acts/2019/Chapter5>

For information on the short term rental legislation implementation here is a link to the Department of Revenue's FAQs: <https://www.mass.gov/info-details/short-term-rentals-frequently-asked-questions>

The creation of the fund was a priority for the entire Cape & Islands Legislative Delegation. The delegation is hopeful the fund will bring significant state support to all participating municipalities in the region to address wastewater needs and environmental stewardship.

This FAQ is our best attempt to provide information and answer questions relative to the intent of the law and its forthcoming implementation. Further guidance will be provided as it becomes available.

Does Cape Cod have a problem with its water quality?

Yes, there is a very serious problem.

Cape Cod's water quality is degrading and impaired due to excess nitrogen in embayments and water bodies. According to an October 2017 Cape Cod Times editorial, the peninsula's 125,000 septic systems cause 85 percent of the nitrogen pollution in the region's waters, followed by 10 percent caused by residential and commercial use of pesticides and storm runoff contributing 5 percent. The islands of Martha's Vineyard and Nantucket face similar levels of nitrogen pollution.

Available studies indicate that Cape Cod's embayments and estuaries need a 87 percent reduction of nitrogen to meet U.S. Environmental Protection Agency (EPA) clean water standards.

What is the effect of the current nitrogen pollution in our waters?

Nitrogen pollution is depleting oxygen for fish, smothering eel grass and shellfish beds, and creating noxious mats of algae on beaches. Algae and bacteria proliferate by feeding on the nitrogen, choking the waterways with green and brown sludge and killing aquatic life.

Excess nitrogen causes beach closures and marine habitat destruction, which threatens the shellfishing industry and tourist economy. Severe cases of nitrogen pollution have led to major fish kills in the Waquoit and Popponesset embayments on Cape Cod.

How did this happen?

Cape Cod is a victim of its popularity and geology. Currently there are 125,000 septic systems across Cape Cod – which is 20 percent of the septic systems in the Commonwealth. Due to Cape Cod's sandy and porous soil, nitrogen travels from septic systems and ends up in marine and fresh water ecosystems. Even when septic systems are removed, nitrogen remains in the soil and continues to impact Cape waters.

In 1978, the wastewater plan for Cape Cod concluded that Title 5 septic systems were an adequate form of wastewater disposal for the region's development. Therefore, towns chose not to install sewers when the federal government offered help to subsidize the cost.

Unfortunately, the septic systems were not able to properly handle Cape Cod's economic and development boom of the 1980s and 1990s, and, as a result, excessive loads of nitrogen in marine water have polluted the region's water ecosystems.

Due to the degraded water quality, there was a lawsuit filed by the Conservation Law Foundation in 2011 to enforce the Clean Water Act. What is the summary of the suit?

The Conservation Law Foundation sued the EPA alleging that since 1978 the agency had violated its mandatory duty to require regular annual updates to the Cape Cod Regional 208 Wastewater Plan. The lawsuit alleged that the failure of the EPA to enforce the Clean Water Act resulted in severe nitrogen pollution to Cape Cod's surface water, ponds and bays.

What was the result of the lawsuit?

In 2015, a settlement agreement was approved that, in part, had the Commonwealth of Massachusetts direct the Cape Cod Commission to work with the 15 Cape towns to create an updated 208 wastewater plan. The state also granted the Commission \$3.35 million to update the areawide plan.

In addition, the EPA approved the Commonwealth's designation of all 15 Cape Municipalities as Wastewater Management Agencies. This means that all ***Cape Cod towns are legally mandated to develop and build wastewater management systems to clean-up nitrogen pollution***, with the goal of ensuring the updated 208 Plan is effective on a regional basis. In effect, all towns are responsible for the Cape-wide clean-up.

What is the current status of the legal settlement?

The lawsuit was stayed as long as there was a proper update and implementation of an updated 208 Plan.

To meet the legal mandate, the Cape Cod Commission developed and drafted a comprehensive 208 Plan Update. It is a watershed-based approach to restore embayment water quality on Cape Cod. This plan was approved by Massachusetts Department of Environmental Protection (MassDEP), certified by Governor Charlie Baker in June 2015, and approved by the EPA in September 2015.

Under the settlement, the EPA committed in 2015 to assess the actions taken in the first six years of the updated 208 Plan implementation to see if further action is needed.

In addition, progress is being closely monitored by the Conservation Law Foundation, the plaintiff – ***insufficient action by Cape towns could lead to the plaintiff to petition the judge for court-ordered solutions.***

How much will the nitrogen pollution clean-up plan, also known as the “208 Plan Update” cost across Cape Cod?

There is a very steep price tag for eliminating or reducing nitrogen pollution in Cape Cod waters – the estimate by the Cape Cod Commission is \$4 billion over 50 years. Here is the breakdown of the \$4 billion under the 208 plan:

- Property taxpayers and businesses will pay for 50 percent of the clean-up, or \$2 billion.
- The State agreed to fund 25 percent, or \$1 billion of the clean-up
- The Federal Government is estimated to also pay 25 percent or \$1 billion.

What is the purpose of establishing the Cape Cod and Islands Water Protection Fund?

The Cape Cod and Islands Water Protection Fund (CCIWPF) was created to capture \$1 billion in state revenue to help Cape Cod towns pay for upgrading their wastewater plans. By assessing a 2.75% excise tax on traditional lodging and short term rentals, visitors to the region would help contribute toward the steep price of wastewater upgrades needed to accommodate the population surge during the summer season. Once realized, the fund will provide \$1 billion in property tax relief to property owners and businesses toward the \$4 billion price tag.

The CCIWPF will help cover the cost of implementing Cape Cod's comprehensive 208 Plan as well as offer Martha's Vineyard and Nantucket a financial tool to help with their wastewater abatement plans.

It is important to note that Martha's Vineyard and Nantucket are not part of the EPA lawsuit settlement agreement. However, both islands have similar wastewater challenges, so they were included in the CCIWPF to give them access to state revenue to help with their wastewater management plans.

The CCIWPF was created by a diverse set of stakeholders including local officials, environmental groups, business leaders, the Cape Cod Chamber of Commerce, the Martha's Vineyard Commission and the Cape and Islands Legislative Delegation. The CCIWPF will take significant steps to address a critical environmental problem, will help fulfill the legal agreement reached in the Conservation Law Foundation lawsuit vs. EPA, and will allow a billion dollars in property tax relief.

What is the CCIWPF?

The CCIWPF is a dedicated fund within the state's Clean Water Trust set up to solely benefit communities on Cape Cod, Martha's Vineyard, and Nantucket. The fund is administered by the existing Clean Water Trust and overseen by a management board comprised of representation from every member town from the region.

Who are members of the CCIWPF?

Under the law, each participating town appoints one member to the Cape Cod and Islands Water Protection Fund Management Board. Currently, all 15 Cape Cod towns are members of the CCIWPF Board due to the legal mandate to have an updated 208 Plan.

The towns on Martha's Vineyard and the town of Nantucket will become members once the towns have a wastewater management plan that is approved by MassDEP.

How can towns on Martha's Vineyard and the town of Nantucket join the CCIWPF?

The provisions in the law, relevant to the town of Nantucket and the towns in Dukes County, states that any of those seven municipalities can opt-in to membership in the fund and begin assessment of the 2.75% excise tax on room occupancy in their town, if they have an active 208 Plan, or an approved "208 Plan equivalent" by the MassDEP.

MassDEP will work with the six towns on Martha's Vineyard and the town of Nantucket to establish a criteria for those towns to receive approval of an "equivalent" plan. Once MassDEP has approved their plan, a town is eligible to become a member of the CCIWPF Board. MassDEP will approve a town's plan if the town makes the request to the agency and will work collaboratively with the municipality.

Chapter 5 of the Acts of 2019, added this provision in Section 11 to provide clarity on how municipalities in Dukes and Nantucket counties opt into the fund after receiving DEP

approval for their suitable equivalent plan: *“following 30 days after the municipality has joined the fund or on the first day of a later calendar quarter, as the municipality may designate by a majority vote of the chief executive officers* of the municipality.”*

In Section 8 of Chapter 5 of the Acts of 2019 , further clarity was added that a suitable equivalent plan must be presented to DEP for approval by a Select Board vote, for municipalities in Dukes or Nantucket Counties: *“as submitted to the department of environmental protection by a majority vote of the chief executive officers* of the municipality.”*

*(*chief executive officers refer to Select Boards or Town Councils.)*

How are members appointed to the CCWIPF Board?

The law states that CCIWPF Board members are appointed by Board of Selectmen or Town Council and that an appointee can either be a town manager, town administrator or other municipally employed professional staff, or a member of that respective appointing authority,

The executive director of the Cape Cod Commission, the executive director of the Martha’s Vineyard Commission and the town manager of the Nantucket shall serve as non-voting members of the board.

The members of the board each serve a three year term. The members of the management board are tasked with selecting a member to serve as chairperson and vice-chairperson for a term established by a vote of the management board.

How is the CCIWPF Board staffed?

The Cape Cod Commission, in consultation with the Martha’s Vineyard Commission, is tasked with providing technical and administrative support to the board. The commissions may be compensated for its associated costs by a vote of the management board.

What are the duties of the CCIWPF Board?

The management board duties are limited to determining the method for subsidy allocation, including but not limited to, an equitable distribution among participating municipalities for projects and debt relief. The Board ensures that monies from the fund are spent only for the purposes listed in the law.

Is there a process to ensure that revenue for projects and debt relief is evenly distributed to participating towns across the Cape and Islands?

Yes, that responsibility will rest with the CCIWPF management board.

What will be the sources of revenue for the fund?

The initial source of revenue for the CCIWPF will come from a 2.75% excise tax that will be automatically imposed on rooms rented in a bed and breakfast establishment, hotel, lodging house, short term rental or motel located within a municipality that is a member of the CCIWPF.

The CCIWPF can also receive revenue from multiple sources, including the state and federal government via grants or appropriations, to improve water quality on Cape Cod, Martha's Vineyard and Nantucket.

How do I know when a 2.75% excise tax is assessed on my lodging establishment or short term rental?

All 15 Barnstable County towns are already automatically enrolled in the CCIWPF and the 2.75% excise tax will be assessed on all vacation lodging rentals.

The legislative intent was for the excise tax to automatically apply to a short-term rentals starting July 1, 2019 for which a rental contract was entered into on, or after, January 1, 2019. In addition, the excise would be applied to all traditional lodging establishment rentals for room rented starting July 1st.¹

For more information on tax collection, please see the DOR FAQs:

<https://www.mass.gov/info-details/short-term-rentals-frequently-asked-questions>

Currently, Martha's Vineyard and Nantucket are not members of the CCIWPF as they were not part of the 2011 Conservation Law Foundation lawsuit. Once these towns chose to opt-in to the CCIWPF, then the 2.75% excise tax will be assessed on all occupancy in the member towns.

Why implement the additional 2.75% excise tax?

With the steep price tag for the wastewater management plans, the Cape and Islands legislative delegation searched for a way to fund the Commonwealth's commitment to fund \$1 billion of the estimated \$4 billion cost for clean-up on Cape Cod. The 2.75% additional excise is the same surcharge that the state has used to finance convention centers in Boston, Worcester, and Springfield.

¹ The statute will be updated with specific language to ensure that July 1, 2019 is the date when all vacation lodging will start collecting the CCIWPF excise tax.

As an international tourist destination, towns on Cape Cod, Martha's Vineyard, and Nantucket see a seasonal population influx that doubles—and in some cases triples—the cost of wastewater management solutions.

The law draws on the reciprocal relationship between tourism and the environment to enable the region to address growing concerns around water quality by allowing municipalities on Cape Cod, Martha's Vineyard, and Nantucket to use the proceeds of the 2.75% excise tax to contribute to the CCIWPF, which will provide an appropriate avenue to fund crucial wastewater infrastructure projects in the region.

How will the revenue in the fund be disbursed?

The Clean Water Trust, after receiving project approvals and recommendations from the Management Board of the Cape and Islands Water Protection Fund, will apply or disburse the revenue to recommended wastewater abatement projects.

The revenue will provide subsidies and other assistance, which may include principal forgiveness, to local governmental units and other eligible borrowers in the payment of debt service costs on loans and other forms of financial assistance made by the trust for water pollution abatement projects in municipalities that are members of the fund.

Amounts credited to the fund will be expended or applied only with the approval of the CCIWPF Management Board and in a manner determined by the board.

Will the CCIWPF revenue replace or duplicate the Clean Water Trust revenue that towns or watersheds are already receiving or applying for their wastewater management plans?

No. CCIWPF is meant to supplement any revenue received from the Commonwealth's State Revolving Fund (SRF) – this distinction is critically important. The statute was written to ensure that current funding levels for the Cape Cod, Martha's Vineyard and Nantucket would not be jeopardized.

Proceeds of the fund cannot be used to offset or otherwise replace contract assistance funds or reserve funds used for pool financing.

What is the existing SRF criteria and will that criteria change with the addition of the CCIWPF?

The existing SRF selection criteria rate projects on the basis to which they resolve existing water quality problems and achieve regulatory compliance with water quality standards. Additional considerations are the extent to which a project is the result of an enforcement action, the degree to which the project reflects a regional or inter-municipal effort and the ability to the community to afford the rate impacts of the project.

The CCIWPF does not impact upon the project selection criteria and has no effect on projects funded by the SRF.

What sort of projects would qualify for funding? Is this only for pipes and pumps?

The 208 Plan projects or suitable equivalent plans eligible for CCIWPF revenue are not limited only to pipes and pumps. Water pollution abatement projects that are eligible for subsidies and other assistance may include the utilization of innovative strategies and alternative Title V technologies that result in nutrient reduction for marine and fresh waters.

There is language in the law that specifically mentions projects can include innovative technologies and approaches such as aquaculture and dredging. With over 125,000 septic systems across the Cape and Islands, the legislation ensures that Title V upgrades and alternative septic technologies are also eligible for funding.

What about the towns on the Cape Cod, Martha's Vineyard and Nantucket that have addressed wastewater issues?

A top priority for this proposal was to ensure that towns that implemented wastewater abatement projects before the Conservation Law Foundation lawsuit in 2011, or the passage of this statute, were not penalized for their advance planning.

Therefore, the law allows for debt service by the CCIWPF to provide subsidies and other assistance with respect to debt incurred prior to the establishment of the CCIWPF in Barnstable, Chatham, Edgartown, Falmouth, Nantucket, Oak Bluffs, Provincetown, and Tisbury for water pollution abatement projects.

What if a town does not want to participate?

According to the law, a municipality that is a member of the CCIWPF, "...shall not withdraw from the fund until 1 year after the effective date of this act."

Once a year has passed, towns are allowed to opt-out by a two-thirds vote at a town meeting. However, if a town participates in the CCIWPF and receives financial assistance, it cannot leave until the financial arrangement is over.

What if a town opts-out of the CCIWPF – can it participate at a later date?

Any municipality that has withdrawn from the fund and votes, by majority vote of its legislative body, to return to the fund cannot receive money from the fund until at least two years from the date of its vote to do so.