

**EXECUTIVE COMMITTEE OF THE
MASSACHUSETTS CLEAN WATER TRUST**

Meeting Minutes

Meeting Date: Thursday, March 21, 2019
Time: 12:30 PM
Location: Massachusetts Clean Water Trust
1 Center Plaza, Suite 430
Boston, Massachusetts 02108
Notice: Due public notice given
Attendees Sue Perez, Executive Director, Trust
Steven McCurdy, Director of Program Development, Trust
Maya Jonas-Silver, Director of Finance & Administration, Trust
Also Present Nate Keenan, Deputy Director, Trust
Maria Pinaud, Deputy Director, MassDEP
Jonathan Maple, Policy Analyst, Trust
Absent

SUMMARY OF DISCUSSIONS

1. **Minutes Approval.** Tabled until following meeting.
2. **208 Plan Equivalent for Communities on Martha's Vineyard.** Mr. McCurdy updated the Committee on MassDEP's progress on creating requirements for a 208-like plan or equivalent for Martha's Vineyard. The plan is required to access the Cape Cod and Islands Water Protection Fund and participate on the Cape Cod and Islands Water Protection Fund Management Board. MassDEP believes that existing planning and monitoring data can be utilized to reduce the cost of this project. Additional activities needed to finalize the plan are estimated to cost between \$100,000 and \$150,000. Mr. McCurdy will produce the finalized project scope for the review once it has been completed by MassDEP.

Ms. Perez notified the Committee that the Cape Code Commission (CCC) has requested that the Trust present at the inaugural Cape Cod and Islands Water Protection Fund Management Board meeting on May 6th. It is expected that this date will be changed. The presentation would be an overview of the Trust programs and activities. Ms. Perez requested additional information from the CCC to clarify the supporting materials related to the water protection fund.

3. **Discussion on Title V Septic Legislative Changes.** Mr. Keenan notified the Committee about a request from the Massachusetts Department of Revenue to review the aspects of state finance laws and if the Trust had any proposed changes to the Title V law (Community Septic Management Program). The Trust has had recent occurrences where cities and towns have issued loan funds, charged interest and built up excess funds. They want to know what they should do with these excess funds. Mr. Keenan noted that Ms. Pinaud has updated MassDEP's guidance on the Title V program, and that this may be sufficient for the Trust

needs. The Committee determined that the Trust should review the applicable law and guidance and suggest any guidance or legislative changes that may be needed.

Mr. Keenan added that he and Kara Adams, an associate from Locke Lord, discussed the swap procedures the Trust uses to show all bond proceeds have been used for each issuance may cause administrative issues for municipalities. A problem arises when the municipality needs to borrow the same funds that were swapped out. This happens because the Trust is putting loans into repayment before the projects are completed. Ms. Perez agreed to review the issue and bring any proposed changes back to the committee.

Mr. McCurdy asked for an update on the Town of Colrain's CSMP. Colrain called the Trust and MassDEP to confirm if they could operate a CSMP for Franklin Housing Authority. Mr. McCurdy noted that they are not sure how they could issue betterments or board of health decisions which are required. Colrain wants to know if they can use excess funds for this program. The Committee determined that the Trust will review the regulations to see if Colrain has the authority or if it even falls under the Trust's authority to review. This may be addressed in the updated guidelines issued by MassDEP.

4. **Lead Service Line Program Policy Discussion.** Mr. McCurdy informed the Committee of the internal discussion about the Incentivized Lead Service Line (LSL) program. MassDEP engineers are concerned that borrowers could use the removal of LSLs to artificially boost a project on the IUP. MassDEP's ranking system places a higher value on remediation actions that are geared toward protecting public health. Replacing a watermain conversely has a lower score value as it does not have the same public health impact as a lead removal project. Its possible that a community could label the project as lead remediation, when they intend to replace 5 miles of watermain while only replacing a handful of LSLs. MassDEP proposes to have systems requesting LSL projects show survey data where they have identified and found lead service lines. This survey data would be required to have the project be considered a lead remediation project.

Mr. McCurdy outlined another potential issue where a system proposes a project that is only for the removal of LSLs. Since there is no additional work that can be added to the project, the incentive of reducing interest and increasing principal does not make sense. The Committee determined that LSL only remediation projects would fall under a public emergency loan and would be brought to the Board with recommendations of issuing a 0% interest loan.

Lastly, Mr. McCurdy pointed out to the Committee that the American Water Infrastructure Act of 2018 required that the next Drinking Water Needs Survey have systems identify lead service lines.

5. **Trust Capacity Analysis Discussion.** Tabled until the next meeting.
6. **Water Bottle Filling Stations Program Update.** Mr. Keenan updated the Committee on the progress of the working group and the Bottle Filling Station program. Currently Treasury IT is working on creating the application process. The application flow, program requirements

and funding process have largely been worked out. The Trust is working with OSD on a potential RFQ for reviewing pricing. The needed change to the contract assistance line item failed to be added to the recent supplemental budget. The committee discussed that the program would not be able to fund the program through traditional means because the projects in quest are not listed within the Safe Drinking Water Act – which is required under the Trust enabling statutes.

The Committee discussed that the Trust could potentially use administrative funds to start the program and determined that the Trust should have legal counsel determine if the Trust could use the funds in this manner.

7. **MassDEP Payment Standard Operating Procedure:** Mr. McCurdy informed the committee that MassDEP updated their procedures for payments and documentation that were last updated in 2007. MassDEP received feedback from the Trust and intends to accept the procedures with the recommendations. The Committee determined that the Trust will review its procedures and document the changes from MassDEP and the Trust as a proactive measure before communicating with EPA.

Other Business (Items not reasonably anticipated by the Chair 48 hours in advance of the meeting)

- 8 **Portigon Guaranteed Investment Contract.** Ms. Perez informed the Committee that Portigon reached out about closing out their Guaranteed Investment Contract (GIC). The Trust used the GIC agreements in the past as part of debt service reserve funds that were tied to bond issuances. With the market downturn that occurred in 2008, the banks were eager to exit these agreements, and even went so far as to threaten to sue the Trust. The Trust settled out of two GICs but kept one that has a 5.5% return as an investment in the equity fund. This GIC has \$21.6 million in Trust funds, and 6 years remaining in the contract.

Portigon is required to liquidate their balance sheet by June 1st. The Trust has two options, 1) accept a termination payment and terminate the contract, or 2) transfer the agreement to another bank that will honor the payout schedule. Portigon offered the Trust \$2.5 million which is short of what a market calculation says the contract is worth. Alternatively, Portigon is working to transfer the contract to another bank that would honor the contract.

The Committee determined that the Trust, in working with its advisors, would continue negotiations to determine which option provided the best value to the Trust.

9. **Lead in Schools Report Card News Conference:** Mr. Maple informed the committee about the state house briefing held on March 21 by State Senator Joan Lovely (Salem), State Representative Lori Ehrlich (Marblehead) and a number of interest groups (MASSPRIG and Environment Massachusetts). The briefing covered Massachusetts' latest score on how its policies address lead in schools. Massachusetts received a D. According the briefing, Massachusetts had a number of policy deficits (i.e. high lead action level (15 parts per billion (ppb) v. 1ppb for lead, no mandatory school testing, no mandatory remediation requirements. Sen. Lovely and Rep. Ehrlich filed H774 and S500, which proposes annually required testing, required remediation process, lowers the Commonwealth's lead action level to less than

1ppb, require lead service line removal and would create a trust fund to assist school districts with remediation expenses. The Committee discussed the potential legislation and will monitor its progress.

10. **Senator Warren's Office asked for feedback:** Mr. Keenan notified the Committee that Senator Warren's office asked for feedback on a proposal to extend Clean Water State Revolving Funds for loan terms of up to 40 years. The Committee noted that the program already allows loans to go out to 40 years, with approval from EPA. The proposed legislation would tie the term of the loan to the useful life of the project. The Committee discussed that they have not received requests for 40-year financing but would not object to the legislation being amended. Also, it was determined the Trust would follow up with requesting the Safe Drinking Water Act be amended to allow SRF program to remediate lead in schools.

LIST OF DOCUMENTS AND EXHIBITS USED:

The meeting adjourned at 2:28 p.m.

Minutes Approved: _____