

DRAFT MINUTES
HB 1295 COMMISSION TO STUDY THE ISSUE OF
STORMWATER MANAGEMENT

February 2, 2009 1:00 PM
NH Legislative Office Building, Room 305, Concord, NH

Members Present:

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Dave Danielson	NH Association of Regional Planning Commissions
Chris Devine	NH Local Government Center
Rob Roseen	University of New Hampshire Stormwater Center
David Cedarholm	NH Public Works Association
Charlie Hood	NH Department of Transportation
Michael Trainque	American Council of Engineering Companies
Paul Currier	NH Department of Environmental Services
Amy Manzelli	Business and Industry Association of NH
Steve Kahl	NH Lakes Association
Newb LeRoy	Associated General Contractors of NH

Members Absent:

Jacalyn Cilley	NH Senate
Eric Stohl	NH House of Representatives
David Borden	NH House of Representatives
Joe Robertie	NH Timber Owners Association
Carl Paulsen	NH Rivers Council

Others Present:

Mark Hemmerlein	NH Dept. of Transportation
Eric Williams	NH Dept. of Environmental Services
Paul Sanderson	NH Local Government Center
Bill Hounsell	Hounsell Consulting
Allen Brooks	NH Dept. of Justice, Attorney General's Office

Commission Staff Present:

Jillian McCarthy	NH Department of Environmental Services
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I. ROLL CALL AND INTRODUCTIONS

Chairperson Sassan called the meeting to order at 1:02 PM. He informed the Commission that the topic of the meeting's agenda is the issue of municipal authority to manage stormwater. Chairperson Sassan requested that Commissioners, staff and attendees introduce themselves by name and representation. Introductions were made around the room.

II. APPROVAL OF MINUTES FROM JANUARY 5, 2008 MEETING

Mr. Danielson made motion to approve the minutes from the January 5, 2008 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed.**

III. DISCUSSION OF MUNICIPAL AUTHORITY

Chairperson Sassan introduced Mr. Eric Williams, from the NH Department of Environmental Services, Mr. Paul Sanderson from the Local Government Center, and Mr. Allen Brooks from the Attorney General's Office and stated that they agreed to attend the meeting to assist the Commission in answering the set of questions that the Commission put together regarding municipal authority to manage stormwater. **Chairperson Sassan** explained that the questions on the handout would be used to guide the discussion.

See Handout:

Mr. Eric Williams began the discussion by going through the handout and explaining the pertinent statutes that were used by DES and the Local Planning Commissions when they developed the new Innovative Land Use Guide.

Mr. Williams explained that the first statute is under the basic zoning enabling legislation (RSA 674:17). He specifically mentioned sub-sections (c) and (h), which are *to promote health and general welfare* and *to assure proper use of natural resources and other public requirements*. He explained that the issues related to stormwater, such as flooding, are issues of health and general wellbeing. **Mr. Williams** then discussed RSA 674:21 Innovative Land Use Controls. Under sub-section (h) it states that *Innovative land use controls may include, but are not limited to performance standards*. He explained that a municipality can establish an ordinance based on an end condition, but not how that end condition is met and gave the example that development projects must infiltrate the first inch of rainfall. He specified that any ordinance must be in the municipality's Master Plan. **Dr. Rosen** asked how well defined "performance standards" is in the statute. **Mr. Williams** answered that none of the innovative land use controls are very well defined with the exception of sub-section (k), *Inclusionary Zoning*.

Mr. Williams then explained there are clear references to stormwater under RSA 674:35 Power to Regulate Subdivisions and RSA 674:44 Site Plan Review Regulations, which describe the municipal authority to approve or disapprove installation of *other utility mains, piping, connections or other facilities within subdivisions...* and municipal authority to *guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of (1) Inadequate drainage or conditions conducive to flooding of the property or that of another.* **Mr. Williams** explained that the municipal authority to require maintenance is not as clear in the statute. He gave the example of a commercial mall that required the development and implementation of an operation and maintenance plan as part of the permit approval. He asked if it would be a violation of their approval if they did not follow the plan.

Mr. Williams then discussed RSA 149-I:6 Bylaws and Ordinances, which enables municipalities to establish utilities for proper maintenance and operation of stormwater systems. He stated that he is uncertain if a municipality does not have a utility established, if they can still use this statute as authority to adopt ordinance and bylaws for stormwater management. He stated that is has been referenced in this way without a municipality having an established utility.

Mr. Williams then discussed RSA 485-A:3 Policies, which the city of Manchester cited when adopting its stormwater regulations. It specifies that *the department shall, in the administration and enforcement of this chapter, strive to provide that all sources of pollution with the state shall be abated within such times and to such degrees as shall be required to satisfy the provisions of state law or applicable federal law, whichever is more stringent.* **Rep. Spang** asked if this only applies to communities subject to the EPA Municipal Separate Storm Sewer System (MS4) permit. **Mr. Williams** responded that, according to Manchester's reasoning, yes, it would only apply to MS4 communities because they are required to meet the more stringent federal permit requirements.

In regard to the final question posed by the Commission, *is it legal to alter the volume and direction of flow from one tract to another*, **Mr. Williams** said that he is often asked what the state can do help a property owner who's land is being flooded by a neighbor that has changed their drainage on an adjacent lot. The only answer he has been able to find in statute is under RSA 498:6 Water Rights, which dates back to 1885. It states that it is a civil issue and must be addressed in court. **Mr. E. Currier** asked if a municipal or state road can direct drainage to private property. **Mr. Williams** restated that RSA 498:6 is the only statute he has been able to find and it basically says that the parties involved need to go to the supreme court.

Mr. Williams said that he saw a questions asking where overlap exists in local, state, and federal regulations and explained that there is overlap and there are gaps. He gave the example of the EPA Construction General Permit (CGP) with its one acre disturbance threshold and the NH Alteration of Terrain (AoT) Permit

with its 100,000 square feet of disturbance limit. He stated that municipalities sometimes feel that even the 1 acre threshold is too big and they want to adopt local regulations or ordinances to regulate at a smaller scale.

Mr. Paul Sanderson introduced himself to the Commission as a staff attorney at the Local Government Center. He also explained that he is a selectman in Greenland, NH, which is a small MS4 community and was previously a hearing examiner for the NH Department of Transportation. In response to the first question on the handout regarding municipal authority, **Mr. Sanderson** reminded the Commission that New Hampshire is not a home rule state. He explained that municipalities only have the authority that is given to them from the state legislature in statute or that can be found in case law. He stated that he agrees with the materials that Mr. Williams provided. He explained that municipal zoning regulations do not govern over government uses such as town hall, public schools, public works and roads. He further explained that they do not cover pre-existing, non-conforming uses such as roads, buildings, or other development completed prior to establishment of zoning regulations. He stated that these are gap areas that existing regulations do not cover.

Mr. Sanderson informed the Commission that the duty of town selectmen is to regulate the road systems under RSA 4111 and 4717 and that the planning board does not see or have authority to regulate road projects. He explained that the road system includes the actual road and the right of way containing signs, bridges, and other road structures. He stated that 80% of the roads were created by “prescription” and explained that prescription means that the roads were created long ago because they were simply being used. He explained that the right of way for these roads is often not clearly defined. **Mr. Sanderson** also explained that RSA 236:13 is the driveway statute. Section IV states that driveways are under the jurisdiction of the planning board. At the state level, driveway drainage is dealt with by the DOT.

Mr. Sanderson explained that for small MS4 communities, water either comes from private property to an MS4 or goes from roads onto private property. He explained that for hundreds of years there has been a law in place to safely drain runoff onto abutting lands, but the drainage has not always been mapped because of limited resources. He explained that there is an issue with municipal or state government entering private property without permission. If drainage from a private property is suspected of contributing pollutants to a small MS4, the municipality cannot simply go out onto the property and take a sample without permission because of the fourth amendment rights.

Mr. E. Currier asked if farmland would be subject to land use restrictions, including wetland rules and regulations, if drainage from a roadway creates a wetland on the farm. **Mr. Sanderson** responded that roads are allowed to drain onto private lands as long as the drainage does not diminish the value and use of the land or unless the loss of value or use is compensated.

Dr. Roseen asked Mr. Sanderson to expand on the selectmen's right to regulate roadways, and if it is specific to drainage. **Mr. Sanderson** responded that the language is very general to regulate highways, which is interpreted to mean that they can regulate drainage. He emphasized that the highway is not only the pavement, but also the right of way as well as all three dimensions of the highway including the soil under it. **Dr. Roseen** asked if it is broad enough to cover water quality. **Mr. Sanderson** responded that it covers water quality as far as what is on the impervious cover. **Ms. Ebel** asked if there is case law supporting this and **Mr. Sanderson** responded that there is no case law.

Mr. P. Currier stated that if a municipality is regulated under the federal MS4 permit, and drainage from private property is entering the municipal drainage system, it is an illicit discharge and needs to be detected. **Chairperson Sassan** asked if all cases of "dirty water" into an MS4 are considered an illicit discharge. **Mr. Sanderson** responded that there are intentional and unintentional discharges. He gave the example of the trees that were cut after the recent ice storm and the debris from the cutting that ends up in the municipal drainage. He stated that the material will likely block culverts, but it is not an intentional or negligent act. **Chairperson Sassan** then asked if illicit discharges are defined to be intentional. **Mr. Sanderson** responded that it is EPA's authority.

Mr. P. Currier stated that illicit discharge may be the wrong term. He always thought that the owner of the pipe was the responsible party. He explained the scenario of a parking lot draining polluted runoff a municipal storm drainage system, which then flows into the state drainage system. If a water quality issue was identified, DES would go to DOT and tell them to fix it. DOT could then go to the municipality and tell them to fix it. The municipality could then go to the parking lot owner and tell them to fix it. **Mr. LeRoy** asked if the municipality can require the property owner to fix it if the parking lot has been there for a long time. **Mr. P. Currier** explained that DOT has the option of treating the polluted water at the end of the pipe or having the municipality clean it up before it reaches the state's drainage system.

Mr. Danielson stated that if a municipality adopts a stormwater utility, existing parking lots, as well as other types of development, would need to contribute to the utility in relation to their impact. **Mr. Cedarholm** stated that he does not believe that if a municipality establishes a stormwater utility that they have the authority to force parking lots to clean up. **Mr. Williams** responded that establishing a utility gives a municipality the authority to adopt ordinances. He gave an example that an ordinance could require that every property owner with a catch basin must clean parking lots every six months. **Mr. Cedarholm** stated that it depends on the municipality passing the utility.

Mr. Mark Hemmerli asked what happens in the situation where there is private property draining to a roadway and what authority the DOT has. **Mr.**

Sanderson responded that it is addressed case-by-case and investigated up the drainage line to identify the polluter. DOT would need to investigate the property they have control of and would need permission through an administrative inspection warrant to investigate private property. **Dr. Roseen** added that if DOT is able to monitor where the drainage enters their property and identify that it contains pollutants, they can put the onus on the property owner to identify the source and there is no need to enter private property. **Mr. P. Currier** added that the state or a municipality does not have to allow everyone's drainage to enter their pipe or, if they do allow private drainage, they can specify the water quality of the drainage. **Mr. Sanderson** stated that it is not always possible to find a point of discharge onto a property. He gave the example of drainage from an entire subdivision that may still require an administrative inspection warrant to access the private property.

Mr. Cedarholm stated that the Stormwater Utility legislation in 149-I:6 applies to municipalities where sewage or stormwater is pumped or treated. He asked if someone could argue that a utility could not be established because stormwater is neither pumped nor treated in typical municipal drainage systems. **Mr. Williams** responded that even a grass-lined swale or a catch basin has the ability to settle large particles from stormwater and could be considered a form of treatment. **Mr. Cedarholm** continued by suggesting that the majority of references to drainage in the existing statutes are related to providing adequate drainage for the purpose of preventing flooding and providing a sufficiently large component to moving flood water away quickly. He stated that these statutes are not necessarily geared toward the concepts that the Commission is concerned with related to water quality and groundwater recharge. **Mr. Williams** responded that source control is a part of reducing flooding and is therefore part of achieving adequate drainage. He stated that if drainage is contributing to pollution, it is inadequate.

Dr. Kahl stated that a grassed ditch is considered treating stormwater and asked if untreated stormwater would be allowed by removing the grass ditch and replacing it with curbing. **Mr. Williams** responded that it would still be treated even though curbing and gutters are not preferred methods of treatment. **Dr. Kahl** asked about combined sewer overflows (CSOs) that stormwater flows into treatment plants. **Mr. Williams** responded that CSOs are regulated through EPA federal stormwater program and that separations are worked out municipality-by-municipality under their specific approaches. **Mr. P. Currier** added that the standard thought is that CSOs should be separated, but separation is not currently required. He gave the city of Nashua as an example of still having a CSO in the downtown area. He also emphasized the point made by Mr. Sanderson earlier that pre-existing conditions are not regulated and present a large gap.

Chairperson Sassan asked if having a stormwater utility closes the gap of pre-existing conditions. **Mr. Williams** responded that he doesn't think the law is as clear as it could be, but that he believes it addresses pre-existing conditions.

Chairperson Sassan then asked if a utility can be defined by the drainage divide and gave the example that native soils provide treatment. **Dr. Roseen** asked if a

utility is more than a fee structure. **Mr. Williams** responded that a utility is more than a fee structure because it allows a municipality to create ordinances. He stated that proper operation and maintenance of stormwater structure could be included under the ordinances.

Mr. Hemmerlien stated that a municipal sewer system and a storm drainage system are different. He explained that the flow of water cannot just be stopped because there are pollutants in it and added that upstream activities in the watershed cannot be controlled by the owner at the end of the drainage system. He asked how DOT can manage the quality of the drainage when they are not able to control any activities outside of the right of way. **Mr. P. Currier** stated that EPA thinks a municipality can regulate the drainage in an urban compact area and expects them to do so. He added that by not regulating drainage in urban compact areas, municipalities are violating federal law, however; New Hampshire does not have specific legislation enabling municipalities to do so. **Chairperson Sassan** stated that municipalities can choose to either break federal law or meet federal law by going beyond the enabling authority. **Mr. Williams** responded that the city of Manchester does not believe that they went beyond the enabling authority because of RSA 485-A:3.

Mr. Brooks, from the New Hampshire Attorney General's Office, added that in the situation where a municipality was not meeting a federal law because the state has not passed enabling legislation would fall back on the state. He stated that the state would have to deal with it. He believes that using RSA 485-A:3 could be legally challenged and stated that the actual sections of the rule, not only the purpose statement should be reviewed to determine the intent.

Chairperson Sassan reminded the Commissioners of another legal question they had asked regarding the authority of a municipality to manage stormwater versus to regulate stormwater. **Mr. Cedarholm** clarified that this question was in regard to the difference between stormwater management and drainage and regulating stormwater on existing sites. **Mr. Sanderson** explained a situation with a big box store in Greenland, New Hampshire. He said that the development was possible to design so the stormwater would be managed with the post-development having the same volume of stormwater as the pre-developed condition, but the design did not address water quality. He stated that managing for quantity and regulating for quality are done under site review and conditions subsequent to construction.

Mr. Cedarholm stated that it is easy to point out the authority of the various references included in the handout, but that there are always members of the town that will find the loopholes to say that the authority doesn't exist and they are able to convince others that the authority doesn't exist. All of the different pieces of authority scattered throughout the state statutes are not clear enough to convince municipalities. **Rep. Spang** added that a person should not have to go all over the statutes for answers and suggested that the Commission may want to consider writing a single, good statute to make it clear. **Chairperson Sassan** added that

the statute could bring New Hampshire municipalities into compliance with the federal regulations for MS4s. **Rep. Spang** added that this relates to the indirect impact of wetlands. She said she is interested in what Mr. Sanderson said about conditions subsequent to construction because she was lead to believe that conditions subsequent to construction were not allowed. **Mr. P. Currier** responded that at the state level, the 401 Water Quality Certification can be used to require subsequent conditions by putting limits or requirements on pollutant loading from activities from construction activities as well as post-construction operation. He added that the 401 Certification is issued by DES, but it is triggered by a federal permit.

Dr. Kahl asked about the advantage of a new statute for stormwater and asked if Mr. Sanderson or Mr. Brooks were aware of similar statutes in other states that the Commission could model. **Mr. Trainque** responded that Vermont might be a good example. **Mr. Sanderson** cautioned against using Maine because they are a home rule state.

Ms. Manzelli clarified the subsequent condition issue by explaining that during municipal site plan review or state permit review a permitting agency can impose a condition subsequent to construction meaning that, at the time the permit is evaluated the conditions are issued. She emphasized that this does not mean that conditions can be added subsequent to the permit being issued. **Mr. P. Currier** stated that the 401 Water Quality Certification says a certification can be modified after it is issued if, for example, the water quality standards change. **Ms. Manzelli** responded that the same is not true for municipal site plan review.

Dr. Roseen requested the opinion of the legal representatives on the state authority to impose stormwater requirements on the local level. He stated that the biggest challenge with stormwater management is that each municipality has its own regulations. He asked if there is any potential mechanism to enable a state to trickle down to the local level. He also asked how the state and federal regulations can better mesh. **Mr. Sanderson** responded that the state can set a floor that municipalities are required to meet, but he stressed that if a municipality does not have the resources to meet it, the responsibility would fall on the state. He added that the state would need to come forward with resources and assistance for municipalities. **Mr. Sienkiewicz** stated that the homebuilders do not want to see each municipality given the authority to set and interpret their own regulations and develop their own ordinances. He said they would rather see an extension of the state's Alteration of Terrain program. He added that he does not understand why water quality is something that each municipality should be able to decide. **Mr. Brooks** responded that he does not see anything legally wrong with the state setting a water quality floor, but agreed with Mr. Sanderson that it would come down to resources at the municipal level to comply with the state requirement.

Ms Ebel referenced the Comprehensive Shoreland Protection Act (CSPA) as an example of a statute that DES is supposed to be enforcing and stated that the town

of New London put the CSPA in their local regulations, but that other towns have not. She added that if the state had the authority to make a town adopt it, they should. **Mr. P. Currier** responded that it is a constitutional issue.

Mr. Trainque stated that the MS4 permit requirements are difficult to meet and they should not be used for a state “floor”. He added that resources are so different for each municipality. **Ms. Manzelli** agreed that the NPDES permits including the MS4 permit are getting tighter and suggested that the floor could be set as an either/or scenario. She elaborated that if a municipality is subject to the MS4 permit, it needs to meet the MS4 requirements and if a municipality is not subject to the MS4 permit, they need to, at a minimum, meet other uniform regulations set by the state. She added that at least the other municipalities would have uniform requirements even if they are less stringent than the MS4 permit requirements. **Mr. Cedarholm** suggested that if there is an impaired water within a municipality, that the municipality should be given additional authority to regulate. **Ms. Manzelli** stated that it should depend on the impairment because all waters are impaired for mercury in the state. **Mr. Cedarholm** recommended that the focus be on nutrient and chloride impairments. He stated that the draft 2008 MS4 permit has different requirements if a discharge is made to an impaired water. He gave the example that tracking and reporting of road salt use is required where there are chloride impairments.

Rep. Spang asked if there is a link to the problem of pre-existing condition. **Dr. Roseen** responded that the draft MS4 permit deals with pre-existing in terms of watershed loading. **Rep. Spang** asked if this is what EPA is using in the Charles River watershed. **Mr. P. Currier** explained that EPA is using residual designation authority in the Charles River watershed in Massachusetts. EPA is delegated to issue NPDES permits in several states including Massachusetts and New Hampshire. He explained that EPA has the authority in these states to issue permits to individual land owners through a general permit. Individuals submit notices of intent (NOIs) under the general permit. **Dr. Roseen** added that this is happening in in South Portland, Maine, in the Charles River watershed in Massachusetts, and in Vermont. He explained that EPA uses residual designation authority when water quality goals are still not being met because of existing conditions and they base is on impervious cover analysis. He added that mapping impervious cover is another requirements of the draft 2008 MS4 permit.

Mr. Sienkiewicz asked if the draft MS4 permit requires municipalities to adopt ordinances to the maximum extent under the law.

Dr. Kahl asked if Mr. Sanderson, Mr. Brooks, or Mr. Williams have any recommendations for the Commission to consider. **Mr. Williams** stated that it appears the current statutes are too vague. **Mr. Brooks** added that from the discussion, it sounds like the statute language may need to be more specific depending on the Commission’s objectives. He offered to look at the language once drafted. **Mr. Sanderson** stated that stormwater utilities are still new and that

cities will have an easier time than smaller towns with adopting them. He recommended focusing on incentives and education and outreach to municipalities as well as building partnerships. **Mr. Hounsell**, a member of the audience, recommended that the Commission follow the new stimulus bill. He said that CSO separation is a starting point, but that the real catalyst for action is money. He added that people want to clean up the water, but they just can't afford to do it.

Dr. Roseen proposed that the Commission dedicate an entire meeting to the issue of municipal assistance and funding for stormwater utilities so that municipalities do not only see money. He added that the Commission should work on ideas for incentives as well as increasing understanding that utilities help share the cost between new and existing development. **Ms. Manzelli** added that in regard to residual designation authority, she recommends New Hampshire try to improve water quality and address stormwater issues on its own before EPA steps in. **Rep. Spang** responded that it would be helpful if EPA came to explain it. **Mr. P. Currier** said that he agrees with Ms. Manzelli and that stormwater management is not about command and control, it's about education and offering carrots, technical assistance and funding. **Rep. Spang** recommended that the Commission establish objectives and determine which are mandatory and which are permissive. She added the objectives should be consistent with federal regulations.

Mr. Hemmerlien suggested that each Commissioner read through the draft 2008 MS4 permit.

Mr. Roseen said that there are federal requirements, but that he is still not clear on the issue of state authority. **Ms. Manzelli** summarized that the Clean Water act requires NPDES permits and requires states to set water quality standards. If the water quality standards are not met, it can be considered when a permit is issued. One type of permit is the MS4 permit under the NPDES stormwater program. Under the MS4 permit, municipalities are required to adopt an ordinance or regulation to address stormwater. The authority to adopt the ordinance or regulation is what is in question. **Mr. Sanderson** reminded the Commission to consider pre-emption. He stated that the federal standard is the floor and that the state can choose to be "cleaner" than the federal standards. **Mr. P. Currier** stated that DES reports to congress every two years with the 305(b)/303(d) surface water quality report.

IV. DISCUSSION OF FUTURE MEETING TOPICS AND DATES

Chairperson Sassan recommended that the Commission consider the formation of subcommittees to address the issues discussed. He stated that the Commission had mentioned at previous meetings that desire to stay in full Commission, but in order to divide the work and to move forward in an efficient manner, he recommends subcommittees. **Ms. Manzelli** agreed with Chairperson Sassan and

suggested that the subcommittees report to the full committee. **Chairperson Sassan** recommended that the subcommittees report to the full Commission at each meeting. He suggested that a subcommittee be formed for roads, municipal authority, and state uniformity standards and asked for the Commissioner's opinions. **Dr. Kahl** asked if municipal authority and uniformity are the same thing. **Mr. P. Currier** responded that municipal authority is what Ms. Manzelli described, the enabling authority for municipalities to manage stormwater and that the issue of uniformity is developing technical standards. He explained that there are two pieces to authority and added that there is authority under planning, which is more urgent because landscape change is happening now.

Mr. Sienkiewicz responded that he opposes enabling municipal authority to develop individual stormwater ordinances. He does not think there is authority to establish ordinances outside of a stormwater utility and suggested enacting legislation to administer or enforce MS4 requirements. He suggested then filling in the regulation gaps relative to existing development and roads. He added that the question of whether or not the Commission is going to recommend that municipalities be given authority to develop freestanding ordinances needs to be hashed out. He restated that he disagrees with municipalities having that authority because he thinks that is duplicates and overlaps other existing regulations and that the state may have to deal with those overlaps later. **Mr. P. Currier** stated that there are other ways to give authority and that the Commission needs to decide how.

Ms. Manzelli suggested that the Commission look at Dr. Roseen funding issue and asked if it should be discussed in the full Commission or in subcommittee.

Chairperson Sassan mentioned that the concept of stormwater polluters and the type and amount of pollutants that come from various activities has been brought up and requested as a presentation. **Rep. Spang** suggested using subcommittee to do homework so Chairperson Sassan and Ms. McCarthy do not have to do it all. **Mr. P. Currier** asked if the Commission had agreed on a subcommittee for municipal authority, a second for state uniformity standards, a third for funding issues, and a fourth for roads. **Chairperson Sassan** stated that he would put together a draft terms of reference for the subcommittees.

Ms. Manzelli suggested that roads might fit under the uniformity subcommittee. **Rep. Spang** stated that she thinks there will be very little to discuss for the funding subcommittee because there is very little funding available. **Mr. Trainque** responded that the Clean Water Act says that stormwater can be funded the same way as wastewater and now stormwater projects are able to be funded under the State Revolving Fund (SRF) loan program. **Mr. P. Currier** added that there will be money going in to SRF now and stated that the issue is technical assistance. **Chairperson Sassan** clarified that the funding subcommittee is not only money, but also looking at how to market utilities to municipalities.

Ms. Ebel asked if municipal authority legislation would only going to cover MS4 communities or if other municipalities would be given authority as well. **Dr. Roseen** responded that the authority would be for all municipalities and the uniformity may only be for non-MS4 communities. **Mr. Sienkiewicz** restated that he sees a problem with municipalities being enabled. **Ms. Ebel** explained that some towns get frustrated because the state works so slowly and that the towns would like to be enabled.

Dr. Kahl asked about new development versus existing development and if the Commission should focus on uniformity for new development. **Mr. Sienkiewicz** responded that many waterbodies are already not meeting federal water quality standards. He added that the water quality is not going to get better by regulating only new development.

Mr. Trainque stated that municipalities already spend money on stormwater in some way. He explained that a stormwater utility would benefit municipalities because it focuses resources on stormwater activities and funding. He informed the Commission that DES hosted meetings on the stimulus package where Harry Stewart, the Director of the DES Water Division, said that he wants to set up a work group for stormwater issues. He told the Commission that he asked Mr. Stewart to join one of the Commission meetings.

Chairperson Sassan informed the Commission that he and Ms. McCarthy would circulate proposals for the subcommittees as well as arrange for a presenter for the March meeting on the topic of stormwater pollution by land use. He reminded the Commission that he arranged to show the documentary titled “Liquid Assets” at 11:30am in room 305 of the Legislative Office Building on March 2n, prior to the next Commission meeting. **Chairperson Sassan** also mentioned that Mr. Trainque had sent several emails to the Commission and that he would consolidate those emails and distribute them for the Commission to discuss.

Date	Time	Location
March 2, 2009	1:00 PM	LOB 305*
April 6, 2009	1:00 PM	LOB 305*
May 4, 2009	1:00 PM	LOB 305*

*NH Legislative Office Building, 33 North State Street, Concord, NH

V. ADJOURNMENT

Ms. Manzelli made a motion to adjourn. **Mr. P. Currier** seconded. All approved.