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a periodic update from the  
CAPE COD COMMISSION

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## Legislative Update

The Cape Cod Commission (CCC) has been tracking four pieces of legislation that may, in some fashion, have an impact on the existing solid waste and/or recycling programs for Cape towns. It is important to note that the CCC has not at this time taken a position on any of these proposed bills and that an overview of the bills is being provided for informational purposes only.

### ■ Renewable Energy Trust Fund (RETF)

State Senator Susan Fargo filed a bill titled "An Act Relative to the Waste to Energy Grant Program" (Senate 376) that seeks a three-year extension for the current Waste-to-Energy (WTE) Grant Program funded by the Renewable Energy Trust Fund, which is managed by the Massachusetts Technology Collaborative.

The bill would seek a three-year extension on the grant funds that are paid to all cities and towns that have had contracts with WTE facilities located within the Commonwealth. The grant funds are disbursed annually to towns to offset the capital costs incurred by the WTE facilities as a result of change-in-law upgrades required by new federal or state regulations. The costs for the upgrades are ultimately passed on to municipalities (and are referred to as "pass down costs") in the form of surcharges on municipal solid waste (MSW) tip fees. The grants, disbursed on an annual basis for three years, assist in offsetting the pass-down costs that are added onto the MSW disposal tip fees. The Cape communities under contract with the SEMASS WTE facility will have received a total estimated amount of \$6,874,286 through the first three years of the program.

A public hearing for this bill has been scheduled for June 10 at 10 a.m. in Room 222 of the State House. Should the bill not pass, the final round of grant fund disbursements to municipalities will occur this year. In total, the Cape has benefited from these annual disbursements as a means of offsetting increases in tip fees due to change-in-law upgrades required at the SEMASS WTE facility in Rochester, Massachusetts.

### ■ An Act Relative to Certain Municipal Costs

#### Background

This bill (Senate 1213) is an effort to halt the passage of new regulations by the Massachusetts Department of Environmental Protection (DEP) that are, in effect,

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unfunded mandates passed on to Commonwealth municipalities. The bill also seeks to address the manner by which any guidance document, policy, rule, or regulation becomes effective, stipulating that the DEP has complied with all the provisions of the Massachusetts Administrative Procedures Act, established under the provisions of Chapter 30A of the General Laws.

The bill is seeking the DEP to implement two new steps before the passage of any new regulations. First, the bill would require the DEP to recognize that any new regulation, guidance document, rule, or policy, which will impose a new or additional cost on a municipality, be termed a "mandate." Prior to any proposal becoming effective, the DEP must conduct a regulatory impact statement, which shall:

1. Define the problem.
2. Identify the methodology or approach to address the problem.
3. Identify stakeholders who will be affected by the problem.
4. Identify when such a proposal will become effective.
5. Identify the immediate and long-term financial impacts of the proposal on all stakeholders (including permitting costs, internal compliance and indirect costs).
6. Identify the fiscal impacts on the private sector for the first and second years.
7. Identify and describe the benefits of the proposal. (The Secretary of



Administration and Finance shall adopt regulations to further define and implement the use of regulatory impact statements as called for above.)

Second, the DEP shall maintain a notification list of all stakeholders in its proposals who may request preliminary notification of such proposals. This list will serve the following functions during the public hearing process:

- No later than 30 days prior to notice of a hearing for a proposal the agency shall send a preliminary notification of the proposal to each stakeholder who has requested notification.
- The proposal shall also be issued to the Joint Legislative Committees on Natural Resources and Agriculture, Local Affairs, and Ways and Means, the State Auditor's Office, and the Massachusetts Municipal Association. The preliminary notification shall identify the proposal to be noticed and the scope of the proposal; provide the statutory authority for the proposal; and identify the person in the agency responsible for the proposal who can be contacted for more information.

- No proposal initiated by the DEP in the form of a guidance document, policy, rule, or regulation shall become effective until the stated office/agency has complied with all the provisions of the Massachusetts Administrative Procedures Act.

### ■ An Act Clarifying a Minimum Threshold for the Purchase of Existing Renewable Power for the Purposes of the Renewable Portfolio Standard Regulation

The Renewable Portfolio Standard (RPS) is a new regulatory program developed by the Massachusetts Division of Energy Resources (DOER) pursuant to the 1997 Electric Restructuring Act ("the Act").

In 1999, DOER determined a baseline fraction for all existing renewable energy generation, which includes waste to energy. The Act requires that retail electricity suppliers purchase by December 2003 a minimum percentage of their electricity supplies from qualified renewable generators, utilizing a baseline or existing renewables and then increasing it with new renewables.

The 1997 Electric Restructuring Act was an effort to increase the state's reliance on renewable fuel sources for power generation. To ensure that renewables are able to compete, the RPS mandates that suppliers must purchase a certain percentage of power from these sources. The further intent of the statute was to focus growth opportunities for new renewable technologies while maintaining the existing renewables.

SEMASS obtains revenue from the sale of power generated from waste incineration and from MSW tip fees. Currently, generous SEMASS power contracts with suppliers allow for a low tip fee (due to the price of power in the power contract).

The DOER did not include existing renewables in the RPS even though they are in the statute. Each year after 2003, the RPS increases one-half percent annually through 2009, when new renewables must constitute four percent of each supplier's sales. After 2009, the RPS may be increased by one percent per year until the DOER modifies or suspends the standard.

As existing renewables have not been included in the RPS purchase require-

ment, they will be disadvantaged selling power into the open market when the contracts expire. However, WTE power-generation costs are higher than larger coal- or natural gas-fired facilities. As a result, it may be difficult for WTE facilities to compete with other non-renewable sources of power generation without the benefit of being included in the RPS. Tip fees therefore are likely to be higher when municipal contracts are renegotiated as power sale revenues would be lower.

To contend with this issue, State Representative Pedone has filed a bill (House 523) that establishes a basic change in Chapter 25A, the legislation governing DOER. The change would require that DOER reestablish the

baseline fraction of electricity sales to end-use customers from July 2003 (not 1999) derived from existing renewables. Retail suppliers shall be required to purchase at least the baseline fraction (plus annual percentage increases) from existing renewables, not just from new renewables.

This change would guarantee WTE electricity sales to suppliers, and WTE would benefit from inclusion in the RPS. WTE, as an existing renewable, would remain competitive with other less expensive power generators (coal, natural gas). This would benefit the SEMASS facility as it renegotiates contracts with energy suppliers when the current contract expires in 2005.

The SEMASS waste-to-energy facility in Rochester, Massachusetts.



## What's New with the Bottle Bill?

In an effort to assist in finding revenues to balance the state budget, Governor Romney has proposed an update to the so-called Bottle Bill as part of his 2004 budget (refer to House 1, Section 124). Specifically, the Governor is proposing several changes to the existing Bottle Bill, including:

- increasing the Bottle Bill deposit from 5¢ to 15¢;
- adding a 5¢ deposit on a variety of non-alcoholic and non-carbonated beverage containers; and
- eliminating the Clean Environment Fund (CEF) and absorbing Bottle Bill revenues into the Stabilization Fund.

Under the Governor's proposal, Chapter 94 of the General Laws shall be amended to define non-carbonated beverage containers as follows: *"Non-carbonated beverage containers include flavored water, fruit and vegetable juices and drinks, mineral water, beer, and other malt beverages, but shall not include dairy products."*

Furthermore, Section 322 states: *"Every beverage container sold or offered for sale in the Commonwealth shall have a refund value of not less than five cents, except alcoholic beverages as defined by Chapter 138."*

Another bill has been filed in response to the Governor's proposal. State Representative Douglas Petersen has filed a bill (H1080) that would update the Bottle Bill. The bill calls for the expansion of the Bottle Bill by assessing a 5¢ deposit on non-carbonated, single-serve beverage containers and by increasing the handling charge paid by distributors to redemption centers and convenience store/redemption locations to 3¢. Under H1080, all revenues generated would go to the CEF, not into the Stabilization Fund.

The hearing for H1080 is scheduled for June 24 in the Joint Committee on Energy. However, the legislative conference committee on the budget will begin negotiations in May. Whether or not H1080 is recognized during the negotiations depends on whether the Senate or the House Ways & Means Committee includes the outside section in its versions of the budget. Even if H1080 doesn't turn up in any version of the budget, the hearing for Representative Petersen's bill will still be held. It is important to remember that Cape and Islands Senator O'Leary is the chair of the Joint Committee on Energy, and any support for this bill may assist in getting a favorable reaction from that committee.



### Important State Solid Waste and Recycling Legislation

Up-to-date information is on the Web: [www.state.ma.us/legis/legis.htm](http://www.state.ma.us/legis/legis.htm)

#### **H523 – An Act Clarifying a Minimum Threshold for the Purchase of Existing Renewable Power for the Purposes of the Renewable Portfolio Standard Regulation**

(Sponsored by State Representative Vincent Pedone): Public hearing to be held in Room 222 of the State House at 10 a.m. on June 10, 2003. The chair of the Joint Committee on Energy is State Senator O'Leary.

#### **S1213 – An Act Relative to Certain Municipal Costs**

(Sponsored by State Senator Guy Glodis): Public hearing to be held in Room 410 of the State House (no date or time yet scheduled). The chair of the Joint Committee on Natural Resources and Agriculture is State Senator Pamela Resor.

#### **S376 – An Act Relative to the Waste to Energy Grant Program**

(Sponsored by State Senator Susan Fargo): Public hearing to be held in Room 222 of the State House at 10 a.m. on June 10, 2003. The chair of the Joint Committee on Energy is State Senator O'Leary.

#### **H1080 – An Act to Protect the Natural Resources of the Commonwealth**

(Sponsored by State Representative Douglas Petersen): Public hearing to be held in Room A1 of the State House at 10 a.m. on June 24, 2003. The chair of the Joint Committee on Natural Resources and Agriculture is State Senator Pamela Resor.

## Local Updates

### ■ Barnstable Pay-As-You-Throw Pilot Program

#### Introduction

The Town of Barnstable has received a technical assistance grant from the Massachusetts Department of Environmental Protection (DEP) for 60 hours of staff time to analyze the results of a pilot program for a Pay-As-You-Throw (PAYT) solid waste management program. The pilot program will analyze the costs, benefits, rates, and required structure of any future PAYT program. The grant monies will also assist the town to conduct a questionnaire at the end of the pilot program. The town currently has 200 participants in the program. Staff is currently conducting a survey for all sticker holders in an attempt to better understand:

- how many times per month the participants are coming to the drop-off facility;
- how many bags are disposed per visit; and
- how many people live in each household.

The pilot program is designed to develop the information needed to implement a Pay-As-You-Throw program. Run like an actual PAYT program, the pilot program will be used to gain invaluable information about cost, staffing, and operational needs. A full cost accounting will be essential for the cost analysis of the transfer station. To cover both the administrative and operational costs, a flat-rate sticker and cost per bag will be implemented.

#### Implementation

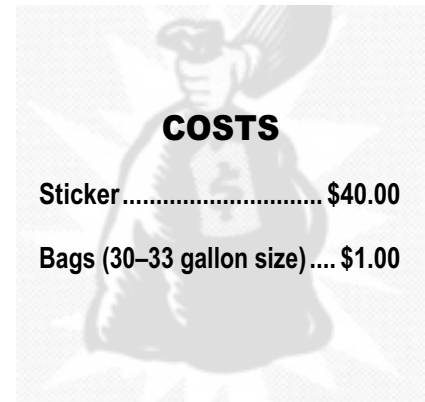
To start this program, the town needed to advertise for participants, seeking approximately 100–200 residents, who agreed to participate in the program for six months. After that time, participants will be able to dispose of their trash for the rest of the year with their pilot program sticker. The participants will be asked to stop at the entrance gate at the transfer station to have their bags counted.

The participants will also be required to fill out a questionnaire after the pilot program ends. It is hoped that the participants that are accepted will be from a diverse group of residents.

#### Bags/Stickers

The participants of the pilot program will have a different-colored 2003 sticker from other residents. The color sticker will help the gate attendants to identify pilot program participants.

For their participation, all will receive a free recycling container, courtesy of the Town of Barnstable. During the pilot program, a 30- to 33-gallon bag will be the maximum size allowed for disposal.



#### Existing Operations

The existing operations of the transfer station will remain the same for those who are not enrolled in the pilot program. The participants will pay the standard fee for bulky items, construction and demolition debris, and any other fee-paying services that are currently provided by the town.

#### Staffing

Staffing at the residential transfer station will need to be upgraded. With the increased reporting and tracking under a PAYT program, office staff will need to increase. One permanent part-time clerk will be needed to do tracking, bag purchasing, and recording as well as helping out with sticker sales.

#### Conclusion

The pilot program will conclude in June 2003. As previously stated, DEP funds will allow the town to measure the results of the pilot to determine its overall effectiveness. Results of the pilot program will be available in July.

## Did You Know...

**?** ...The Town of Bourne has filed a Notice of Project Change with the Massachusetts Executive Office of Environmental Affairs MEPA Unit dated March 3, 2003 (EOEA #11333). The project change involves expanding the list of acceptable materials at the 78-acre landfill to include municipal solid waste and municipal waste combustor ash. For more information, contact MEPA Analyst Nicholas Zavalas at (617) 626-1030.

**?** ...Recently, two new Department of Public Works (DPW) directors were hired here on the Cape. Lincoln Hooper, the former Harwich Transfer Station supervisor, has been hired as that town's DPW director. Also, David Johansen has been hired as the Town of Dennis's DPW director. Congratulations to both.

**?** ...Heard enough about the Bottle Bill? Other states without existing deposit requirements for beverage containers are contemplating Bottle Bill proposals, including Idaho, North Dakota, West Virginia, and Arkansas. Several states with ongoing Bottle Bill legislation are seeking to add to existing programs, including New York, Connecticut, Vermont, and Michigan. Bucking the trend is Hawaii, as that state's governor is seeking to repeal the existing Bottle Bill legislation.

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