

Peconic Estuary Protection Committee  
**Meeting Summary – October 3, 2018**

**Board Room, Town of Riverhead Town Hall  
200 Howell Avenue, Riverhead, NY  
10:00am- 12:00pm**

**ATTENDEES**

**Committee Member Representatives**

Town of Riverhead | Drew Dillingham (Committee Chair)  
Town of Brookhaven | Veronica King (Committee Vice-Chair)  
Town of Southampton | Christine Fetten  
Town of Southold | Michael Collins  
Town of Southold | James Richter  
Town of East Hampton | Kim Shaw  
Town of Shelter Island | Jay Card  
Town of Shelter Island | John Cronin  
Village of Sag Harbor | Mary Ann Eddy  
Village of Greenport | Mary Bess Phillips, Village Trustee  
Suffolk County | Elyse Jay  
NYSDOT | Anthony Becker  
Peconic Estuary Program | Sara Schaefer

**Elected Officials in Attendance**

NYS Assemblyman William Thiele  
Suffolk County Legislator Al Krupski  
Suffolk County Legislator Bridget Fleming  
Town of Riverhead Town Supervisor Laura Jens-Smith  
Village of Southampton, Mayor Michael Irving

**NYSDEC Representatives**

Koon Tang  
Ethan Sullivan  
Sue Van Patten  
Robert Capowski

**Additional Participants**

Peconic Estuary Protection Committee | Patricia Aitken, Coordinator,  
Oyster Bay/Cold Spring Harbor Protection Committee | Rob Crafa  
Manhasset Bay Protection Committee | Sarah Deonarine  
Hempstead Harbor Protection Committee | Eric Swenson  
Setauket Harbor Task Force | George Hoffman  
Villages of Patchogue, Port Jefferson and Old Field | Brian McCaffrey  
South Shore Estuary Reserve | Jeremy Campbell

South Shore Estuary Reserve | Christie Pfoertner  
Village of East Hampton | Mike Bouker  
Town of Oyster Bay | Maryann Webb  
NYSDEC and Peconic Estuary Program | Elizabeth Hornstein  
NYSDEC | Kristin Kraseski  
Friends of Georgica Pond | Sara Davison |  
Suffolk County Soil and Water Conservation District | Corey Humphrey  
Peconic Land Trust | Josh Halsey  
Cornell Cooperative Extension of Suffolk County | Scott Curatolo-Wegeman  
Cornell Cooperative Extension of Suffolk County, Marine Program | Carolyn Sukowski  
Cornell Cooperative Extension of Suffolk County, Marine Program | Emerson Hasbrouck  
Legislator Krupski's Office | Catherine Stark

The purpose of the Peconic Estuary Protection Committee meeting of October 3 was to provide an opportunity for a discussion between representatives of NYSDEC and meeting attendees regarding the TMDL rescission process and to provide an update on the MS4 Permit Renewal process.

### **TMDLs – Koon Tang**

Koon Tang began the meeting by providing background information regarding the three TMDLs impacting 57 water bodies on Long Island. TMDLs identify the sources of pathogens and determine what level of reduction is required. The goal is to inform how to restore water quality, so waterbodies will be suitable for shellfishing purposes. The main reason for impairment is bacteria, which can come from stormwater runoff (pet waste), wildlife – especially geese, or septic systems.

At the end of the exercise, the embayments should be able to sustain shellfish. The effort was started in early 2000s. The TMDLs were approved by the EPA in 2005 or 2006. Issues were discovered when implementation of the MS4 General Permit began. It was presumed that most of the pathogens came from stormwater. It was found that there were errors in the calculation of the TMDLs; for example, in some cases the area of sewersheds were overestimated. The area contributing to an embayment might have only been 10 - 20% of what was stated in the permit. It was also found that in some MS4s, the conveyance system was not discharging to embayments, but was instead actually discharging to catch basins that are bottomless, and the stormwater is infiltrated to the ground. Recognizing these issues and problems, it is not reasonable to ask municipalities to reduce pathogens by 90% and entail spending millions of dollars that might not achieve the intended pathogen reductions and improvement in water quality.

In 2013 DEC issued guidance for retrofits under the MS4 permit, requesting more data and information, which could then be submitted to EPA to build a case and convince them this was an unwise use of municipal resources. The EPA has finally acknowledged that the TMDLs must be re-done for the 57 water bodies.

Koon discussed the process of rescinding the three TMDLs. The DEC wants to identify which waterbodies should be prioritized and to work with the municipalities in this process. Some waterbodies have ambient water quality data to indicate they should not be closed due to bacteria but instead may be closed due to boat traffic, or a marina or STP nearby. The Division of Marine Resources makes the decision about closures in these cases.

There may be a few waterbodies where a TMDL is not necessary, and the waterbody should not be listed. DEC will have to determine how to list/classify them. Another 30 waterbodies are not included in the original three TMDLS prepared in 2000, but are on the impaired list. It was suggested that all 80 waterbodies be grouped together to determine which waterbodies make sense for TMDL development, and which might be able to be removed from the list.

Town of Southampton expressed appreciation for the discussion. The Town has been told that some waterbody closures are due to administrative reasons, and they have asked for a list of which waterbodies are closed due to administrative reasons, rather than due to water quality data; but has not received a response to their request. Koon said this list can be released. He referred to CALMS document which needs to be updated. The Town has FOILED the sanitary shellfish reports, and what they have received does not substantiate closures.

Town of Southold said a NYSDEC document states that administrative reasons do not automatically lead to closures. In some waterbodies, there is no water quality data, and marine resources does not do testing - they won't test because of presence of an STP (as in Flanders Bay). It becomes a circular argument; the DEC will not do the testing to show that there is no problem because it is felt that this would be a waste of resources since the waterbody will never be opened to shellfishing.

It may be a suggestion to not prioritize waterbodies with a marina or an STP. The Town of Southold said that might be a solution, however, when a waterbody is improperly classified as impaired it mandates allocation of municipal resources to address issues that do not exist, and those resources could be better directed elsewhere.

Town of Brookhaven asked if there is a regulatory way to add language in the permit that would exempt an MS4 from implementing programs in waterbodies that are administratively closed. Koon said that may not be easy accomplish, since the permit must be legally defensible, and data is required to exempt MS4s.

At this point in time, the only acceptable data has to come from the DEC lab. It was asked if data from other acceptable labs could be used? Legislator Krupski pointed out that the DEC Marine Resources unit should be represented at this meeting to address this committee.

Southold said that DEC's own policy states that administratively closed waterbodies cannot be listed as impaired unless there is data to show the impairment. In Southold ¼ of waterbodies are closed administratively, without data to support impairment classification.

The Village of Sag Harbor asked if funding is available through the DEC to allow for water quality testing, so that decisions can be science based.

A Trustee from Greenport stated that municipalities are tied to a 2% tax cap, and there is a need to be realistic about costs borne by municipalities to do testing. In Greenport, there is no data to support that it should be closed to shellfishing. The impairment is believed to be from a pollutant source contained in the bottomlands. In this instance the DEC wants samples from meat of shellfish, however, the bottomlands are owned by New York State, and it is illegal for the municipality to take samples for testing.

The point was made that if bacteria problems originate with geese, then the State should address the waterfowl issue and determine a way to control populations. There are wildlife refuges on Long Island, which are meant to provide habitat for waterfowl and this needs to be considered. There needs to be a

differentiation between nuisance waterfowl, such as non-migratory Canada Geese and Mute Swans. The DEC is working with USGS to develop a model to determine sources of pollution. It is hoped that this study would better inform the impacts from wildlife compared to other sources of pathogens. A suggestion was made to increase the waterfowl bag limit and extend the season. Legislator Krupksi asked if wildlife issues are being looked at holistically. Geese are a significant impact to cover crops, by grazing and removing the cover crops in November, which at that time of year cannot be regrown. In spring, farmers have no recourse to remove the geese from their fields, which contribute to bacteria.

The DEC should acknowledge the long running water quality monitoring programs on Long Island, such as those in Hempstead Harbor and Oyster Bay. The only lab certified to do sanitation shellfish sampling is the DEC Lab, which does not have the resources to do all the sampling necessary. This is understood by the Committee; however, the lack of water quality data compels municipalities to do significant work or leads to closures of potentially productive shellfish area. Supervisor Jens-Smith said there is an initiative in Suffolk County for shared services, and some provision should be made so that another lab can be certified and used.

Data from other water quality monitoring programs can be used for modelling, and informational purposes, but since the data is not from a DEC certified lab it will not be used for shellfish analysis. The FDA is the entity that certifies the DEC lab.

Greenport asked if an indication can be made as to which waterbodies will never be opened for shellfishing?

The DEC has signed a contract to work with USGS to do a study of eight waterbodies to determine sources of bacteria, including waterfowl. The USGS did data collection this summer. It was requested that the DEC release this data to the committee. The Town of Southold requested that the data collected by the USGS be posted on the USGS website.

A map of the eight waterbodies to be studied is attached. It is costing \$800,000 for the study of eight waterbodies.

Of the approximately 80 SA waterbodies on the impaired list, it is believed there is sufficient data for conducting an analysis of 50. If it is determined there is no impairment, there is a potential to delist them.

When asked if there is a way to suspend or delay additional requirements, the DEC responded that the 303(d) list is being reviewed to determine if there is a way to use the existing methodology to move waterbodies to a different part of list. It would take approximately two years to revise the methodology since that is next time the list will be issued. The DEC is sensitive to a desire to not burden municipalities with work that will not result in water quality improvements.

Town of Brookhaven has DNA source tracking on some outfalls. Cornell Cooperative Extension does the sampling, and it was suggested the DEC get this information from Cornell. The DEC will follow up with Cornell.

It was expressed at the meeting that better communication with local municipalities is needed. Local knowledge is a valuable resource and it is not being utilized. The HHPC only learned about the original TMDL when the draft was released and was not informed of the recent USGS sampling in Hempstead Harbor.

Laura Jens-Smith suggested that a sign-on letter to the Governor requesting funding for an additional shellfish laboratory be drafted and sent.

NYS Assemblyman Bill Thiele said that additional funding for a lab should be in DEC's budget request to the Governor, and it should be stated that this is a priority to address the need for additional analysis capabilities.

#### **MS4 Permit – Ethan Sullivan**

The DEC received approximately 1200 public comments on the draft permit. They have been looking at how to modify the permit to make it more palatable. DEC expects to remove Part IX.C, if the TMDLs are rescinded. However, they are not sure how this will impact requirements for municipalities affected by the relisting of subject water bodies.

Three MS4 permit stakeholder workgroups meeting have been held in Albany (Pat Aitken of PEPC and Eric Swenson of HHHPC are participants). Two additional meetings are scheduled.

The EPA remand rule has requirements as to what language must be used in the permit. It must be clear, specific and enforceable. The workgroup has addressed changes with language to make it clearer. Discussions have been held regarding removing some of the more burdensome items to municipalities. Further discussions will be held regarding what target dates may be included in the permit. It is possible that some mapping requirements may extend past the permit period. Guidance and training materials to assist MS4s may be provided to regulators. It is expected the permit will be out early next year for public review.

MS4 waiver criteria are based on two sets of population-based criteria. If a municipality feels they should have a waiver, they should contact Ethan.

The WQIP this year included mapping and vac trucks. The DEC is not sure if vac trucks will be part of the WQIP funding for next year.

The Town of Southampton asked if there is a correlation between the MS4 permit, goose management, and the hunting licenses issued for geese? They have asked for that information in the past and have not received it. An increase in the bag limit may help to improve water quality. Koon said the USGS study should help inform the level of pathogens coming from geese. The point was made that many areas where geese congregate are private and not under municipal control.

The Town of Brookhaven asked the DEC to consider what municipalities have jurisdiction over. Municipalities don't have jurisdiction over wildlife, some bay bottoms, or over septic systems. In Suffolk County, the Department of Health has jurisdiction over sanitary systems. These comments have been submitted numerous times to DEC through the public comments process. There is recognition that this is a statewide permit, and other municipalities may have different issues, however, it may be necessary to do a separate permit, or acknowledge in the permit that different conditions exist on Long Island. Long Island has vastly different hydrology than other areas in New York State.

A question was raised as to NYSDOT inspection of drains, specifically in Greenport and Shelter Island. They are full and have caused flooding issues. A NYSDOT representative attending the meeting said NYSDOT is in the process of doing inspections now and they will prioritize Greenport and Shelter Island.

HHPC asked if the next draft of MS4 permit can be issued showing track changes. DEC indicated that with so many changes, it may not be feasible. PEPC requested that the old permit and new draft permit both be provided as word documents so that they can be compared to see what changes have been made.

It was asked if MS4s are required to submit the December semi-annual reports. The response was probably; depending on when the TMDLs are rescinded. The DEC will try to do so by November 30<sup>th</sup>.

**Koon Tang provided the following list of items that he will follow up on and report back to the committee:**

Speak to the Division of Marine Resources to better understand the process of what is needed for additional FDA-certified labs. Talk to Carol Lamb-Lefay and legal team to see if there is a way to offer relief to a community if a waterbody is not suitable for shellfishing due to an administrative closure and therefore delisted.

Work with Assessment and Listing Group to see if there is a way to do delisting before the 303(d) list is finalized using the existing protocol, and if not, how to change protocol, or move the select waterbody to another list that shows the waterbody is not suitable for shellfishing. These water bodies would not require a TMDL.

Work with Cornell and USGS staff to coordinate efforts.

Provide a list of administrative closures to the municipalities.