

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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GOVERNOR

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COMMISSIONER

**Memorandum**

**To:** Board of Environmental Protection

**From:** Jeffrey S. Crawford, Office of the Commissioner

**Date:** June 24, 2015

**Re:** Chapter 500 Stormwater Management (Amendments) Adoption

**BACKGROUND:**

Stormwater is water that accumulates on land as a result of rain and other precipitation events. Impervious and developed areas like parking lots, streets, and roofs prevent stormwater from naturally soaking into the ground, thereby creating faster and greater volumes of surface flows. This surface runoff also collects contaminants that are typical to developed areas, such as excess nutrients, sediments, pathogens, toxic contaminants, and chloride. In Maine, as in many other areas, unmanaged stormwater runoff has caused serious damage to property, lakes, streams and wetlands.

Natural areas like forests, fields and wetlands, allow dense vegetation to slow rainfall and snowmelt runoff, thereby allowing precipitation to infiltrate the soil, and providing an opportunity for sediments and pollutants to settle out. In addition to slowing erosion, these areas allow plants and soil microbes to transform or process soil contaminants into less harmful compounds. Impervious and semi-impervious areas, in contrast, change the distribution of stormwater by reducing infiltration, and magnifying the volume and velocity of stormwater runoff over land. The result is decreased groundwater recharge, and increased surface runoff. Stormwater management practices are designed to increase stormwater infiltration and reduce uncontrolled surface runoff.

The Department's Chapter 500 Stormwater Management rules were initially promulgated in 1997, and have since been revised to include a number of stormwater management standards, including basic stormwater management requirements, flooding standards, phosphorous standards and urban impaired stream standards. In addition, Chapter 500 includes a number of

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appendices establishing basic performance standards for a variety of stormwater management techniques.

The Department's proposal to amend its Chapter 500 Stormwater Management rules provides greater flexibility while encouraging the use of innovative stormwater designs that accommodate measures for addressing climate change, resiliency, and adaptation in our infrastructure. Elements of the proposal include: 1) revised treatment levels in the general standards 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 if an applicant uses LID techniques that reduce the volume of stormwater that must be treated; 3) new treatment levels for redevelopment projects, through the use of scaled treatment requirements based on stormwater impact changes; and 4) updated appendices that reflect current stormwater best management practices. The Department also proposed a number of minor revisions to the rule that will provide greater clarity and consistency with other Department rules.

### **DISCUSSION:**

On October 16, 2014, the Board held a public hearing on the Department's proposal, and the written comment period closed on October 27, 2014. The Department received testimony and/or written comments on this proposal from the following persons: 1) Brian M. Rayback-Pierce Atwood; 2) Curtis C. Bohlen, Ph.D.-Casco Bay Estuary Partnership; 3) Colin Holme-Lakes Environmental Association; 4) Gerry J. Mirabile-Central Maine Power; 5) Nick Bennett- Natural Resources Council of Maine; 6) Jennifer Burns Grey- Maine Audubon; 7) Jennifer A. Pisani-Maine DOT and Maine Turnpike Authority; 8) Garrett H. Corbin- Maine Municipal Association; and 9) Tamara Lee Pinard- Interlocal Stormwater Working Group. The Board provisionally adopted the Department's proposal, which incorporated a number of technical revisions made in response to commenters' concerns, on December 18, 2014.

As a major substantive rule, Chapter 500 is subject to legislative review pursuant to 5 M.R.S. § 8072. The Joint Standing Committee on Environment and Natural Resources held a public hearing on the provisionally adopted rule on March 4, 2015. The Maine Legislature subsequently authorized final adoption of Chapter 500 through Resolve 2015, Chapter 22 (a copy of which is enclosed), contingent upon the followings changes being made to the proposal:

1. The rule must be amended in Section 4, subsection 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, which may be either a pollutant or a failure to meet a water quality standard, 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. The rule must be amended in Section 14 to extend the permit shield provision to the implementation of innovative measures to increase the probability that low-impact development measures will be installed.

The Department has amended its provisionally adopted rule to incorporate these changes<sup>1</sup>.

<sup>1</sup> The Department has also updated its Basis Statement to reflect these changes.

**REQUESTED ACTION:**

The Department is requesting final adoption of the Chapter 500 proposal by the Board.

