

BASIS STATEMENT
 Amendments to Chapter 500 Stormwater Management
 Major Substantive Rulemaking
 June 24, 2015

The proposed amendments to Chapter 500 Stormwater Management are intended to provide greater flexibility while encouraging the use of innovative stormwater designs that will accommodate measures for addressing climate change, resiliency, and adaptation in our infrastructure. Elements of the proposal include: 1) treatment levels in the general standards have been revised to provide additional stormwater treatment options where the standard treatment requirements are impractical or cannot be met; 2) a new voluntary Low Impact Development (LID) credit has been established that reduces the volume of stormwater that must be treated if an applicant uses LID techniques; 3) new treatment levels have been created for redevelopment projects, through the use of scaled treatment requirements based on stormwater impact changes; and 4) the appendices, which provide basic performance standards for a variety of stormwater management and associated activities, have been updated to reflect current stormwater best management practices. The Department is also proposing a number of minor revisions to the rule that will provide greater clarity and consistency with other Department rules.

The Department and Board of Environmental Protection held a public hearing for this rule on October 16, 2014. The comment period closed on October 27, 2014. The Department's final proposal includes a number of revisions made in response to testimony received during the public hearing and the written comment period. Additional minor changes were made in response to review by the Office of the Maine Attorney General.

The final adoption of the proposed amendments to this major substantive rule was authorized by Resolve 2015, Chapter 22, only if the rule was amended 1) in Section 4(E) to clarify, for the purposes of the urban impaired stream standard, that where there is a Department-approved management and monitoring plan in place and monitoring demonstrates that a stressor in the watershed is contributing to the impairment of the urban impaired stream, the Department may require the applicant to use alternative or additional stormwater treatment measures to address the identified stressor; and 2) to extend the permit shield provisions of the rule to the implementation of innovative measures in order to increase the probability that low-impact development measures will be installed. The Department made these additional amendments pursuant to the Resolve.

Commenters

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General Comments

1) *Comment:* Several commenters suggested the Department reengage the stormwater stakeholders working group prior to moving forward with these revisions. These commenters note that the stakeholders group last met in 2010, and that both the stakeholders and the Department would have benefitted from additional discussions of the Department's proposed changes, especially since it is unclear how the current changes compare to those that were previously discussed by the stakeholder group.

Commenters suggested the Department put the proposed stormwater rule changes on hold, and provide an opportunity to reconvene the stakeholders group and discuss the proposed changes. (Commenters 2, 6, 7 and 9)

Response: In 2009, the Department convened a stakeholder's group to identify changes to its Chapter 500 Stormwater Management rules that would provide greater flexibility for the regulated community and municipalities, simplify compliance and improve environmental outcomes. The Department and stakeholders met several times over a two-year period, and identified a number of potential changes to the Department's rule. Proposals receiving widespread support at that time included:

- 1) Additional options for meeting the General Standards treatment requirements;
- 2) The opportunity to utilize innovative treatment measures on a case-by-case basis;
- 3) New general standards clarifying stormwater requirements for redevelopment projects;
- 4) New general standards for low density subdivisions;
- 5) New general standards for wetland road crossings;
- 6) New general standards for flat roofs;
- 7) Provisions to allow additional treatment options under the Department's Stormwater Compensation Fees and Mitigation Credits program¹; and
- 8) Revisions to the stormwater management performance requirements contained in the appendices to Chapter 500.

Although the Department last met with stakeholders in 2010, many of the proposed changes to Chapter 500 are substantially consistent with those discussed and receiving widespread support from the stakeholders at that time. While certain elements of the current proposal, most notably the proposal to provide voluntary incentives for the use of Low Impact Development techniques, were not discussed during stakeholders meetings, interested parties have had sufficient opportunity to fully review and comment on the Department's proposed changes to Chapter 500 both prior to², and during the formal rulemaking process. No changes were made to the proposal as a result of this Comment.

¹ Please note that these provisions will be contained in the Department's new Chapter 501 Stormwater Management Compensation Fees and Mitigation Credit rule.

² On July 11, 2014, the Department released a pre-rulemaking draft of its Chapter 500 proposal for review and comment.

2) *Comment:* Given the complexity of certain parts of the proposal (e.g., low impact development), and our many technical comments, we believe that a working meeting with DEP staff would be helpful towards clarifying our concerns. (Commenter 9)

Response: Prior to the development of its final draft proposal, Department technical staff met with the Commenter to seek clarification on specific technical comments related to the proposal. The Department made a number of changes in response to the technical comments submitted by this Commenter; these changes are discussed in the following comments.

Comments on Interactions with the Construction General Permit (CGP) and Municipal Separate Storm Sewer System (MS4) Programs

3) *Comment:* If Chapter 500 is not aligned with the MS4 permit, 30 municipalities – the urban centers and economic engines of the State of Maine – may be required to develop and implement their own ordinance to maintain compliance with the federal permit program. Since the regulated municipalities are the urban centers of the State, if they are forced to adopt ordinances that do not apply across the State, the unintended consequence could be pushing more development out to suburbs and rural areas with the potential to impact water bodies that currently meet State water quality standards.

As written, the proposed rule may undermine much of the progress municipalities have made on a local level to encourage Low Impact Development (LID) by updating municipal ordinances/review process, address development/redevelopment consistently with respect to stormwater standards, and comply with MPDES Program permit requirements (i.e., MS4, CGP). ISWG respectfully requests that DEP closely analyze the inconsistencies with municipal efforts that are mainly driven by other permit requirements on a State and Federal level (e.g., MS4, CGP, TMDLs, etc.).

Inconsistency with MS4 permit requirements should be addressed. Specifically, 30 municipalities rely on Chapter 500 for controlling runoff from construction and post-construction sites in order to comply with their existing MS4 permit. These concerns were previously expressed on 7/25/14, when ISWG noted:

“As you know, a monumental effort was undertaken by DEP as part of the 2007 Chapter 500 rulemaking effort to more closely align Chapter 500 stormwater standards with the Maine Construction General Permit (MCGP), which is another NPDES/federally-based permit that DEP administers since receiving delegated authority from EPA. For several 5-year permit cycles now, MS4 programs have relied on Chapter 500 or the MCGP to support the development and implementation of the construction minimum control measures. Without this reliance, municipalities must develop and implement their own ordinance, which would be a costly undertaking for 30 regulated MS4 municipalities in Maine, not just the 14 participating in ISWG. REQUEST: ISWG respectfully requests that DEP maintain consistency with the MCGP.”

One of the main reasons cleanup efforts are so expensive is because communities are forced to shoehorn stormwater technologies into existing developed landscapes. Typical costs of stormwater “retrofits”, as these projects are often called, are many times the cost of incorporating stormwater management into project design.

When new development is carried out in a way that does not adequately protect water quality, we effectively impose much higher stormwater management costs on our communities in the future. Covering such costs would be required to coax our streams, rivers and lakes back to health and such investments may be required of our communities via regulatory mechanisms such as “Municipal Separate Storm Sewer System” (MS4) discharge permits under the Clean Water Act. (Commenters 2 and 9)

Response: The Department recognizes that many municipalities rely upon the Department's Chapter 500 Stormwater Management rules to satisfy federal requirements under the Municipal Small Storm Sewer System (MS4) Program. Although the Department previously proposed streamlining a number of basic performance standards in a pre-public hearing draft, the Department's draft hearing proposal incorporated a number of changes intended to further align the Chapter 500 requirements with both the federal Construction General Permit (CGP) and MS4 programs.

In response to comments, the Department has incorporated additional revisions that should provide greater consistency with these federal programs, and obviate the need to develop and implement local ordinances. For more detail on these revisions, see Comments #41, #42, # 43, #45 and #46.

Definitions

4) *Comment:* The new rule should make clear that the definition of "redevelopment" includes improvements made by the existing owner or operator at an existing site. The proposed definition of "redevelopment" is, in relevant part, "an activity undertaken to redevelop property in which the newly developed area, not including maintenance, is located within the same footprint as the existing developed area." See 06-096 CMR 500 § 3(CC) (proposed rule). To some, the concept of redevelopment could have the implication of a new owner or operator coming in to develop something new at a site that is currently abandoned or run-down, and thus render the entire section on redevelopment inapplicable to facilities like BIW and SDW that are improving their sites. Thus, we would suggest clarifying that the rule applies to improvements by existing owners and operators, as follows: "an activity undertaken to redevelop or otherwise improve property in which the newly developed area, not including maintenance, is located within the same footprint as the existing developed area." (Commenter 1)

Response: The Department agrees with the Commenter and has amended its proposal to clarify that the term "redevelopment" may apply to improvements undertaken by existing owners and operators, since the intent is to indicate that the newly-developed area is within the footprint of an existing developed area. Section 3(CC) of the proposal has been amended to read:

CC. Redevelopment. "Redevelopment" means an activity, not including maintenance, undertaken to redevelop or otherwise improve property in which the newly developed area is located within the same footprint as the existing developed area. A minor amount of undeveloped land, as determined by the Department on a case-by-case basis, may be included within the perimeter of the existing developed area.

See also Comments #9 and #16.

5) *Comment:* Section 3 deletes a reference to the listing of "lakes most at risk from development" and "urban impaired streams" in chapter 502. Where does DEP propose to list these waterbodies in the future? (Commenter 5)

Response: The Department's Chapter 502 (Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams) rule will continue to describe the criteria used to identify the direct watersheds of lakes most at risk from new development and urban impaired streams and list these waterbodies. The Department has amended its proposal to include the title of Chapter 502 as follows:

3. **Definitions.** The following terms have the following meanings as used in this Chapter and 06-096 CMR Chapter 502 (Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams), unless the context otherwise indicates. "Lakes

~~most at risk from new development” (lakes most at risk) and “urban impaired streams” are listed in chapter 502.~~

See also Comment #10.

6) *Comment:* In Section 3(O), the language on linear projects is very difficult to understand. DEP should clarify it. (Commenter 5)

Response: The Department agrees with the Commenter and has amended its definition for “linear projects” as follows:

Linear portion of a project. “Linear portion of a project” means that The portion of a project consisting of a utility corridor, roads and road shoulders, driveway, railroad track outside a yard or station, or other similar transportation corridor, as determined by the Department. Linear projects do not include golf courses. The linear portion of a project does not include roads and road shoulders within 50 feet of an impervious area of the same project that is not a sidewalk, bikepath, driveway or other road entrance, or single or two family residential buildings.

The proposal (Section 4(C)(5)(d)) provides for reduced stormwater treatment in the case of linear projects that are not subject to the urban impaired stream standard due to the impracticability of achieving greater treatment levels for most of these projects. In some cases, however, roads and other infrastructure projects may be located adjacent to impervious areas of the same project where these impervious areas are implementing stormwater treatment measures that can readily address both the stormwater volume and treatment requirements from the road (or other infrastructure project). As an example, roads and road shoulders within 50 feet of a (impervious surfaced) commercial or industrial parking lot would not be treated as a “linear portion of a project”, since the stormwater treatment for the parking lot could be designed to handle both the road and parking lot volumes. See also, Comment #14.

7) *Comment:* In general, many of the definitions in Chapter 500 may not be consistent with those in the MS4 permit. Please ensure consistency between this rulemaking and the existing MS4 permit. Examples of definitions that are potentially incongruous with municipal ordinances and/or municipal budgets for O&M include Low Impact Development (LID) – Knowing that LID was a priority for DEP in 2009-2010 rulemaking efforts, Maine municipalities have already begun adopting LID ordinances. Has the proposed definition, which is different from 2009-2010 versions, been reviewed to ensure that it is consistent with existing, adopted, or proposed municipal ordinances, EPA definitions, DEP guidance documents, etc.? (Commenter 9)

Response: The Department’s definition of “Low Impact Development is specific to the Department’s proposal. The term “Low Impact Development” was first coined by Larry Coffman of the non-profit Low Impact Development Center. The Low Impact Development Center uses the following definition:

“Low Impact Development is a comprehensive land planning and engineering design approach with a goal of maintaining and enhancing the pre-development hydrologic regime of urban and developing watersheds. This design approach incorporates strategic planning with micro-management techniques to achieve superior environmental protection, while allowing for development or infrastructure rehabilitation to occur.”³

³ <http://lowimpactdevelopment.org/about.htm>

Although a wide range of jurisdictions have implemented programs incorporating the use of voluntary and/or mandatory Low Impact Development strategies, almost every jurisdiction has its own definition. For example, the Central Coast Water Board (California) defines Low Impact Development as follows:

“minimizing or eliminating pollutants in storm water through natural processes and maintaining pre-development hydrologic characteristics, such as flow patterns, surface retention, and recharge rates.”⁴

In practice, Low Impact Development definitions typically prescribe specific strategies or practices such as an array of infiltration best management practices, minimizing street widths, or the use of native vegetation. The Department’s proposed definition similarly focuses on replacing or replicating pre-development hydrology through a variety of smaller-scale structural or non-structural projects that promotes the natural movement of water within an ecosystem or watershed. No changes were made to the proposal as a result of this Comment.

8) *Comment:* Much of the routine construction that DPW crews undertake themselves or contract out each year is considered “maintenance” thus allowing municipal and State budgets to efficiently maintain infrastructure and avoid costly permitting submittals. Is it DEP’s intention to limit the universe of unpermitted “maintenance” by requiring that the “hydraulic capacity” be maintained, instead of maintaining the “drainage pattern” as in previous versions? (Commenter 9)

Response: The Department’s proposal requires that hydraulic capacity, rather than “drainage pattern” be maintained. Maintaining the hydraulic capacity, or the ability of a stormwater management system (and its components) to retain the same level of treatment for a given volume of water, is critical to the continued effectiveness of stormwater management systems. Simply requiring the maintenance of a “drainage pattern” is insufficient to ensure that a stormwater management system will continue to adequately address stormwater. For example, a culvert that is used to distribute stormwater to a vegetated buffer via a sheet flow may continue to maintain the “drainage pattern” even if partially occluded, thereby compromising the effectiveness of the stormwater control.

The proposal does not limit the universe of unpermitted maintenance, but instead helps to ensure that stormwater management systems continue to perform as designed and constructed. No changes were made to the proposal as a result of this comment.

9) *Comment:* The definition for redevelopment specifically “does not include maintenance” as defined above. Is it DEP’s intention to remove “maintenance” altogether from the requirements associated with redevelopment (i.e., not required to meet standards)? (Commenter 9)

Response: The Department’s proposed definition for “redevelopment” states that maintenance does not constitute redevelopment; it does not remove maintenance requirements for redeveloped areas. The Department has revised its proposal to improve clarity:

CC. Redevelopment. “Redevelopment” means an activity, not including maintenance, undertaken to redevelop or otherwise improve property in which the newly developed area is located within the same footprint as the existing developed area. A minor amount of undeveloped land, as determined by the Department on a case-by-case basis, may be included within the perimeter of the existing developed area.

⁴ http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/low_impact.shtml

No other changes were made to the proposal as a result of this comment. See also Comments # 4 and #16.

10) A definition of “Urban Impaired Stream” (UIS) is offered with reference to Chapter 502, which is consistent with previous versions. Chapter 502 provides a list of at-risk lakes and impaired water bodies in each municipality. Is it DEP’s intention to update Chapter 502 through a parallel, but concurrent rulemaking effort?” (Commenter 9)

Response: The Department intends to update its Chapter 502 (Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams) rule at a later date. No changes were made to the proposal as a result of this comment.

11) *Comment:* In Section 3(A) Certified erosion and sedimentation control professional, the proper term is Certified Professional in Erosion and Sedimentation Control (CPESC). Will those officials certified under DEP’s Nonpoint Source (NPS) Training and Resource System program qualify in lieu of the Enviro-Cert International qualifications listed in this definition? (Commenter 7)

Response: The Department agrees with the Commenter and has amended its proposal to incorporate the proper terminology:

- A. **Certified Professional in Erosion and Sedimentation Control (CPESC).** “Certified professional in erosion and sedimentation control (CPESC)” means a ~~A~~ professional certified by Enviro-Cert International ~~the International Erosion Control Association (IECA)~~ in erosion and sediment control practices.⁵

With respect to officials certified under the Department’s Nonpoint Source (NPS) Training and Resource System, it is important to recognize that this term is utilized in Chapter 500 to ensure that only qualified individuals prepare stormwater plans. For example, Section 7(C) of the Department’s proposal states:

Basic standards submissions. ~~These submissions are required for all sites except those that qualify for stormwater PBR described in Section 7 above.~~ An erosion and sedimentation control plan or an inspection and maintenance plan for a project that does not qualify for a stormwater PBR must be prepared by a professional engineer registered in the State of Maine, landscape architect licensed in the State of Maine, or a certified professional in erosion and sedimentation control ~~professional~~.

The Department’s NPS Training and Resource System was developed to provide contractors and other parties with a basic understanding of nonpoint source pollution and environmentally-sound construction practices. While successful in achieving this goal, it is not intended to supplant the more extensive professional certification process administered by Enviro-Cert International.

12) *Comment:* The proposed language for “developed areas” in Section 3(D) now includes landscaped areas excluding those areas that maintain the same drainage pattern of existing conditions prior to disturbance as long as it is not mowed more than once per year. However, under the landscaped area definition in Section 3(N), an area of grass is considered landscaped if it is mowed more than twice per year. These definitions appear to be in conflict. Maine DOT and MTA request that the developed area definition be updated to limit mowing to twice per year. Some median strips and slopes are mowed twice a year to avoid sight restrictions and provide stormwater treatment. (Commenter 7)

⁵ The Department has also revised subsequent references to this term in the rule.

Response: The Department agrees with the Commenter and has amended the definition of “developed area” to allow mowing no more than twice per year:

Developed area. “Developed area” means an impervious area, landscaped area, or unvegetated area. Developed area includes A all “Disturbed areas” excluding except: an area that within one calendar year of being disturbed is returned to a condition with the same drainage pattern that existed prior to the disturbance and is revegetated, within one calendar year of being disturbed, provided the area is not mowed more than twice ~~once~~ per year.

13) *Comment:* The term “natural” within the landscape area definition in Section 3(N) is ambiguous. “Revert” infers that it occurs without seeding or planting and does not appear to address the potential for erosion during that time period. Does DEP mean for this to be the pre-existing condition? The “Developed area” term does not require a “natural revegetated condition when describing the “disturbed area” exemption. Maine DOT and MTAS request that the word “natural” in the definition be replaced with the term “pre-existing.” (Commenter 7)

Response: The Department’s definition of “landscaped area” excludes an area of land that has reverted to a natural vegetated condition. As an example, a parcel of land may have been previously seeded with a cool-season grass, but has now, as part of the vegetative successional process, reverted to herbaceous plants, shrubs trees and other vegetation. Key to this exclusion is whether the vegetation on the parcel has been intentionally planted, or grown without human intervention. The Department’s exclusion is not conditioned on the re-establishment of pre-existing vegetation species and/or types; only upon the reversion to a vegetated condition without human intervention.

Since the Department’s rules require areas to be temporarily stabilized during the construction process, and permanently stabilized thereafter, there is no increased erosion potential. No changes were made to the proposal as a result of this comment.

14) *Comment:* The proposed changes to the linear portion of a project definition in Section 3(O) do not explicitly state that road shoulders are considered a part of the linear portion. Maine DOT and MTA request that the definition edits include a reference to include public linear projects as including all areas within the Rights of Way. (Commenter 7)

Response: The Department has amended its proposal to explicitly state that road shoulders are considered part of the linear portion of a project:

Linear portion of a project. “Linear portion of a project” means that The portion of a project consisting of a utility corridor, roads and road shoulders, driveway, railroad track outside a yard or station, or other similar transportation corridor, as determined by the Department. Linear projects do not include golf courses. The linear portion of a project does not include roads and road shoulders within 50 feet of an impervious area of the same project that is not a sidewalk, bikepath, driveway or other road entrance, or single or two family residential buildings.

The Department did not revise its proposal to include all areas within Rights of Way in this definition because the Rights of Way can encompass a much larger area than only the road and shoulder. As previously noted (see Comment # 6), the proposal (Section 4(C)(5)(d)) provides for reduced stormwater treatment in the case of linear projects due to the impracticability of achieving greater treatment levels for many projects. Conversely, stormwater treatment opportunities are reasonably expected to be enhanced, not diminished, by the presence of the Rights of Way, since it logically follows that there will be more options for stormwater control in a larger area.

15) *Comment:* Maine DOT and MTA suggest adding a citation to the Natural Resources Protection Act (NRPA) to the definition of “major river segment” in Section 3(R) in order to clarify the statutory definition of this term. (Commenter 7)

Response: The definition of “major river segment” is specific to Chapter 500 and is not found in the Natural Resources Protection Act, 38 M.R.S. § 480 *et. seq.* No changes were made to the proposal as a result of this comment.

16) *Comment:* In Section 3(CC), Maine Dot and MTA request that DEP quantify the term “minor amount” or provide further clarification of how the Department will define a “minor amount” as it relates to the new redevelopment definition. If DEP will not quantify the amount, then Maine DOT and MTA request that a statement be added to reflect that DEP will determine this amount on a case-by-case basis. (Commenter 7)

Response: The Department has amended its proposal to clarify that a “minor amount” will be determined on a case-by-case basis. The amended proposal states:

CC. Redevelopment. “Redevelopment” means an activity, not including maintenance, undertaken to redevelop property or otherwise improve property in which the newly developed area is located within the same footprint as the existing developed area. A minor amount of undeveloped land, as determined by the Department on a case-by-case basis, may be included within the perimeter of the existing developed area.

See also Comments #4 and #9.

17) *Comment:* In Section 3(EE) Soil Hydrologic Groups, the proper term is actually “Hydrologic Soil Groups” as defined by NRCS, therefore, Maine DOT and MTA suggest the definition be updated as shown below:

~~Soil hydrologic groups.~~ Hydrologic Soil Groups. Soil hydrologic Hydrologic Soil Groups means the soil categories are a ranking of soil types for runoff potential adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture ~~to rank a soil’s runoff potential used in estimating direct runoff.~~ The four hydrologic groups are A, B, C, or D, where group A generally has the ~~smallest~~ lowest runoff potential and group D has the ~~greatest~~ highest. (Commenter 7)

Response: The Department agrees with the Commenter and has made the suggested change. The revised proposal states:

K. Hydrologic Soil Groups. Hydrologic Soil Groups are a ranking of soil types for runoff potential adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture used in estimating direct runoff. The four hydrologic groups are A, B, C, or D, where group A generally has the lowest runoff potential and group D has the highest.

18) *Comment:* Stormwater (Section 3(FF)) is more appropriately defined as the runoff from rain or melting ice and snow that flows. Maine DOT and MTA recommend removing the words “the part of precipitation, including” from the term to accurately define stormwater. (Commenter 7)

Response: The Department's proposal regulates the runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in drainageways. No changes were made to the proposal as a result of this comment.

Stormwater Standards

19) Comment. Many existing industrial sites, including at BIW and SDW, have overlapping stormwater controls through the federal Clean Water Act, either in the form of coverage for the discharge of industrial stormwater under the Multi-Sector General Permit ("MSGP") or under provisions akin to those of the MSGP in a Maine Pollutant Discharge Elimination System ("MEPDES") permit. These programs have been delegated by the U.S. EPA to the Department, and are therefore implemented at the state-level. Nonetheless, there does not appear to be any effort to reduce the overlap between the two programs. When a facility has an MSGP approval or has the provisions of the MSGP incorporated into its MEPDES permit, it is required to develop stormwater pollution prevention plans that apply specifically to the operations at that site. These plans include extensive requirements for implementing best management practices that cover both structural and non-structural controls. Among other things, these approvals also require at least quarterly monitoring and inspection of the stormwater system, and obligate facilities to maintain those records on-site. The program also encourages industrial facilities to reduce the exposure of industrial activities to stormwater by bringing them under cover.

To reduce the administrative burden of these overlapping programs, we suggest three revisions:

1. Facilities subject to the MSGP, whether directly through the MSGP program or through a MEPDES permit, receive "credit" in Table 2 for redevelopment projects in the form of a reduced pollutant ranking. Thus, we recommend a new subparagraph under the proposed Table 2, as follows: "Any facility that is subject to the Multi-Sector General Permit ("MSGP") or has the substantive provisions of the MSGP incorporated into its MEPDES permit shall have its pollutant ranking in Table 2 reduced by 2 points."

Response: The Multi-Sector General Permit ("MSGP") is one element of the Maine Pollutant Discharge Elimination System ("MEPDES")⁶; a federally-delegated program that addresses stormwater from construction sites, industrial activities, and from Municipal Separate Storm Sewer Systems (MS4). The MSGP is a discharge permit that authorizes the direct discharge of stormwater associated with an industrial activity to waters of the state, excluding discharges to groundwater, and establishes both general and specific control requirements for a number of industrial activities (in accordance with an activity's classification under the Standard Industrial Classification codes). The MSGP program was developed to address a range of pollutants that can enter stormwater as a result of industrial activities, including: 1) industrial chemicals; 2) leaked or spilled fluids such as gasoline and oil; 3) paint chips and debris; and 4) heavy metals and other industrial wastes. Under this program, sources within the affected industrial sectors must develop and implement a Stormwater Pollution Prevention Plan (SWPPP) which focuses on the development and implementation of best management practices, good housekeeping practices and preventative maintenance activities⁷.

⁶ The MPDES program covers the following stormwater discharges in Maine:

- Operators of MS4s located in "urbanized areas" as delineated by the Bureau of the Census,
- Industrial facilities in any of 29 industrial sectors that discharge to an MS4 or to waters of the United States
- Operators of construction activity that disturbs 1 or more acres of land; construction sites less than 1 acre are covered if part of a larger plan of development.

⁷ If industrial materials or activities are not exposed to rain snow or ice melt, the facility may qualify for a "No Exposure Certification" that excludes them from the MSGP program requirements.

Although the MSGP (and MEPDES) program addresses stormwater discharges, the control requirements under this program are not necessarily more stringent than those of Chapter 500. In addition, it does not follow that a facility subject to the MSGP or MEPDES programs (in comparison to a source that is not subject to these programs), will automatically have a lower ranked impact as a result of redevelopment. A redevelopment activity subject to the MSGP could still result in an increase in impervious area, with the resulting stormwater impacts, since the MSGP (and SWPPP) focus on specific activities and discharges.

At the same time, it should be recognized that redevelopment activities at facilities subject to the MSGP and MPDES programs could, in some cases, reduce stormwater impacts from these sites. The Department has amended its proposal to clarify that the pollutant impact rankings of Table 2 will be evaluated and assigned by the Department, and that an alternative ranking may be assigned based on a case-by-case evaluation of individual projects. The Department recognizes that project-specific features may warrant discussion; this discussion however, should not be unbridled. The Department is therefore limiting its adjustment of these rankings to no more than 2 points:

- (i) The requirement for treatment is scaled based on the pollutant discharge that, if the stormwater was untreated, would result from the redevelopment project. The Department will assign a pollutant ranking based on Table 2, and may, on a case-by-case evaluation of individual projects, modify the ranking by up to 2 points in light of project-specific features.

See also, Comments #4, #16 and #36.

2. Furthermore, we believe that those portions of redevelopment projects that bring industrial activities indoors should be exempt entirely from the Chapter 500 rules, as those projects *improve* stormwater quality by limiting exposure in the first place. For example, BIW has been working to bring more and more of its processes indoors, such that activities like welding or cutting can occur where they are not subject to contact with stormwater at all. Given the limited area on the site for more treatment structures, they should not be required to treat stormwater that is already being improved by limiting exposure.

Response: - Unlike the Multi-Sector General Permit (“MSGP”) program, the Maine Stormwater Management Law (38 M.R.S. § 420-D) and Chapter 500 Stormwater Management rules do not establish activity-specific control or treatment requirements, but instead require treatment for all surfaces. Although limiting outdoor exposure may provide water quality improvements, these improvements are more appropriately accounted for by the MEPDES permitting process⁸. Since the relocation of an activity or process indoors is unlikely to change the extent of either the developed or impervious areas, stormwater volumes and treatment requirements pursuant to Chapter 500 would remain essentially unchanged. No changes were made to the proposal as a result of this comment.

3. In addition, these facilities should also be exempt from the standard conditions of approval for Stormwater Management and Site Law facilities that require recertification every five years that the stormwater system continues to function as appropriate. *See* 06-096 CMR 500 §§ 9(A)(8) & 10(B) (proposed). Such facilities are already subject to quarterly and annual inspections and reporting requirements, and must regularly update their stormwater plans. Thus, a five-year certification is redundant. (Commenter 1)

⁸ Relocating activities indoors may exclude an operator from industrial stormwater permit requirements.

Response: The Department acknowledges that stormwater control requirements under the Multi-Sector General Permit (“MSGP”) or Maine Pollutant Discharge Elimination System (“MEPDES”) programs which are intended to reduce or eliminate a broad range of water pollutants, can overlap with the broader requirements established by the Chapter 500 Stormwater Management rules. In these cases, it may be permissible to waive the recertification requirements when it can be demonstrated that the MSGP and/or MEPDES programs are providing stormwater control that is at least as effective as required pursuant to Chapter 500. The Department has amended its proposal to provide for the waiver of these recertification requirements at facilities subject to MSGP and/or MEPDES on a case-by-case basis as follows:

Section 9(A)(8) of the proposal has been amended to state:

- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the Department.
- (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the ~~facilities system, or portions of the system~~, as necessary.
 - (c) The ~~erosion and~~ stormwater maintenance plan for the site is being implemented as ~~written, or modifications to the plan have been submitted to and approved by the~~ Department, and the maintenance log is being maintained.
 - (d) All proprietary systems have been maintained according to the manufacturer’s recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.
 - (e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department’s Multi-Sector General Permit (“MSGP”) and/or Maine Pollutant Discharge Elimination System (“MEPDES”) programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.

Section 10(B) of the proposal has been amended to state:

- B.** Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the Department.
- (1) ~~A.~~ All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (2) ~~B.~~ All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the ~~facilities system, or portions of the system~~.

~~(3) C.~~ The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the Department, and the maintenance log is being maintained.

~~(4) D.~~ All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.

(5) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.

20) *Comment:* We also recommend a minimum threshold for redevelopment projects before they trigger a review under Chapter 500. Specifically, we suggest:

1. Revising the proposed Section 16 to limit application of Chapter 500 only to those projects that require amendments to Stormwater Management or Site Law licenses *and* have an impact on stormwater. Thus, the proposed Section 16 could be amended to provide: "If a project has required a permit pursuant to the Stormwater Management Law or Site Law, all subsequent changes to the project that could affect the quality or quantity of stormwater discharged from the site and require a modification of the project's license are also required to meet the stormwater standards of Section 4." Given that as a standard condition of approval nearly any revision to a licensed project requires an amendment of a Site Law permit, this would clarify that only those modifications that meaningfully affect stormwater trigger a Chapter 500 review.

Response: The Department agrees with the Commenter and has amended its proposal to state:

16. Modification. If a project has required a permit pursuant to the Stormwater Management Law or Site Law, all subsequent changes that could affect the project's stormwater quality or quantity and require a modifications of the project's license of any size are also required to meet the stormwater standards of Section 4, except as allowed for redevelopment in Section 4(D). When the applicable standard depends upon an area threshold, the area of the entire licensed project, including the proposed project changes modification, is included. ~~The area may be limited if the project covers more than one direct watershed, and the standards so provide.~~

2. In addition, to prevent the kind of situation described above, in which a small project could trigger the need for disproportionately expensive revisions to existing stormwater infrastructure, we suggest a threshold that would function in a manner similar to the manufacturing facility exemption under the Site Law, 38 M.R.S. § 488(7). The rule could provide that a redevelopment project at a facility with an existing Site Law license is not required to meet the Chapter 500 standards provided the new development area does not exceed 10 acres or 20% of the existing developed area on the site, over a 10-year period. Once a facility exceeded that threshold, it would have meet standards both for the current project and any projects undertaken pursuant to the exemption. (Commenter 1)

Response: The proposed exemption threshold could negatively affect wetlands and waterbodies since the proposed exemption threshold fails to consider the type of redevelopment undertaken on the site. While

some redevelopment activities may improve the quality of untreated stormwater, others would have a deleterious impact.⁹ No changes were made as a result of this comment.

21) *Comment:* It is unclear why “roofs on an industrial facility” would have a higher pollutant ranking under Table 2 than “other rooftops.” From a stormwater perspective, we do not believe that industrial facilities are any more likely to contribute pollutants to stormwater from their roofs than other types of facilities. Thus, we propose that both have a pollutant ranking of 2. (Commenter 1)

Response: The Department’s proposal, which assigns a higher pollutant ranking for industrial roofs, is based on the potential for greater deposition of airborne pollutants and leaching of materials such as zinc from these roofs. Industrial facilities, even those with well-controlled emissions, can be expected to experience greater pollutant loads than similarly-sized non-industrial facilities due to both point and fugitive emission sources at the facility. Industrial roofs themselves have also been identified as a major contributor to excessive levels of zinc in stormwater runoff^{10,11,12} due to the common use of galvanized roofing, HVAC equipment and other structures. No changes were made to the proposal as a result of this comment.

22) *Comment:* Subparagraph (4)(C)(2)(d) describes the General Standards to be applied when properties are re-developed. While the rules are complex, the basic concept appears to be to require no stormwater management at the time of redevelopment unless the project is likely to cause a significant increase in water quality impacts.

While such an approach may limit risk of significant degradation of water quality, it also does nothing to improve conditions in already degraded waters. Stormwater rules should be a tool not just to slow the pace of damage to these waterbodies, but to clean up ones that are already damaged.

Redevelopment projects provide a cost-effective opportunity to install stormwater management in already-developed watersheds. Sites are being rethought and re-designed, providing an opportunity to incorporate stormwater management as an integral part of project design, rather than as an after-the-fact add-on. Construction is already being planned, reducing impact of building stormwater infrastructure on businesses and customers.

We request that the BEP consider ways that these regulations could require or encourage redevelopment projects to incorporate stormwater management, either by requiring some stormwater management on redevelopment projects or by creating regulatory incentives to encourage use of stormwater management practices.

We recognize that there is a balance to be struck here. Regulations that are too stringent could discourage redevelopment in favor of new construction. Such an outcome would increase land clearing and construction of roads, parking lots and other impervious areas, which would be counterproductive for water quality. However, we believe the proper balance has not yet been found. (Commenter 2)

Response: The Department’s proposal strikes an appropriate balance between encouraging redevelopment and unintentionally favoring new development activities by providing for reduced treatment levels where redevelopment activities significantly reduce the stormwater impacts from the redeveloped site. The

⁹ For example, redevelopment activity that converted landscaped areas to a high-use parking lot would have significant impacts on stormwater volume and quality.

¹⁰ <https://fortress.wa.gov/ecy/publications/publications/0603009.pdf>

¹¹ <http://www.deq.state.or.us/wq/stormwater/docs/SWZincReduction.pdf>

¹² <http://stormwatercenter.net/Library/Practice/8.pdf>

pollutant impact rankings in Table 2 of the proposal only reduce stormwater treatment requirements for redevelopment activities that also reduce stormwater impacts. For example, a redevelopment project that converts a high use parking lot to a landscaped area would positively impact both stormwater quality and quantity. Conversely, developing the same high use parking lot on an area that was formerly landscaped would negatively affect stormwater.

The Department's proposal provides incentives for redevelopment activities while providing that those larger projects subject to the Site Location of Development Law treat at least 50% of the developed area of the redevelopment project, and will not only prevent further stormwater degradation, but also help to improve already-degraded waters. No changes were made as a result of this comment.

23) *Comment:* Paragraph (4)(C)(4) provides information on a "Low Impact Development Credit". We applaud the Department for including a process for allowing Low Impact Development (LID) practices under the proposed rules. LID has the potential to both improve water quality and reduce costs of stormwater management. The Department should be doing whatever it can to encourage its use. However, as drafted, this section will do little to encourage, and may actually discourage, use of LID. Investors, and the design engineers working on their behalf, wish to navigate the regulatory process in a timely and predictable manner. Innovative technologies are frequently passed over in site design, not because of their performance characteristics, but because regulatory review of novel technologies is likely to be slow and uncertain compared with standard designs. This kind of regulatory disincentive for innovation is still a barrier to widespread use of LID in Maine.

Subparagraph (4)(C)(4)(a) begins with the following language: "Projects incorporating low impact development strategies under this Section must be reviewed and approved by the Department on a case-by-case basis..." To an applicant, such language signals both delays in gaining permit approvals and a lack of certainty with regards to what LID practices will be allowed.

The BEP and DEP should develop language that provides greater certainty for applicants about how LID projects will be evaluated, and clarity to permit reviewers about how to evaluate projects that incorporate LID. In particular, this section should address both projects that implement LID as their primary stormwater treatment technology, and also projects that combine LID design principles and practices with other stormwater technologies.

If use of LID principles is going to increase in Maine, the language has to be specific enough so that engineers can readily determine whether a possible design will meet with regulatory approval. Since LID technologies are still an area of developing technical understanding, the final language should also allow case by case review of innovative projects, based on more general design and performance principals. (Commenter 2)

Response: The Department's proposal was developed after an extensive review of Low Impact Development (LID) programs in other jurisdictions, and provides a flexible approach to encouraging the use of LID strategies that better restore and maintain predevelopment hydrologic functions.

LID strategies are typically less costly, and result in better environmental outcomes than trying to control stormwater and restore natural hydrologic functions using "end-of-pipe" stormwater management techniques such as ponds or concrete conveyances. Unlike traditional technologies, LID techniques utilize smaller distributed stormwater control systems employing materials such as native plants, soil and gravel that can be more easily integrated into the landscape.

The Department's proposal employs a two-tiered approach to LID implementation. First, applicants choosing to apply for the voluntary LID credit must demonstrate they are minimizing site disturbance

during both the construction and post-construction phases to reduce changes in a site's hydrologic character. Minimizing land disturbance and soil compaction helps to preserve natural drainage patterns and infiltration, thereby reducing both on-site and off-site stormwater impacts. Second, applicants must utilize decentralized stormwater control strategies that infiltrate, filter, store, evaporate and detain runoff closer to its source.¹³

While there may be some benefits for the regulated community by providing a more prescriptive approach to LID implementation, especially in municipalities or other jurisdictions requiring the mandatory use of these techniques, the Department's proposal was crafted to provide a more flexible approach to incentivizing its voluntary use. Although a case-by-case review requirement may at first seem an impediment to the widespread use of these principles, it is incumbent to remember that the Department requires a pre-application meeting for all Stormwater Management projects not qualifying for a Stormwater Permit by Rule, unless waived by the Department based on an initial review of project plans and scope. This meeting provides an ideal opportunity for an applicant to review all statutory and regulatory requirements, including the use of LID technologies. A case-by-case application procedure may serve to help, rather than hinder, the application of LID principles in Maine, and help to avoid the use of prescriptive stormwater control requirements that may be inappropriate for certain sites. No changes were made to the proposal as a result of this comment.

24) *Comment:* Subparagraph (4)(C)(5)(e) provides an exception to "Low Density Subdivisions". Even with the best modern stormwater management technologies, development projects have residual negative effects on water quality. While stormwater management and use of LID practices can reduce water quality impacts, they do not prevent them entirely. The best way to protect water quality is, therefore, to encourage development patterns that minimize land clearing and construction of impervious surfaces.

Low density subdivisions generally require more land clearing and substantially more road construction than do higher density subdivisions housing a similar number of people. From a water quality perspective, it is counterproductive to provide a regulatory incentive (in the form of exceptions to the general rule) for subdivisions that will almost certainly have greater overall water quality impact.

The idea behind the proposed exception may be that water quality impacts of low density subdivisions can be muted because of opportunities to make use of natural stormwater treatment on-site. Indeed, these projects often have numerous opportunities to take advantage of LID techniques and low cost treatment options such as vegetated buffers.

That sounds like a great example of LID design principles at work. Rather than carving out an exception to the general standards for low density projects, the LID credit standards should be drafted to allow application of buffers, land protection, and similar strategies wherever they are feasible, regardless of overall subdivision density. (Commenter 2)

¹³ Section 3(P) of the proposal defines these strategies: **Low impact development.** "Low impact development" or "green infrastructure" means site planning and design strategies intended to replace or replicate predevelopment hydrology through the use of source control and relatively small-scale measures integrated throughout a site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible. Low impact development strategies may be either nonstructural or structural, except that low impact development strategies utilizing structural stormwater management techniques shall be limited to an impervious contributing drainage area equal to or less than 1 acre. Low impact development strategies include, but are not limited to: bioretention filters, grass swales and channels, vegetated filter strips, permeable pavements, rain gardens and vegetated rooftops.

Response: As noted by the Commenter, the intent of the low density subdivision proposal is to provide an incentive to utilize natural stormwater treatment opportunities. To that end, the proposal established restrictive limits on the developed area of the parcel, total impervious area, and the maximum developed area of each lot. In addition, each lot was to include a vegetated, forested or meadow buffer along with deed restrictions.

The Department's proposal was based on recommendations discussed by stakeholders during an extensive stakeholder process in 2009 and 2010, and represents one mechanism to provide incentives for the use of buffers and deeded development restrictions. At the same time, the Department recognizes that the proposal may have unintended consequences, and ultimately lead to more land clearing and road construction; activities antithetical to the Department's stormwater protection goals.

The Department agrees with the Commenter's assertion that the stormwater management goals of the low-density subdivision proposal can be better accomplished through the use of Low Impact Development techniques, and has deleted the low density subdivision standards from its proposal.

25) *Comment:* The standards for receiving credit for low impact development (page 12) are loosely defined and require judgment calls on what is the "extent practical", "extent possible" or "minimum". These terms will have vastly different meanings to the developer, regulator and other interested parties. If the development potential of a lot has been maximized or pushed near this threshold, the project should not be able to qualify for this credit.

In addition, the broadly defined LID treatment methods combined with the nature of rural subdivision would seem to automatically qualify these projects as low impact development despite often sprawling infrastructure. Thus subdivisions, which are the most common type of development in rural lake watersheds, will likely receive a 10 to 20% credit for standard practices.

While the proposed changes allowing for greater flexibility with redevelopment projects were needed and had been discussed during previous stakeholder meetings, our organization feels strongly that the low impact development credit criteria need to be further refined or these standards will likely be liberally interpreted and the waters of the state will be more polluted as a result. (Commenter 3)

Response: As previously discussed (See Comment # 23), the Department's proposal employs a two-tiered approach to LID implementation. First, applicants choosing to apply for the voluntary LID credit must demonstrate that they are minimizing site disturbance during both the construction and post-construction phases to in order to reduce changes in a site's hydrologic character. Minimizing land disturbance and soil compaction helps to preserve natural drainage patterns and infiltration, thereby reducing both on-site and off-site stormwater impacts. Although terms such as "minimize...to the extent practicable" may at first seem indeterminate and subjective, the Department has considerable experience in successfully implementing programs requiring similar determinations (e.g., the "no unreasonable impact" requirements under the Natural Resources Protection Act). It should also be noted that similar provisions are being implemented in other jurisdictions (e.g., New Jersey) as part of their LID program requirements.

Second, applicants must utilize decentralized stormwater control strategies that infiltrate, filter, store, evaporate and detain runoff closer to its source. The Department's two-tiered approach to LID implementation should go far towards ensuring that any project utilizing LID techniques provides greater, not lesser, long term stormwater protection. No changes were made to the proposal as a result of this comment.

26) *Comment:* The exact requirement for treating water from upgradient sources in Section 4(C)(2)(b) is not clear. This language needs clarification. Also, simply directing the water away from a given project

may result in increased discharge to protected resources. If a developer elects to divert water flowing from an upstream source, the developer should direct that water to a buffer or other treatment measure. (Commenter 5)

Response: The Department's proposal was developed to prevent upgradient runoff (from either on or off the project site) from overwhelming a stormwater management system. The Department has amended its proposal to clarify that these provisions are primarily intended to address the increased volume that may be expected from upgradient runoff:

(b) Upgradient runoff. The runoff from any upgradient area must be either directed away from the stormwater treatment measure or that measure, not including buffers, must be sized to address the runoff volume from the upgradient area at 50% of the sizing requirements for an area that is landscaped, unless the upgradient area is on soil with hydrologic condition A or B.

While counterintuitive at first, directing the upgradient runoff away from the stormwater treatment system is a technically sound method to prevent overwhelming the treatment system with an excess volume of runoff and help to improve the efficacy of the treatment measure. Since the upgradient runoff does not otherwise require treatment, it can then be redistributed downgradient of the treatment measure. For example, upgradient runoff could be redirected to a drainage way downgradient of a wetpond.

27) *Comment:* The language in Section 4(C)(2)(c) needs more explanation: "Mitigation may also include providing stormwater treatment for existing developed areas that do not require treatment under this chapter to offset other developed areas requiring treatment." Will treating a developed area that does not require treatment result in as much benefit as treating a developed area that does? How will DEP calculate that treating runoff from areas that do not require treatment actually offsets treating runoff from areas that do require treatment? (Commenter 5)

Response: The Department's proposal provides that mitigation projects may include the treatment of an existing developed area, with the actual mitigation requirement determined on a case-by-case basis. The proposal also codifies Department practice. To help clarify this requirement, the Department has amended its proposal to state:

(c) Mitigation. If a project is not in an urban impaired stream watershed, the Department may allow the portion of a project's impervious or developed acreage that must be treated to be reduced through mitigation by eliminating or reducing an untreated off-site or on-site impervious stormwater source within the same watershed (see 06-096 CMR 501 Section 6(B)) if a project is not in a direct watershed of an urban impaired stream. The Department may, on a case-by-case basis, also determine that mitigation may include providing stormwater treatment for existing developed areas that do not require treatment under this Chapter.

28) *Comment:* In Section (4)(C)(2)(d), the requirements for treatment for redevelopment projects that come under the Stormwater Law (as opposed to the Site Law) seem insufficient. If there is no treatment requirement at all for redevelopment projects that do not increase impervious surface, how will things get better? NRCM understands that DEP is trying to balance the need for treatment with the need to limit incentives for sprawl and that retrofitting redevelopment projects can be difficult. However, NRCM does not believe DEP has that balance right here. This is particularly true for redevelopment projects in watersheds of impaired waters.

In addition, NRCM believes it is unlikely that a requirement to retrofit a project for stormwater treatment, in and of itself, would drive redevelopment projects to greenfield sites. There are many advantages to

redevelopment. The presence of existing infrastructure and location in an area that is already home to other businesses are two examples. (Commenter 5)

Response: See Comment # 22.

29) *Comment:* In Section 4(C)(4), there should be more details about low-impact development (LID). This language does not describe what DEP will give credit for. There is no mention of specific LID strategies, such as permeable pavement, and how the different strategies stack up in terms of performance. Given that, NRCM believes this language will provide little incentive for using LID techniques. Developers are more likely to use engineered treatment systems they are familiar with, such as wet ponds, that they know the department will approve. Over the long term, this is likely to be detrimental to water quality and cost developers more money.

The advantages of LID can be significant in terms of increased performance, lower costs, and reduced maintenance when compared to heavily engineered stormwater systems. The Low Impact Development Center (see: <http://lowimpactdevelopment.org/>) provides information on how to use these techniques as well as how to educate developers, municipalities, and homeowners about them. DEP could have worked with the Center and stakeholders to develop a table of LID practices and their pollution removal rates in the years between 2010 and 2014. Such a table would have allowed DEP to provide the credit a developer could receive for different LID techniques and the corresponding reductions in required capacity of engineered treatment systems. If DEP provides this information, developers will be far more likely to use LID techniques. (Commenter 5)

Response: See Comment #23.

30) *Comment:* The language in Section 4(C)(5)(e) is new and surprising. Typically, DEP has tried to encourage clustered development as a way to minimize sprawl and allow shared treatment for multiple sources of stormwater. This language looks like an incentive for sprawl and encourages low-density development. Also, what sort of deed restriction does this section require? Will it be permanent? This needs more explanation, as does the justification for encouraging low-density development. (Commenter 5)

Response: The Department had included the low density subdivision proposal in prior drafts reviewed with the stakeholder group in 2009 and 2010. See also Comment # 24.

31) *Comment:* In Section 4(C)(5)(f), NRCM questions the rationale for exempting roads over wetlands. Road runoff is likely to be high in pollutants whether the road is over a wetland or not. Directing the flow to a culvert does nothing to remove these pollutants. (Commenter 5)

Response: Roads over wetlands are exempt from the general stormwater treatment requirements because there are few, if any, treatment technologies that could be utilized without requiring the placement of fill or otherwise require alteration of the wetland. The Department's proposal requires the use of culverts, bridge spans or permeable base materials to maintain connectivity of water flows and the natural hydrology of the site. No changes were made to the proposal as a result of this comment.

32) *Comment:* In Section 4(C)(5)(g), does it make sense to provide this narrow phosphorus exemption for roofs? Won't stormwater systems likely treat all the water from a property? Whether or not the roof runoff is treated for phosphorus seems unlikely to influence a decision about what overall measure to install. This exemption seems likely to result in confusion and make design more complicated. (Commenter 5)

Response: Recognizing that roofs should not contribute to the phosphorous load¹⁴, there is no reason to treat roof runoff for phosphorous. This exclusion does not complicate the design of stormwater systems, since the square footage of the roof is simply excluded from the design requirements. No changes were made to the proposal as a result of this comment.

33) *Comment:* Section 4(E)(3) applies specifically to urban impaired streams -- streams that are already failing to meet water quality standards due to stormwater. Although NRCM understands the desire to encourage redevelopment to prevent sprawl, this section does not get the balance quite right. If redevelopment does not increase impervious area and DEP requires no stormwater treatment measures for redevelopment of projects predating the Stormwater Law, water quality in impaired streams will not improve. Maine has the obligation to bring streams that are in non-attainment due to stormwater into attainment under both the Clean Water Act and Maine law. (Commenter 5)

Response: While it is true that Maine has an obligation to bring streams that are not attaining federal and state water quality standards into attainment, it is important to remember that the intent of the Maine Stormwater Management Law is to prevent and control the release of pollutants to waterbodies, wetlands and groundwater, along with reducing the impacts associated with increases and changes in flow. The Department's proposal amends the urban impaired stream redevelopment exception by linking the exception to the proposed pollutant rankings in Table 2 for projects in which the impervious area predates the Stormwater Management Law. In order to qualify for this exception, a redevelopment project located in the direct watershed of an urban impaired stream would need to meet two criteria:

- 1) The impervious area must pre-date the Stormwater Management Law; and
- 2) The new use of the untreated area is not likely to increase stormwater impacts beyond the levels as established by Table 2.

The Department's proposal thus establishes objective criteria for the use of this exception that improve stormwater management, and result in an environmentally-preferable outcome. While the existing Chapter 500 redevelopment exception applies to the redevelopment of any existing impervious area, the proposal limits this exception to only those older projects predating the 2005 amendments Stormwater Management Law.¹⁵ In addition, these projects will now be subject to the pollutant impact ranking established by Table 2, ensuring that only those projects having a net reduction in stormwater impacts are provided the exception. No changes were made to the proposal as a result of this comment.

34) *Comment:* In Section 4(F)(2), the treatment measures based on the 25-year flood are likely to be undersized given increased precipitation in recent years. Four of the eight wettest years in the last century occurred between 2005 and 2010¹⁶. In addition, more of the precipitation is falling in single, large events than in the past. DEP should require that developers engineer stormwater management measures to meet the 50- or even 100-year flood. (Commenter 5)

Response: The technical standards in the Department's proposal are based on best engineering practices, and utilize a 25-year storm event for the design of flood control systems. While it might seem prudent to address increased precipitation by designing stormwater management systems for larger 50-year or 100-year storm events, this is not necessary since the Department's proposal (Appendix H) already includes the most recent rainfall data for Maine as developed by the Northeast Regional Climate Center.

¹⁴ Phosphorous concentrations in stormwater are due primarily to soil erosion, fertilizer runoff, and organic wastes.

¹⁵ September 15, 2005

¹⁶ W.M. Balch et al. Step-changes in the physical, chemical and biological characteristics of the Gulf of Maine, as documented by the GNATS time series. *Marine Ecology Progress Series* 42:11-35.

It should also be noted that over-sizing stormwater flood control measures is not advisable, since oversized culverts and systems can inadvertently lead to downgradient overflows and other problems. No changes were made to the proposal as a result of this comment.

35) *Comment:* With respect to Section 4(C)(2)(b), upgradient runoff via existing driveways, drainageways, or overland flow is unavoidable for public road systems. Current practices of transportation agencies is to consider the additional runoff volume from upgradient locations and to treat to the extent practicable, however, a requirement to treat a specific volume is not always feasible. Maine DOT and MTA request a waiver of this requirement for any “linear portion of a project.” (Commenter 7)

Response: The Department recognizes that public and other road systems must be designed to address or otherwise accommodate upgradient runoff or flows, with current practices treating these flows to the extent practicable. The Department’s proposal provides that upgradient runoff must be either directed away from the stormwater treatment measure, or that the measure be adequately sized to treat the runoff. At the same time, it must also be noted that these upgradient flows are generally routed to by-pass any treatment measure. The Department’s proposal will only minimally affect linear projects such as public roads, because these projects are typically designed to allow most direct upgradient flows away from, and not to, the treatment measures. No changes were made to the proposal as a result of this comment. See also Comment # 26.

36) *Comment:* In Section 4(C)(2)(d), Table 2, the term “...idling may occur...” is not clearly defined. What is the extent of the impact area that must be treated where idling is likely to occur? For example, idling occurs at all public road intersections; therefore, how far beyond the intersection (i.e., length of road) does the redeveloped area require treatment? Also, the potential pollutant loading from parked cars versus traveling cars is not apparent. The ranking designations for “high use” and “medium use” parking lots, as defined in Section 3, appear arbitrary. Not all land uses will fit neatly into the categories listed. Maine DOT and MTA recommend including a statement that DEP will evaluate and determine the Pollutant Ranking for a Land Use on a case-by-case basis, using the table as a guide. (Commenter 7)

Response: The Department has revised its proposal to clarify that the pollutant impact rankings of Table 2 will be evaluated and assigned by the Department, and that an alternative ranking may be assigned based on a case-by-case evaluation of individual projects:

- (i) The requirement for treatment is scaled based on the pollutant discharge that, if the stormwater was untreated, would result from the redevelopment project. The Department will assign a pollutant ranking based on Table 2, and may, on a case-by-case evaluation of individual projects, modify the ranking by up to 2 points in light of project-specific features.

37) *Comment:* In Section 4(C)(2)(d), Table 3, the current version of the rule has an exemption, which appears to have been deleted in this revision, for the redevelopment of projects that require treatment. Under the current rule, if “the department determines that the new use of the existing impervious area “ is “likely to increase stormwater impacts resulting from the proposed project’s stormwater runoff beyond the level of impact already caused by the runoff from the existing impervious area” then it is subject to treatment requirements.

When a stormwater redevelopment project has a “Ranked Impact Change Due to Redevelopment” that falls into the greater than 0.0 to less than 1.0 range the “Percentage of Developed Area that Must be Treated” should be pro-rated from 0% to 60%. As presented, if Maine DOT were to install additional impervious area on what would be considered a redevelopment project, how much is a “Minor amount?”

Above that “minor amount” would raise the impact change to greater than zero, the required treatment would be 60% of the redeveloped area. Is it DEP’s intention to no longer allow for exemptions and/or not prorate the treatment requirements?

The title and header of Table 3 is ambiguous. It is unclear if the entire developed area must be treated or just the developed area within the redevelopment project. For example, if the redevelopment project is only on a portion of a developed site, will the treatment levels apply to the entire developed site or just the portion being redeveloped? In addition, Section 4(C)(2)(d)(ii) states that “priority for treatment must be given in areas with the highest pollutant ranking to the maximum extent practicable.” While Section 4(C)(2)(d)(iii) states that “the developed area of the redevelopment project must be treated to the level required on the pollutant impact ranking in accordance with Table 3.” These statements appear to be in conflict. Maine DOT and MTA request clarification regarding the extent of treatment for a redevelopment project. (Commenter 7)

Response: The Department’s proposal deletes an existing exemption for projects that are “not likely to increase stormwater impacts resulting from the proposed project’s stormwater runoff beyond the level of impact already caused by the runoff from the existing area”, since the proposal establishes new general stormwater standards for redevelopment projects providing greater regulatory certainty and reduced treatment levels for projects with lower stormwater impacts.

Unlike some other tables in the proposal, there is not pro-rating proposed in Table 3, since treatment levels are defined for all values of ranked impact change. For example, if a redevelopment project results in a ranked impact change of 0.21, then 60% of the developed area must be treated. The Department’s proposal, unlike the previous exemption for redevelopment projects, assigns an objective control requirement for various redevelopment projects that also recognizes the varying impacts of redevelopment projects; projects having no ranked impact change are not required to treat the developed area of the redevelopment project.

With respect to the treatment levels for redevelopment projects, the Department’s proposal (Section 4(C)(2)(d)(iii)) states:

(iii) The developed area of the redevelopment project must be treated to the level required based on the pollutant impact ranking in accordance with Table 3. If the Department determines that it is not practicable to meet the general standards for redevelopment on site, the Department may allow equivalent treatment or mitigation on an off-site parcel within the same watershed as an alternative for stormwater treatment.

Thus, only the developed area (as defined by Chapter 500) must be treated.

Finally, Sections 4(C)(2)(d)(ii) and 4(C)(2)(d)(iii) are not in conflict. Section 4(C)(2)(d)(ii) states that priority for treatment must be given to those areas of the redevelopment project having the highest pollutant impact ranking (e.g., high use parking lots). Section 4(C)(2)(d)(iii), on the other hand, states that the developed area of the redevelopment project must be treated in accordance with Table 3 (which quantifies the percentage of developed area that must be treated). No changes were made to the proposal as a result of this comment.

38) *Comment:* In Section 4(F)(2)(e), Flooding Standard, the text contains a typo, the reference listed points to the current section, the revised version should direct the reader to Section 4(C)(3)(a) of the chapter under the proposed edits. (Commenter 7)

Response: The Department agrees with the Commenter and has made the suggested change.

Submission and Pre-Application Meetings

39) *Comment:* In Section 7(A), Pre-application Meetings, if it is DEP's intention to solicit pre-application meetings prior to the design of a stormwater project then a note to this effect should be added to the rule. Otherwise, the proposed revisions to the rule should enable designers the ability to define the applicable project design standards that must be met while designing the project. If design plans must be submitted prior to the pre-application meeting, relying on DEP to define the applicable standards after a project has been designed will likely result in added costs and burden to both DEP and the Applicant. (Commenter 7)

Response: The Department recognizes the advantages afforded by a pre-application meeting, and believes the current proposal provides sufficient clarity. Section 7(A) states:

- A. ~~Pre-application meetings for Stormwater Management Law projects.~~** A pre-application meeting is required for a Stormwater Management Law project that does not qualify for a stormwater PBR, unless the requirement for such a meeting is waived by the Department based on an initial review of project plans and scope. A pre-application meeting between the applicant and the Department is an opportunity for the applicant to determine the statutory and regulatory requirements that apply to a specific project, and to identify the Department staff person who will serve as project manager for the application. A written request for a stormwater pre-application meeting must include two copies of a preliminary site plan, brief project description, and a regional map with the site marked. ~~Note: A Site Law application for a new development project requires a pre-application meeting pursuant to Chapter 2, Section 10(B).~~

No changes were made to the proposal as a result of this comment.

40) *Comment:* Section 7(C), Basic Standards Submissions, states "An erosion and sedimentation control plan or an inspection and maintenance plan for a project that does not qualify for a stormwater PBR must be prepared by a professional engineer registered in the State of Maine, landscape architect licensed in the State of Maine, or a certified erosion and sedimentation control professional." Will this require our officials to obtain additional certifications for qualification as an erosion and sedimentation control professional on a construction site? (Commenter 7)

Response: The proposal will not require additional certifications; the only change is to allow landscape architects that are licensed in the State of Maine to prepare a stormwater permit erosion and sedimentation control plan or inspection and maintenance plan. No changes were made to the proposal as a result of this comment.

Appendices- Basic Performance Standards

41) *Comment:* Removing the specificity associated with the Basic Standards is problematic since Code Enforcement Officers, Third Party Inspectors, and others, are responsible for ensuring compliance with Chapter 500 and MS4 requirements. Examples of specific details that should remain (or be added) in the proposed rule to provide enforcement support to municipalities include (but are not limited to) the following sections:

- a. Appendix A.5- Permanent Stabilization should continue to include details for seeded, sodded, ripped and paved areas, as well as ditches, channels, swales, etc.

b. Appendix B.2- Inspection and Maintenance Plan should continue to include details in what was previously B.2 (a) Plan.

c. Appendix C.- Housekeeping should include a better discussion on pollution prevention and good housekeeping requirements (e.g., dust control, sweeping at construction entrances/exits, etc.), which is another minimum control measure of the MS4 permit with which municipalities must comply and also look to Chapter 500 for support. Additional detail may be needed with respect to erosion control practices for concrete truck washout areas since a recent EPA audit identified this as a deficiency of the MPDES MS4 program. (Commenter 9)

Response: Although the Department proposed streamlining these appendices during the rule development process, the Basic Standards were subsequently updated to provide consistency with the Maine Construction General Permit (MCGP) and Municipal Separate Storm Sewer System (MS4) programs. The Department's current proposal actually provides greater, not less, specificity than the existing rule, and should provide additional guidance for the regulated community while also fostering increased compliance and program enforceability. The Department has also revised its proposal to include additional requirements for stabilized construction entrances (Appendix A), and fugitive dust emissions (Appendix C). Please see comments #42, #43, #45, and #46 for additional details on these revisions.

42) *Comment:* Please consider reinstating the specific requirements for an inspection and maintenance plan in Appendix B, 2. Post-construction in order to ensure consistency with compliance. Suggested language follows:

“(a) Plan. Carry out an approved inspection and maintenance plan that is consistent with the minimum requirements of this section. The plan must address inspection and maintenance of the project's permanent erosion control measures and stormwater management system. This plan may be combined with the plan listed in Section 2(a) of this appendix. See Section 8(C)(2) for submission requirements.” (Commenter 9)

Response: The Department's proposal currently contains these requirements; the Department has amended its proposal to correct cross-references:

“(a) Plan. Carry out an approved inspection and maintenance plan that is consistent with the minimum requirements of this section. The plan must address inspection and maintenance of the project's permanent erosion control measures and stormwater management system. This plan may be combined with the plan listed in Section 2(a) of this appendix. See Section ~~7~~8(C)(2) for submission requirements.”

43) *Comment:* Please consider reinstating the specific requirements for reaching permanent stabilization in Appendix A, 5 Permanent Stabilization (a) through (g) referencing (i.e., seeded areas; sodded areas; permanent mulch; riprap; paved areas; ditches, channels, and swales), as this provides consistency, which is desired by both the development community and municipalities alike. Specific language changes suggested for each method of permanent stabilization are as follows:

a. “(d) Riprap. For areas stabilized with riprap, permanent stabilization means that slopes stabilized with riprap have an appropriate backing of a well-graded gravel or approved geotextile to prevent soil movement from behind the riprap. Stone must be sized appropriately. It is recommended that angular stone be used.”

b. “(f) Paved areas. For paved areas, permanent stabilization means the placement of the compacted gravel subbase is completed, provided it is free of fine materials that may runoff with a rain event.”

[Rulemaking could reference the allowable base material (e.g., Type A, B, or C; or subbase Type D) along with Maine DOT Specs Section 703.06.]

For open channels, permanent stabilization means the channel is stabilized with a 90% cover of healthy vegetation, with a well-graded riprap lining, turf reinforcement mat, or with another non-erosive lining such as concrete or asphalt pavement. There must be no evidence of slumping of the channel lining, undercutting of the channel banks, or down-cutting of the channel.” (Commenter 9)

Response: The Department has amended its proposal to incorporate the suggested revisions to Appendix A(6)(f) and Appendix A(6)(g). The revised proposal states:

- (f) Paved areas. For paved areas, permanent stabilization means the placement of the compacted gravel subbase is completed, provided it is free of fine materials that may runoff with a rain event.
- (g) Ditches, channels, and swales. For open channels, permanent stabilization means the channel is stabilized with a 90% cover of healthy vegetation, mature vegetation at least three inches in height, with well-graded riprap lining, or with another non-erosive lining capable of withstanding the anticipated flow velocities and flow depths without reliance on check dams to slow flow. There must be no evidence of slumping of the lining, undercutting of the banks, or down-cutting of the channel.

No changes were made to Appendix A (6)(d) “riprap”, since the proposal is consistent with the Commenter’s recommendations.

44) *Comment:* Without specificity in the permit language, it is unclear for both contractors and developers to know what the minimum standards are, which makes enforcement by CEOs and third party inspectors inconsistent, thus leaving the municipalities and contractors vulnerable to permit and/or water quality violations. As in previous versions of Chapter 500, the Basic Standards are specified in Appendices A, B and C of Chapter 500. Much of the specificity that municipal employees and officers (e.g., code enforcement officers, planning boards, etc.) rely upon to provide direction to developers has been stricken. These specific details have provided the necessary elements and direction to “develop, implement and enforce” the construction and post-construction minimum control measures required under the MS4 permit. Without these details, municipalities may be vulnerable to challenges and non-compliance issues. ISWG respectfully requests that the specific details remain in the rule and the Appendices to provide municipalities guidance and direction for continuing to “develop, implement and enforce” the minimum control measure requirements of the MS4 permit. (Commenter 9)

Response: See Comments #41, #42, and #43.

45) *Comment:* Please consider reinstating the specific inspection and maintenance details in Section 7(C)(2). The specificity in (c) through (j) helps to ensure consistency, which is desired by both the development community and municipalities alike, for compliance with Basic Standards. (Commenter 9)

Response: The Department agrees with the commenter and has revised its proposal to retain the existing inspection and maintenance details in Section 7(C)(2).

46) *Comment:* Removal of the references to other related citations and guidance documents also makes it problematic for municipalities to ensure that the intent of Chapter 500 is achieved; and to enforce the MS4 permit requirements. Throughout the proposed rule, references to citations and guidance documents have been stricken. Inclusion of these citations and guidance documents in the rule allows municipal

employees and officials, who must enforce the construction and post-construction standards as part of MS4 requirements, quick reference and access to additional information. ISWG respectfully requests that these references to external citations and documents remain in the proposed rule. (Commenter 9)

Response: The Department recognizes the value citations and guidance documents provide to municipalities and the regulated community. At the same time, excessive references can unnecessarily complicate an otherwise concise and succinct rule. Regulatory agencies must also be careful to ensure that these citations, when in the form of notes, do not impose regulatory requirements and are only explanatory in nature.

The Department has revised its proposal to reduce, but not eliminate, the proliferation of notes. A number of notes that the Department had previously proposed for deletion have been retained, while others have been modified to avoid the unintentional imposition of regulatory requirements. In still other cases, notes have been revised and incorporated within the rule. We believe the final proposal provides sufficient guidance for the regulated community and municipalities.

47) *Comment:* Lack of specificity and references to guidance documents results in ambiguity regarding what is required. Municipal staff repeatedly convey to us that what matters most to developers is predictability and consistency. Specificity helps to achieve both of these goals by making the rules clearer and consistently enforceable. Lack of consistency is not favorable to municipalities, contractors, or developers. (Commenter 9)

Response: See Comment # 46.

48) *Comment:* Increased frequency in post-construction maintenance requirements is not warranted. Often times these post-construction maintenance requirements are passed on to municipal crews placing undue burden on municipalities. As seen in Appendix B.2, post-construction inspection and maintenance requirements associated with the Basic Standards are being increased twofold. For example, stormwater infrastructure (e.g., catch basins, underdrained filters, ponds, etc.) all must be inspected twice per year, as opposed to once annually. Additional measures in this section place an undue burden on municipalities who often assume these O&M responsibilities, especially if enforcement efforts with developers and/or landowners are undermined, as may be the case as presented above. DEP is also proposing a more rigorous standard for catch basin cleanouts, as well (i.e. cleanout required when sediments are measured within 6" of the outlet). ISWG respectfully requests that the inspection and maintenance schedule remain at the previous frequency (i.e., annually) and level of sediments for catch basin cleanouts. Further evidence to support maintaining the annual frequency and cleanout level may be demonstrated in the publically available data associated with the management of the Long Creek watershed. Implementation of the Long Creek General Permit includes post-construction maintenance inspections across the watershed. What we have found is that the increased inspection and maintenance schedule proposed as part of this revision to Chapter 500 is not necessary. (Commenter 9)

Response: The Department agrees with the Commenter and has amended Appendix B(2) to its proposal to require an annual inspection frequency.

49) *Comment:* The lack of specificity regarding LID requirements will result in no implementation of LID. A. We applaud the DEP for incorporating LID into this rulemaking. Unfortunately, the current revision of Chapter 500 indicates the review and permitting of LID will be on a case by case basis; this provides neither predictability in regards to what will be required in order to meet the standard, nor consistency in how the rule will be applied Statewide. This is not good for developers who want clear, predictable permitting processes, nor is it good for municipalities who want to cultivate an atmosphere that promotes investment in their communities that maintains the quality of their waterbodies. We need

clear regulations that will ensure the receiving water will comply with State water quality standards. We do not need more Long Creeks. (Commenter 9)

Response: See Comment # 23.

50) *Comment:* In its previous comments, CMP requested that language be included in each of the three stormwater buffer Declaration of Restrictions templates (Forested Buffer, Limited Disturbance; Forested Buffer, No Disturbance; and Meadow Buffer) that would clarify the allowance to locate utility poles and appurtenant facilities within Restricted Buffer Areas. Specifically, CMP proposed that the following language be inserted in Section 1.c. or 1.d. of each template (new language in ***bold italics***):

“No building or other temporary or permanent structure may be constructed, placed or permitted to remain on the Restricted Buffer Area, except for a sign, utility pole (***whether constructed of wood, steel, or other materials***) and ***appurtenant equipment such as guys and guy anchors***, or fence;”

The latest draft Chapter 500, posted for public comment on September 18, included the above suggested language in the Forested Buffer, Limited Disturbance template. However, this draft did not include this same language in the Forested Buffer, No Disturbance or the Meadow Buffer templates. Based on our recent discussion, CMP understands that these omissions were an oversight of the Department. CMP requests that this new language be included in the Forested Buffer, No Disturbance and the Meadow Buffer Declaration of Restrictions templates. (Commenter 4)

Response: The Department has amended its proposal to include the suggested language in the Forested Buffer, No Disturbance and Meadow Buffer templates.

51) *Comment:* Also in its previous comments, CMP requested that the three Declaration of Restrictions templates within Chapter 500, include language pertaining to maintenance of structures allowed within Restricted Buffer Areas. Specifically, CMP proposed that the following language be inserted after Section 7 of each template:

“Excepting from this conveyance and reserving to the Declarant, its successors and assigns forever, the right to construct, maintain, improve, repair, replace or remove any temporary or permanent structures and appurtenant equipment allowed under Section 1.c. above, and to access these structures and equipment at any time with personnel and equipment, including motorized equipment of any kind or size necessary to perform such construction, maintenance, improvements, repair, replacement or removal. Declarant, for itself and its successors and assigns, covenants and agrees that upon completion of such construction, maintenance, improvement, repair, replacement or removal, it will restore any portion of the stormwater buffer impacted by such activities to the functional stormwater buffer condition as existed prior to such activities, such restoration to include, as necessary, the tilling of any significantly compacted soils, the amendment or replacement of thin or degraded topsoil, and the re-establishment of vegetation within one growing season.”

This suggested language, which would apply to all three types of stormwater buffers, would: 1) allow for construction, maintenance, improvement, repair, replacement, or removal of allowed structures and equipment; 2) permit access to structures and equipment to carry out these allowed activities, including access with motorized equipment of any kind or size necessary to perform these activities; and 3) commit Declarant to restoring any areas of stormwater buffers significantly impacted by these activities.

The above suggested language was developed in consultation with, and ultimately approved by, the Department's Engineer Art McGlaulin and Project Manager Lisa Vickers in January 2014 as part of post-permit compliance for the Berwick Phase II/III project (DEP Permit #L-26002-NI-A-N/L-26002-TG-B-N).

This language would apply to all allowed structures within stormwater buffers – signs, utility poles, fences, and any other structures the Department deems acceptable to be located within stormwater buffers. In the absence of this (or similar) language, the permittee would be prohibited from improving, repairing, replacing, or otherwise maintaining these allowed structures if such maintenance required motorized equipment, because of the following language which is part of each of the three Declaration of Restriction templates:

“No trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles or mechanical equipment may be permitted on the Restricted Buffer Area;”

CMP understands that the three Declaration of Restrictions templates are only optional templates, and that permittees may develop their own Declarations which may differ from these templates. However, CMP has chosen to utilize one of these templates for each of the many stormwater buffers it has developed because the language in these templates protects stormwater buffer areas well, and because these templates are known to be acceptable to the Department. CMP respectfully suggests that it makes sense to allow motorized equipment for the necessary maintenance of allowed structures within stormwater buffers, and to include language that excepts or exempts this motorized equipment from the mechanical equipment prohibition cited above. Further, the restoration requirement assures that such motorized equipment access will not permanently degrade the function of the stormwater buffer. (Commenter 4)

Response: While the suggested language would allow Central Maine Power (CMP) and its successors the right to use motorized equipment for the maintenance of allowed structures within stormwater buffers, it is neither necessary nor advisable to include this language in the Declaration of Restrictions templates. As the Commenter notes, the Declaration templates provide optional language that may be adapted to address specific needs demonstrated by a permittee or other interested party on a case-by-case basis (as in the Berwick Phase II/III project referenced above). The suggested revision is unnecessary because the Declarations are intended to be modified by the permittee and other affected parties to address their specific needs.

The Commenter's suggested revisions were developed in cooperation with Department staff to address specific needs at the Berwick Phase II/III project. Although appropriate for that particular project, it does not follow that these provisions are always necessary for the maintenance of allowed structures within a stormwater buffer. Recognizing that it is difficult to anticipate all potential situations for which the Declaration of Restrictions would require modification, the Department finds that it is most appropriate for the permittee or other interested party to address these needs on a case-by-case basis. No changes were made to the proposal as a result of this comment.

52) *Comment:* The proposed Appendix B(2)(b)(iv-ix) appears to contain the following new unfunded mandates:

Subsection iv: Doubling, from once to twice per year, the required frequency of catch basin clean-outs, while imposing a new hard line six inch sediment trigger;

Subsection v: Expanding the scope of buffer inspections from specific resource and treatment buffers to all buffers;

Subsection vi: Imposing a new twice-per-year requirement to inspect each stormwater management pond or basin and related structures, remove and dispose of accumulated sediments in the pond and control of embankment vegetation;

Subsection vii: Imposing a new twice-per-year inspection requirement on undrained filters and a related requirement to rehabilitate clogged structures; and

Subsection xiii: Imposing a new twice-per-year inspection requirement on installed manufactured systems.

Municipalities are obviously responsible for inspections, and in practice municipal officials frequently bear rehabilitation and maintenance responsibilities as well. Increased inspection and rehabilitation requirements translate at the local level to additional demands on municipal staff. Because Maine's towns and cities are particularly financially challenged at this point in time, these new inspection and maintenance mandates are especially unwelcome in the absence of a compelling justification. In the view of MMA, these increased obligations constitute mandates because they will primarily affect local government and expand municipal obligations in a way that requires additional expenditures. Article IX § 21 of Maine's Constitution and 30-A M.R.S.A. § 5685 prohibit Maine's executive branch from imposing unfunded mandates on municipalities.

The main comment of MMA, therefore, is that the aforementioned new and expanded requirements ought to be removed from the proposed Chapter 500 rules. MMA also inquires whether these requirements retroactively apply to existing structures, or if they apply solely to new structures. MMA nonetheless requests these mandates do not become part of the final rule. (Commenter 8)

Response: The Department has amended Appendix B(2) of its proposal to eliminate the biannual inspection and maintenance requirements¹⁷. The Department has retained its proposed requirements for the (annual) inspection of stormwater management ponds, underdrained filters and manufactured systems, since these provisions provide valuable guidance on the proper inspection and maintenance of these stormwater management systems.

See also Comment #48.

53) *Comment:* Please consider incorporating the note below Appendix C, 3. Fugitive sediment and dust into the language as follows to ensure consistency with compliance and inclusion of a Stabilized Construction Entrance as mentioned above.

“Fugitive sediment and dust. Actions must be taken to ensure that activities do not result in noticeable erosion of soils or fugitive dust emissions during or after construction. Oil may not be used for dust control, but other water additives may be considered as needed. A SCE should be included to minimize tracking of mud and sediment. If off-site tracking occurs, public roads should be swept immediately and no less than once a week and prior to significant storm events. Operations during dry months, that experience fugitive dust problems, should wet down unpaved access roads once a week or more frequently as needed with a water additive to suppress fugitive sediment and dust.”
(Commenter 9)

Response: The Department has made the suggested change to Appendix C(3).

¹⁷ The proposal to expand inspection requirements from resource and treatment buffers to all buffers was also deleted.

54) *Comment:* As part of the MS4 requirements, a stabilized construction entrance to prevent the tracking of sediment off of a construction site is also required as part of MS4 permit compliance for construction activity. Therefore, the requirement for a stabilized construction entrance should be included in this revision of Chapter 500.

The Department should consider adding a new section to Appendix A- Erosion and Sedimentation Control, to clarify the need for all construction sites to install a stabilized construction entrance:

“Stabilized construction entrance. Prior to construction, properly install a Stabilized Construction Entrance (SCE) at all points of egress from the site. The SCE is a stabilized pad of aggregate, underlain by a geotextile filter fabric, used to prevent traffic from tracking material away from the site onto public ROWs. Maintain the SCE until all disturbed areas are stabilized.”

Also, please also add a note that directs users to the Maine Erosion and Sediment Control BMPs Manual Protection for guidance on Stabilized Construction Exit. The specific reference is attached, “SCE Fact Sheet.” (Commenter 9)

Response: The Department has made the suggested change to Appendix A.

