

## **MCTF Policy Structure Subcommittee Meeting Minutes 10 14 21**

### **Minutes for the Mosquito Control for the Twenty-First Century (MCTF) Task Force Meeting**

#### **Subcommittee Meeting: Policy Structure**

October 14, 2021, 12:00 p.m. via Zoom

Subcommittee Chair Stephen Rich called the meeting to order at 12:00 p.m. and a quorum was established. Subcommittee members in attendance included Brad Mitchell, Richard Pollack, Heidi Ricci, Heidi Porter, Russell Hopping, Derek Brindisi, and Julia Blatt. Housekeeping items were addressed by EEA Staff Lead, Alisha Bouchard. Stephen Rich inquired about the approval of meeting minutes. Jessica Burgess responded that meeting minutes would be distributed to the group in the future.

Diana Pietri, ERG Facilitator, provided an overview of the purpose of the meeting, which included the following topic areas:

1. Review of current policy structure, existing laws, and general landscape of mosquito control and mosquito control districts (MCDs) and their differing approaches to mosquito control.
2. Revisit subcommittee understory questions and directives and discuss potential overlap with other subcommittees.
3. Discuss any data gaps identified and determine which the subcommittee considers to be critical.
4. Discuss proposed sources to fill critical gaps and determine which the subcommittee considers to be essential.

Jessica Burgess provided an overview of current policy structure, existing laws, and general landscape of mosquito control in MA. Jessica noted that she has been working in this space for over ten years and served as the General Counsel for the State Reclamation Mosquito Control Board (SRB). Before 2020 there were two things that were reviewed. First, Massachusetts General Law (M.G.L) Chapter 252. Second, were several pieces of special enabling legislation that created most of the Mosquito Control Districts (MCDs). In 2020, there was Chapter 120 of the Act in 2020, which created the Task Force and added a new section of M.G.L. 252. M.G.L 252 was enacted in 1918 and most sections have never been updated to reflect the changes of how county and municipal governments operate. Jessica noted activities that are done under M.G.L. 252 are still subject to other applicable laws and regulations.

Jessica discussed in detail the current structure of mosquito control in MA. Jessica then reviewed some general provisions of M.G.L 252 that were relevant to operations:

- Section 1:
  - allows for drain or flow a meadow, swamp etc. Remove obstructions in rivers, eradicate mosquitoes in any infested area
  - Very broad, doesn't identify nuisance or arbovirus, general provision that talks at a high level that a lot of activity can be conducted to eradicate mosquitoes
- Section 2:
  - sets up SRB, DEP, MDAR, DCR employees
  - Funded through assessments to MCDs, legislative appropriations
- Section 2A:
  - created by C. 120 of the Acts of 2020
  - Authorized the SRB to engage in preventative, management, and eradication methods it deems necessary anywhere in MA
  - Formalized DPH's role in arbovirus risk determinations
    - Required written determination from DPH of an elevated risk for the current or next year
  - SRB can act through any MCD, other state agency, or hire professions as needed
  - Allows for opt outs through two different processes
  - Requirements for certain aerial and wide-area emergency response methods of treatment
- Section 3:

- Authorized SRB to act for public health
- Section 4:
  - SRB to hire individuals and enter land
- Section 4A:
  - Authorizes state agencies and municipalities as landowners to be parties to proceedings within section 1 – 14C, to the same extent as individual proprietors
- Section 5:
  - Property owners can petition SRB for improvements
  - Requires petition to ID funds and pay for the improvements
  - Authorizes SRB to organize district and appoint commissioners as needed to perform and maintain improvements
- Section 5A:
  - SRB can perform work without forming a district
  - IDs funding mechanisms, allows SRB to incur costs, salaries, hire staff, can assess those costs to others as they deem necessary
  - Gives SRB authority to certify budgets and report those numbers to the DOR
  - Allows non-member municipalities to vote to join an MCD, subject to SRB approval
- Section 5B:
  - Authorized boards of health in a municipality not included in an MCD to determine any area infested by mosquitoes, or likely to produce mosquitoes to be a public nuisance
  - BOH may require owner, occupant, or person in charge to abate the nuisance.
- Section 6A:
  - MCDs can hold and obtain liability insurance
- Section 8:
  - Allows state to contribute to costs of improvements made to protect public health
- Section 9-11:
  - Different funding options for MCDs created by the SRB
  - Established when county government was in place
  - Lots of reference to municipal and county governments that don't really mesh with how municipal governments operate today. Constantly trying to see if we can meet the legislative intent
- Section 12:
  - Commissioners to hire individuals, purchase, and own property
- Section 13:
  - Authorizes commissioners to perform work associated with raising and lowering waters
- Section 14:
  - MCDs must submit invoices to SRB for review
- Section 14D:
  - Gives districts the sole authority for personnel decisions
- Section 15 through 23:
  - General provisions not applicable to MCD activities (taking authority, roadways, fees, damages, petitions to municipalities)
- Section 24:
  - Authorizes the establishment of greenhead fly control projects
  - Can exist under MCDs, funded separately, membership can be limited to greenhead fly control operations
  - 252 has a lot of sections, few that are on point to what we need to do now because so many of the sections were about IDing issues and improvements and then creating things to attack those improvements
  - Special enabling legislation, some of it dates back all the way to 1930s (more recent is 1970s)

- SRB did not initially use the sections to create MCDs, legislature did the special enabling legislation
- Almost every area of the Commonwealth has an MCD that could provide services to a municipality if it joined
- Each enabling legislation has been amended several times
- In Chp 252 there's a mechanism to create these districts, but since they've already been created for the Commonwealth, there are not more to be created. If towns want to create a new one, they are pointed to the enabling legislation to see which they are eligible to join
- Enabling legislation addresses funding and commissioners
  - Funding: established general funding mechanism and its through land valuation assessments. Does not give municipality discretion over the amount assessed. Allows for voluntary contributions, establishes trust account.
  - Legislation establishes commissioners, number of commissioners, subject to SRB appointment and removal, IDs any applicable requirements for appointment (like specific areas of expertise), generally 5 commissioners for each project
- Membership: county-based, land area, or municipalities eligible for membership
  - County-based unless otherwise noted
  - IDs method to join and withdraw, any time limits associated with membership
- SRB Role
  - All created as if constituted under the SRB under C. 252 Section 5a.
  - All MCDs subject to SRB oversight and applicable provisions of 252
  - Oversees budgets, expenses, operations, and commissioners

In closing, Jessica noted that Chapter 252 and the enabling legislation gave the SRB general oversight authority. In addition, there were other statutes and regulations that MCDs needed to comply with related to pesticides, fish and wildlife, endangered species, and water quality protection.

Richard Pollack asked if there was a legal definition within 252 for the term nuisance? Jessica noted there was no definitions in 252 and that 252 referenced public health but did not set out to identify nuisance or arbovirus control. It was established for the eradication of mosquitoes and reclaiming lands. The discussion moved towards other legislation or sources that may include a definition of the term nuisance or eradication. Heidi Ricci commented that based on the current outdated legislation there was an opportunity to rethink the current structure as it related to wetland management, the role of DPH and Mass Wildlife, and assisting local communities with education, surveillance, and source reduction.

Jessica Burgess commented that there was no statutory role for DPH or Division of Fisheries and Wildlife, but they are involved in other ways and there was consultation with those Agencies. It was noted that it was good to flag that DPH and Mass Wildlife are not listed in 252 and from a structural perspective that topic may be relevant to other subcommittee groups as well. Jessica Burgess discussed that MCDs established under 252 can have voluntary contributions. For example, East Middlesex and Pioneer Valley Mosquito Control Districts.

Jessica Burgess addressed the cherry sheet deduction process. Heidi Ricci noted until recently, the only way communities could get surveillance was an all or nothing situation. Heidi Ricci referenced that the town of Uxbridge had hired a private company for surveillance and DPH was accepting that data into their systems. Jessica Burgess responded that under the 252 structure, Uxbridge would need to report that data to the SRB. In terms of reporting, all MCDs work with DPH and DPH does all the testing. Although not formally identified in 252, that was another way that DPH was very much involved in the Districts' surveillance process. A question was raised related to the assessment process for municipalities and if the state accounted for land mass that would be considered state owned property. Jessica Burgess noted that this could be brought back to get more detail about how DOR assess land valuation of state-owned property. It was also noted to keep in mind that municipalities were not just paying for MCD services but were also assessed for staff, buildings, and equipment. There was a base cost associated with general operating and then there was payment into the SRB because of the SRB services.

Jessica Burgess commented that this discussion identified components for consideration during recommendation development; to have more flexibility there would need to be a legislative change. Julia Blatt asked about doing away with or updating the legislation so that it is in alignment with the wetlands protection act. Jessica noted that if the subcommittee had identified within the current structure something that doesn't make sense, a recommendation to adjust the current language could be explored further.

Subcommittee members discussed the benefit of rewriting 252 by starting with the purpose of the legislation being centered around science-based mosquito control. The group saw a need for consistency in how mosquito control was handled across MCD's and discussed the need for greater control from a centralized body that could incorporate perspectives from other state agencies into the mosquito control process. Russell Hopping added that defining terminology such as nuisance, creating greater consistency, transparency, and streamlining the opt out process would be beneficial focus areas.

It was noted that the group had two directives: Identifying challenges to municipalities joining MCDs and assessing the need to update the composition of the SRB. Brad Mitchell commented that a lot of this was dependent on how we set up mosquito control. Best practices should be for setting up a system for implementing, creating, and updating best practices, not actually recommending best practices. Julia Blatt commented that she was thinking of the water management act which balanced sets out goals and the regulations that were supposed to support those goals. Jessica noted that she was speaking from her perspective, but EEA's role is to try to help identify the means to accomplish certain goals and objectives. For example, if it was done this way, you are going to be subject to open meeting law. Or, if you wanted to do it this way, we need to make sure that there's regulatory authority.

Heidi Ricci commented that getting some consensus on goals for the program would assist in informing the work for the subcommittee. Heidi Ricci noted we needed a mosquito disease management plan that was open and transparent and was approved following public input. In addition, there needed to be an oversight entity that included DPH, Division of Fisheries and Wildlife, and outside agencies and experts. It was mentioned that the CDC website had a good definition of disease vs. nuisance mosquitoes. Richard Pollack commented in response to a point raised about nuisance vs. disease and noted that MCDs don't try to eliminate all mosquitoes but rather target those mosquitos that pose risk.

Russell Hopping noted the discussions about eliminating 252 and asked what the goal was, and if it might be too radical to think about removing nuisance from the goal of mosquito control. Brad Mitchell argued that we come back to discussion on nuisance control. There was general agreement that we should not rewrite MGL 252, but rather eliminate it and replace it with a framework of what it should and could entail.

Diana Pietri shifted the conversation to talk about the process for filling gaps and recommended the group think about the information that's currently available and what the critical gaps are in that information. In addition, Diana reminded the subcommittee group that other areas of focus will be centered on the discussion of goals, the definition of nuisance, questions related to MGL 252, and what to do with MGL 252 moving forward.

Diana recapped that the next meeting would be on 10/28/21 and that there would be a full Task Force meeting on 10/21/21. Seeing no other comments or questions from the group Stephen Rich took a motion to adjourn. Brad Mitchell made the motion, with Heidi Porter seconding. All ayes. Meeting was adjourned at 2:00 p.m.