

Cape coastal cleanup could go to court

By [Doug Fraser](#)

dfraser@capecodonline.com

May 04, 2009 6:00 AM

If Chatham voters approve borrowing \$59.5 million at town meeting on May 11, it will be the first big step in a \$300 million plan to build a sewer system for the town.

This would deal with wastewater that is contaminating, and ruining, water quality in Chatham's coastal waters — an idea that holds appeal elsewhere. Barnstable, Orleans and Falmouth also are moving relatively quickly toward taking similar steps to resolve their coastal wastewater problems.

But while some towns are committing to spending unprecedented amounts of money for easily the most expensive municipal projects undertaken in their communities, others are still in the beginning phases. This, despite an eight-year, state-funded Massachusetts Estuaries Project to help towns assess and plan for the cleanup, mandated under the federal Clean Water Act of 1972.

Concerned that foot-dragging and other time delays might be exacerbating what they see as an already degraded environmental condition in the Cape's coastal waters, the Boston-based Conservation Law Foundation may file a lawsuit that could speed the cleanup and guarantee that the measures put in place will do the job.

"We are concerned about the pace, and about where there's been no forward momentum despite the availability of data," said CLF staff attorney Cynthia Liebman. "While we recognize that very significant efforts are under way ... we're concerned that the bays are only getting worse by the year."

CLF will hold a panel discussion on the cleanup at 1 p.m. Saturday at Cape Cod Community College.

CLF lawsuits against the Environmental Protection Agency and the Metropolitan District Commission in 1983 were instrumental in getting Boston Harbor cleaned up.

Toward the end of last year, CLF filed a Freedom of Information Act request with the state to get all documents pertaining to the development of nitrogen limits for each of the 89 bays and estuaries on the Cape and Islands, and Southeastern Massachusetts.

The University of Massachusetts School for Marine Science and Technology at Dartmouth, is collecting and analyzing water quality information gathered by municipalities and volunteer groups to determine the maximum amount of nitrogen each water body can handle and still remain healthy.

Nitrogen from human waste and fertilizers enters water bodies through groundwater, road runoff, and storm drains. It feeds runaway algae growth that ultimately robs water bodies of oxygen, killing marine life.

After examining the data, CLF decided that litigation was needed because there are gaps in enforcement, for septic systems in particular, that might affect the quality of the solutions.

"We recognize that these are really difficult economic times, and that there is always something else

for which local or government funding can be used, but the bays have been subject to neglect for a long time," Liebman said.

Andrew Gottlieb, executive director for the Cape Cod Water Protection Collaborative said he is concerned that potential litigation might cause towns to stop ongoing efforts while waiting to see the outcome of a suit.

"That's the wrong strategy," Gottlieb said.

Towns that have developed their wastewater management plans will likely escape court-mandated solutions that are always more expensive, the least flexible, and most poorly thought-out measures, he said.

Thomas Cambareri, Cape Cod Commission water resources program manager, is skeptical that CLF has a winnable case.

"Most of the towns are engaged in wastewater planning," he said. "All of the towns have recognized that this is an issue that has to be dealt with."

But Lindsey Counsell, executive director of Three Bays Preservation, welcomes litigation.

"Anything that will speed the process is good on a number of levels," he said. "The longer we wait the more it's going to cost."

Towns like Chatham are phasing in their wastewater projects over two or more decades to minimize the impact on taxpayers. Counsell said speeding things up could be tough on taxpayers, but the projects would also provide employment and money to the region.

While CLF has not decided yet on exactly whom they will sue, the agency says the EPA should be playing a greater role than it does right now.

"The federal government is stepping in right now on important issues across the nation to provide assistance to municipalities and states. If the EPA were to sit on the sidelines in the effort to address nutrient pollution on Cape Cod, that would be a huge missed opportunity," said Christopher Kilian, CLF vice president and director of its clean water and healthy forests program.

Panel discussion

- The Conservation Law Foundation will host a panel discussion on the cleanup of Cape Cod's bays and estuaries.
- Saturday, May 9, at 1 p.m. at Cape Cod Community College.
- Conservation Law Foundation Web site: