

Stormwater Stakeholders Meeting
June 15, 2006
Pine Tree State Arboretum
9:00 to Noon

Attendees:

David A. Kamila	ASCE
Derek Berg	Contech Stormwater Solutions
John Simon	Balanced Engineering
Jeff Dennis	Maine DEP
Barry Sheff	Woodard & Curran
Helen Edmonds	Pierce Atwood
Alex Jaegesman	City of Portland
Kathy Earley	City of Portland
David Braley	DHHS Drinking Water Program
Carl V. Beal	Civil Consultants
Jeff Edelstein	Interlocl SW Working Group
Hetty Richardson	Maine DEP Land Bureau
Sharon Newman	Preti & Flaherty
Robyn Saunders	GZA GeoEnviro
Marianne Hubert	Maine DEP
Curt Neufeld	Sitelines PA
Ben Jenkins	Conservation Law Foundation
Steve Hinchman	Conservation Law Foundation
Don Witherill	Maine DEP Land Bureau
Sean Mahoney	Verrill Dana LLP
Rich Roedner	Town of Topsham
Jeff Austin	Maine Municipal Association
Christine Olson	Maine DOT, Environmental
Eva Birk	Maine DOT, Environmental
Andrew Johnston	SYT Design Consultants
Linda Kokemuller	Maine DEP Land Bureau
Bill Kelley	NEGCI
Kristie Rabasca	Edwards & Kelcey
Lorraine Kelley	DEP Land Bureau
Al Palmer	
Maggie Drummond	GrowSmart Maine

Comments/Questions

1. Pre-treatment is not in BMP Manual

DEP: The BMP Manual allow a 25% reduction to the volume needing treatment, etc. in the filtration and infiltration sections for pre-treatment Section 8 (distribution systems) and Section 9 (separator BMPs) do provide information on pre-treatment devices The proprietary system section still needs to be written.

2. New Rules require 95% of developed area & 80% of landscaped area be treated – a very high goal – would like to see some kind of “out”

DEP: Provision being added to allow reduction to 90% of developed area provided the run-off volume being treated off-sets the reduced area.

3. Page 24 Gen. Std. Submission: D (2): reference to runoff model is confusing

DEP: Reference to runoff model will be dropped.

4. Concern for under-drained outlets, go deep into ground & end up having to outlet to stream. The slope of the under-drain doesn't need to be as steep as rule requires.

DEP: The department has agreed to remove the under-drain slope requirement for underdrained filter beds.

5. Site law subdivision versus non site law subdivisions: Doesn't make sense that we don't deal with lots in the latter.

DEP: The exemption for single family lots is in statute and cannot be addressed through rules.

6. Concern for Compensation Fee Utilization Plans (CFUPs); have any been approved? There needs to be a model for how to develop one.

DEP: No CFUPs have been approved to date. DEP has developed a guidance document and is working with South Portland currently on one for the Long Creek watershed. We hope that it will provide a model for other communities to work from.

7. Look at Section 16 page 31: Is this redundant or contradicting?

DEP: Proposed language has been modified with respect to redevelopment.

8. Redevelopment (page 9): How would the “greatest extent practicable” requirement work with the compensation fee? How much would they have to pay?

DEP: The “greatest extent practicable” is being removed from proposed change. Redevelopment projects would not have to meet the Urban Impaired Stream

standard at all. The reasoning for this is that the redevelopment project would need to meet the General Standards “to the extent practicable” and that in so doing, it would have less impact on water quality than the existing development has.

9. High Use Parking lots: usually tied to potential pollutant lands. Can definition relate to pollutant load rather than use?

DEP: The term “high use parking lots” is used to determine mitigation credit. While schools and office buildings generally lack the turn-over of certain retail establishments, we do recognize that a specific site could be a “hot spot” for contaminated runoff; e.g., a school lot where there are older vehicles being parked could be the site of oil leaks. The department is proposing that these sites can be treated as “high use” if there is evidence that they are receiving a higher pollutant load than is typical for the amount of use it receives.

10. The term “in existence” on page 7 is different than used in Site Law. Is this a problem?

DEP: The term “in existence” relates only to Stormwater Law projects and not to Site Law projects. It does not create a conflict with usage under the Site law.

11. It is not clear whether or not DEP views LID measures as Experimental measures (p. 15).

DEP: Many low impact development techniques are accepted practices and are included in the BMP Manual. However, it is possible that a new LID practice could be proposed and we would want to consider it as experimental. We’re proposing to revise the section on “experimental measures” to include those measures that are “experimental as determined by the department.”

12. Manufactured Systems only get pre-treatment credit. They should get more credit e.g. when going into a combined sewer.

DEP: Generally, manufactured systems do not provide treatment for metals or nutrients. In some cases it may be OK to discharge to a combined sewer. However, discharges to combined sewer systems that are regulated by DEP are exempt under the Stormwater Law (Title 38 Sec. 420-D.7.F.) so this should not be an issue in those locations.

13. Promoting water quality versus sprawl: What is DEP’s sense on balance between two? How does the provision to allow redevelopment of impervious area in existence as of 11/16/05 fit with the sprawl concern? In Topsham, projects are being built at a lower density than they would otherwise have been. How does this fit with sprawl concern?

DEP: Much attention was given to the sprawl issue during the last round of rule-making and we continue to look for ways to resolve concerns that the rules could create incentive for sprawl. This has led us to revise the proposed standards with respect to redevelopment. We recognize that the rules will make higher density development difficult in some locations. For those situations where higher densities are desired, we will need to work with municipalities on development of watershed management plans that may allow for higher densities by treating runoff from existing development. However, even then, there will likely be limits to how densely areas may be developed.

14. Would like to see flow chart for the “In existence by 11/16/05 language” and some scenarios.

DEP: We will work on providing these.

15. Redevelopment should not be subject to the same standards as new development.

DEP: Proposed changes will further relax requirements for redevelopment.

16. There needs to be flexibility to allow treatment on less than 95% of impervious area.

DEP: We are proposing to provide additional flexibility.

17. Disagree with change in definition of high use parking lot, makes it harder for retro-fits, already had enough.

DEP: Proposed change will add flexibility so that a site with higher pollutant load than typical for its use can be mitigated as a high use parking lot.

18. We should consider receiving waterbody when determining standards. They should be more rigid for impaired waters; Likewise, pristine waters should be more protected.

DEP: The urban impaired stream standard and the requirements for “most at risk” lakes do provide additional requirements in those watersheds. Additional standards were created for all other waters in the last round of rule-making (quality standards apply everywhere). We need more time to assess how these changes will work in practice, so we are not proposing additional standards at this time.

19. Page 8, Redevelopment must meet standards to “extent practicable” Does DEP have a threshold? What are other states doing?

DEP: No, this will be determined on a case by case basis. Massachusetts is using similar language for redevelopment projects. Their standard states that “redevelopment of previously developed sites must meet the Stormwater

Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.” MA’s standards also state that “to the extent practicable” means the applicant has made all reasonable efforts to meet the standards, including evaluation of alternative BMP designs and their locations.”

20. There is conflict between local & state standards; local ordinances often have landscaping requirements that are not suitable for stormwater management.

DEP: Many municipalities are reviewing their ordinances and will make changes to make them compatible with state requirements. DEP will continue to provide technical assistance to communities directly and through support of the Nonpoint Education for Municipal Officials (NEMO) program. We also encourage municipalities to develop watershed management plans that will result in more comprehensive protection of water resources. Such plans can provide a path for integrating water quality concerns with other goals, such as maintaining or improving scenic character.

21. Do the rules allow two adjacent sites to create a combined system?

DEP: While the rules do not make specific provision for shared treatment facilities, such an approach is allowed. The sites would need to be in the same watershed. A shared arrangement will need to include provisions for on-going inspections and maintenance.

22. DEP has an internal tracking system on status of permittees. Can the public access it?

DEP: The department’s tracking system does not provide status information between the time of formal application acceptance and the issuance of an order. An interested party needs to contact the DEP project manager to receive current information on the status of an application. If a project manager is unavailable for an extended period of time, the manager’s supervisor should be contacted.

23. Are there plans to revise Chapter 502 at least every two years to reflect changes in the list of impaired waters (303d)?

DEP: While rule changes may not occur exactly every two years, Chapter 502 will be revised periodically to include changes in the 303d list.

24. Can a Compensation Fee Utilization Plan provide for treatment in a different watershed from the one in which a project occurs? Would it make a difference if both were urban impaired streams?

DEP: Treatment must be in the same watershed. This is true regardless of whether or not a stream is designated as urban impaired.

25. The issue of Redevelopment deserves substantive discussion; would like to see the revised Rules reflect the Department's ability to provide as much flexibility as is reasonable and still meeting the intent of the Clean Water Act, while at the same time provide some language that drives consistency within the Department (throughout the State) as to how "greatest extent practicable" will be applied to Redevelopment projects required to meet the BMP standards.

Massachusetts has been working on new stormwater standards, including the issue of how to apply "greatest extent practicable" for redevelopment projects (draft documents have been forwarded to Maine DEP).

26. Generally speaking I think there is far too much detail within the rule itself. As we have already seen the inclusion of detailed specifications can be a headache, particularly when a number of them have been poorly thought through. I would advocate the removal of Appendices D-F from the rules in their entirety. This information really belongs in the BMP Manual and would be easier to amend if it were there.

DEP: The Department staff concurs that technical specifications that are subject to change should not be in the appendices, and are better suited for the BMP manual. We are re-evaluating the appendices to determine what should be taken out and what should be revised. We have not concluded that Appendices D – F should be removed altogether.

27. The issue of high use and low use parking lots was raised and there were some interesting suggestions. I think the important thing here is that, if there is to be a distinction it should be based on actual pollutant loading data from different uses rather than arbitrary definitions from traffic data, or pure conjecture. Basing legislation on "observations" or subjective opinions is plain bad policy. There is an awful lot of pollutant loading data available from studies already performed and empirical data should be referenced wherever possible to give some basis for the rules.

DEP: See response to comment 9 above.

28. I agree wholeheartedly with the point raised regarding protection of pristine watersheds. I understand the need to address impaired waters, but it seems counterintuitive to have lower permit thresholds and higher standards in impaired watersheds, unless it can be conclusively shown that storm water pollutants are the **major** contributing factor to the impairment. This approach risks making immeasurably small improvements to water quality in highly impaired waters a priority over protection of more fragile watershed areas.

DEP: The urban impaired stream list (Chapter 502) does not include all impaired streams, but only those where it has been determined that stormwater runoff is a major contributor to the impairment. The additional requirement of meeting the urban impaired stream standard, which only applies to Site Law sized projects, was deemed necessary by the department in order to be able to make the finding that the project would not contribute to a water quality violation.

As for greater protection for pristine waters, we are not proposing to increase standards beyond those that apply to all watersheds. As stated previously, we need more time to evaluate how these standards are working to protect water quality, and are not proposing to increase standards for any additional sub-set of waters at this time.