

Date: **April 20, 2023**

Project No.: **20985**

To: **George Meservey, Orleans**

From: **Mike Giggey**

Subject: **Orleans Wastewater Management Planning
Strategy for Future Orleans-Eastham Watershed Permits**

Eastham and Orleans representatives have met several times to begin discussions on possible future DEP watershed permits for the Nauset Harbor and Rock Harbor systems. At the April 13 meeting, you and I were given the charge of preparing a draft strategy that would help the two towns streamline their efforts and maximize their success. This memorandum presents my early thoughts on such a strategy.

The Setting

The important facts at hand include:

1. Both towns have active wastewater management plans underway that address town-wide issues, including both shared watersheds and single-town watersheds.
2. Orleans is an active participant in the implementation of the Pleasant Bay Watershed Permit, the first such permit in the Commonwealth. The successful work in Pleasant Bay has given Orleans much valuable experience in the permitting process, and has gained considerable goodwill with DEP.
3. Both of the estuarine systems whose watersheds span Orleans and Eastham have been studied under the Massachusetts Estuaries Project, generating much important information. However, questions remain about both the Nauset Harbor and Rock Harbor MEP reports, and neither system yet has an approved TMDL.
4. DEP has published a proposed strategy for dealing with nitrogen overloading of coastal embayments and has issued draft regulations for watershed permitting and for updating Title 5. Extensive public comment on the draft regulations may delay the implementation of DEP's strategy, but Eastham and Orleans do not want to delay their wastewater management efforts waiting for that process to finish.
5. The proposed changes to Title 5 would mandate the implementation of I/A systems on every developed property in nitrogen sensitive areas, unless the towns have obtained a watershed permit. Both towns believe that widespread I/A use is not the best answer.
6. Staffing transitions at both DEP and SMAST make it difficult for towns to obtain accurate, timely input on key matters. The proposed watershed permitting program will exacerbate that situation.
7. Investment in nitrogen management infrastructure is expensive and both towns must rely on state loans to make their projects affordable. It is unclear if state funding is dependent on having a watershed permit.

These factors can be impediments to Orleans' and Eastham's progress. These factors may also provide the opportunity for the two towns to craft a streamlined approach to their benefits.

Overall Approach

It is my belief that the towns can proceed with good-faith technically-sound efforts to address nitrogen overloading without waiting for DEP's proposed watershed permitting program to be finalized. The success of that approach is heavily dependent on regular communications with DEP, giving the opportunity for DEP staff to participate in important decisions and to approve individual steps along the way. A proactive, open-book approach can accomplish important milestones by building on the respect that exists between DEP and the two towns.

Specific Actions

I propose that the two towns send periodic (perhaps quarterly) letters to DEP that

- document steps completed to date
- set forth a schedule and assumptions for upcoming work
- request DEP comment and concurrence
- schedule meetings with DEP as necessary.

In essence, each letter will lay out our upcoming plans and assumptions and give the DEP the opportunity to advise, confirm or correct. Once DEP is notified, we proceed unless or until DEP provides differing guidance.

Contents of First Letter

To illustrate the approach I propose, here are the items that might be included in the first letter:

Contents

The body of the letter would do the following:

1. State intention of the two towns to jointly pursue watershed permits for the Nauset Harbor and Rock Harbor systems.
2. State intention to work closely with DEP given all of the uncertainties in the program.
3. Transmit a copy of the signed MOU.
4. Acknowledge the likelihood that portions of the watersheds of these two systems will be designated as nitrogen sensitive areas and document our understanding that imposition of the I/A mandate in those locations will not occur until 5 years after a TMDL is issued.
5. State our intention that the watershed permit for the Nauset Harbor system will be a two-party deal; that is, that we do not intend to include the small part of Brewster that contributes to the Town Cove watershed load. (Perhaps include the caveat that this approach is not intended to absolve Brewster from any financial contributions to solve the nitrogen over-loading problem.)
6. State our understanding that the MEP reports for both Rock Harbor and Nauset Harbor provide adequate "documentation of embayment impairment" to allow the same priority funding points as if there were actual TMDLs in place. Remind DEP that Orleans obtained SRF funds for Phase 1 of its sewer program, which included sewers in the Rock Harbor watershed.
7. Suggest upcoming meeting dates for DEP attendance.

Addressees

Send the letter to Millie Garcia, Gerard Martin, and Drew Osei, and request DEP's direction on possible other recipients.

Signatories

Have both towns sign the letter, by designated representatives (to be determined).

Later Letters

Later letter would address:

- our understanding on which watersheds or sub-watersheds will not be deemed nitrogen sensitive (Orleans has already drafted a letter on this subject).
- a proposed approach to updating the watershed loads.
- opportunities for DEP funding of permit-related activities, emphasizing the benefits to DEP of establishing improved practices in establishing nitrogen removal goals.
- an approach to develop TMDLs.

Summary of Approach

With a mature permitting program, DEP might have already developed many protocols and procedures under which the towns would operate. With this permitting program just unfolding, Orleans and Eastham could use this proactive approach to avoid delays in their programs, influence decisions that benefit the towns, and enhance public support.

Next Steps

Once you have reviewed this draft memo, we can incorporate your comments before circulating it to the WMAC. With WMAC input on April 27, perhaps an updated memo can be provided to Eastham for discussion at the planned May 11 joint meeting.