

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

April 6, 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
David Cedarholm	NH Public Works Association
Michael Trainque	American Council of Engineering Companies
Paul Currier	NH Department of Environmental Services
Steve Kahl	NH Lakes Association
Newb LeRoy	Associated General Contractors of NH
Carl Paulsen	NH Rivers Council
Joe Robertie	NH Timber Owners Association
L. Mike Kappler	NH House of Representatives
David Borden	NH House of Representatives

Members Absent:

Jacalyn Cilley	NH Senate
Rob Roseen	University of New Hampshire Stormwater Center
Charlie Hood	NH Department of Transportation
Amy Manzelli	Business and Industry Association of NH

Others Present:

Mark Hemmerlein (for Charlie Hood)	NH Dept. of Transportation
Joel Anderson	NH House of Representatives Staff

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 1:04 PM and requested that Commissioners, staff and attendees introduce themselves by name and

representation. Introductions were made around the room. It was noted that Rep. Mike Kappler was assigned to the Commission to replace Rep. Eric Stohl.

II. APPROVAL OF MINUTES FROM FEBRUARY 2, 2009 MEETING

Mr. Danielson made motion to approve the minutes from the February 2, 2009 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed; Mr. Paulsen and Rep. Kappler abstained due to their absence at the February 2, 2009 meeting.**

III. PRESENTATION ON EVENT MEAN CONCENTRATIONS AND LAND USE

Mr. P. Currier presented to the Commission on the event mean concentrations of various land uses. He explained that event mean concentration (EMC) is defined by EPA as the total pollutant mass discharge divided by the total runoff volume. EMCs were developed by the EPA's Nationwide Urban Runoff Program (NURP) in the 1980's to serve as a national measure of the magnitude of urban runoff, specifically pollutant loadings. He explained that EMCs exist for all pollutants, but in regard to stormwater sediment, nutrients, bacteria, and metals are the pollutants of concern. EMCs vary depending on geography and from storm to storm. They can be used to generalize and estimate pollutant values per land use over time. He explained that the landscape type influences the EMC and in general as impervious cover increases, the event mean concentration increases.

Mr. P. Currier continued to explain that EMCs are used in modeling pollutants loads. He explained that there are many different pollutant loading models available and that NHDES is currently recommending that people use the Simple Method, which can estimate the change in pollutant loading between the pre-developed landscape and the post-developed landscape by breaking the landscape down into different types such as residential, commercial, highway and so on. He explained that the Simple Method uses annual loads for the pre-developed condition based on existing land use and post-development loads based on the proposed level of imperviousness and the proposed land use. To protect water quality, he explained that the desired condition is for post-development pollutant loading to be less than or equal to the pre-development loading. If meeting or exceeding the pre-development pollutant loading is not possible, and a waterbody is not an impaired water or an outstanding resource water, then the antidegradation policy applies. He explained that the draft Alteration of Terrain Program regulations did not require a pollutant loading analysis if a project proposed less than 10% effective impervious cover (impervious cover that contributes to runoff) and greater than 65% undisturbed cover. Meeting the "1065 Rule" would assume that the increase in loading would be minor and would not harm aquatic life.

IV. PRESENTATION DISCUSSION AND QUESTIONS

Mr. Sienkiewicz asked if antidegradation is in the federal Clean Water Act. **Mr. P. Currier** responded that antidegradation is in the clean water act and that EPA requires states to adopt an antidegradation policy. He explained that antidegradation is implemented through the state water quality standards. He explained that antidegradation has not been well implemented. The primary mechanism for implementation is through the 401 Water Quality Certification, which applies to any application for a federal permit, including Army Corp permits and general permits. It was proposed in the draft Alteration of Terrain program administrative rules, but was removed prior to adoption. **Mr. P. Currier** explained that the NPDES Construction General Permit requires a 401 Certification from the state, but that a general 401 Certification gets issued for the general permit and individual projects do not get certified. **Mr. Sienkiewicz** stated that we the exact impact of a project isn't known because a pollutant loading analysis is not required. **Mr. P. Currier** agreed.

Dr. Kahl stated that 10% of a site can be impervious and 65% needs to be undisturbed and noted that there is 25% of the property remaining. **Mr. P. Currier** responded that 25% of the property can be developed, but cannot be impervious. **Mr. Paulsen** asked for the definition of effective impervious cover. **Mr. P. Currier** responded that effective impervious cover is impervious cover that contributes to site runoff and that disconnected impervious cover does not contribute to site runoff because it is infiltrated. **Rep. Spang** asked if it takes into account the proximity of the impervious cover to a waterbody. **Mr. P. Currier** responded that the simple method does not take location into account necessarily, although buffer strips are included in the model as a best management practice [BMP]. **Rep. Spang** asked if a pollutant loading analysis is required under the Alteration of Terrain program if the 10% effective impervious cover and the 65% undisturbed cover requirements are met. **Ms. McCarthy** responded that if the antidegradation sections had been adopted as part of the Alteration of Terrain Rules, meeting the 10% and 65% requirements would excuse an applicant from conducting a loading analysis. However, because those sections were removed from the rules before adoption, there is currently no requirement for effective impervious cover and undisturbed cover, or for a pollutant loading analysis under the Alteration of Terrain program.

Mr. Paulsen asked if the state would require a 401 Certification on Alteration of Terrain projects. **Mr. P. Currier** responded that because the Alteration of Terrain permit is not a federal permit, it does not need a 401 Certification. **Mr. Cedarholm** asked Mr. P. Currier where else he would like to see antidegradation implemented. **Mr. P. Currier** responded that he would like to see it implemented at the state and local level with requirements on maintaining the hydrograph by not increasing the intensity of runoff and also not increasing pollutant loading. **Dr. Kahl** clarified that using buffer strips as a BMP is not intended to reduce the amount of effective impervious cover, but to provide treatment to reduce the pollutant loading.

V. PROPOSED WORK PLAN

Chairperson Sassan stated that the focus of the Commission to date has been information gathering, and suggested that the Commission now put together a work plan and establish subcommittees to fulfill its duties. He explained that Dr. Roseen drafted a work plan and proposed subcommittees in a handout given out with the meeting documents. He stated that some Commission members expressed an eagerness in moving forward to make recommendations. He asked for recommendations on the number and type of subcommittees to be formed.

Rep. Spang stated that there will be a resources study committee established to study infrastructure and funding and asked if the Stormwater Commission should start the work on funding and hand it over to the committee when it begins work in November. **Chairperson Sassan** responded that Dr. Roseen was the lead on the funding topic and suggested that he might be chair of a funding subcommittee. **Mr. Cedarholm** stated that Mr. Roseen had agreed to chair a funding subcommittee if one were formed. **Dr. Kahl** asked if it is premature to find funding mechanisms without having recommendations to be funded. **Mr. Danielson** responded that part of the funding subcommittee purpose is to see what other states are going for funding. **Rep. Spang** agreed with Dr. Kahl that the needs should be identified before funding and planning can be done. **Mr. P. Currier** stated that there are two parts to stormwater, the existing development retrofits that require funding for infrastructure and new technology, and the new development that requires technical assistance to municipalities to ensure that development is designed to reduce stormwater impacts. He stated that Mr. Sienkiewicz recommended that a state level performance standard be established to assist municipalities. **Rep. Spang** stated that deciding what should be done should be the central subcommittee. **Mr. P. Currier** stated that DES says there can be no increase in loading from development projects, but there are actually no state permits in place to implement it. If a permit were to be developed, it would require substantial funding to administer it. **Rep Spang** asked about the problems with old pipes and infrastructure, which she thinks is more of a regulatory issue and not a funding issue. **Mr. P. Currier** responded that failing infrastructure is not necessarily due to being old, but because it was not designed for treatment.

Mr. E. Currier stated that the total phosphorus and total nitrogen EMCs listed in Mr. P. Currier's presentation showed agriculture to be one of the highest sources and asked if funding is available for agricultural activities. **Rep. Spang** asked if the nutrient loading is high because BMPs are not in place or because there is a lack of education and outreach or a lack of enforcement. **Mr. E. Currier** responded that education and outreach would benefit the farm community. **Chairperson Sassan** asked if there are BMP requirements for agricultural operations. **Mr. E. Currier** responded that there are requirements and farmers are trying to comply, but the requirements are dependent on the type of farming being done. **Chairperson Sassan** asked if the EMCs presented are reflective of

agricultural land uses with BMPs or without. **Mr. P. Currier** responded that the EMCs are without BMPs being implemented.

Mr. Hemmerlein stated that there are requirements for retrofitting and for new development and that DOT does both. He explained that there are active DOT projects that were approved a long time ago. Some road and highway projects can take a long time and although they were approved several years ago, they are required to meet new regulations. He explained that sometimes there is not enough land available in road rights of way to meet the head requirements or for treatments areas. He also explained that for retrofits, they cannot simply change the grade of existing roads. He stated that funding needs serious consideration. He added that there is a lot of regulatory uncertainty right now and it makes it difficult to work. **Chairperson Sassan** stated that the funding subcommittee will look at both existing and new development.

Chairperson Sassan stated that a subcommittee for municipal authority had been suggested at previous meetings. **Mr. Hemmerlein** suggested that the subcommittee look at both state and municipal authority. He explained that authority varies greatly by municipality and municipal authority may not be the best approach. Municipalities that adopt lax regulations will have an unfair advantage over municipalities with strict regulations in attracting business. **Mr. Danielson** asked the Commission to keep in mind that planning boards should be involved. He suggested looking at a proposal to EPA from Region 1 to look at regulations and planning from a watershed perspective. **Mr. P. Currier** added that the work in the Great Bay watershed has included three regional planning commissions because there are three regions in the watershed. **Mr. Hemmerlein** suggested looking at Maryland and Lake Tahoe as examples of regional efforts.

Chairperson Sassan summarized that there are to be three subcommittees, a funding subcommittee to look at existing and new infrastructure, a regulatory authority subcommittee, and a uniform performance standards subcommittee and questioned if the uniform standards should fall under the regulatory authority subcommittee. **Mr. P. Currier** suggested that the uniform standards subcommittee should be separate if the task is to suggest what the uniform standards ought to be. **Chairperson Sassan** stated that the uniform standards subcommittee would be science-based to develop recommendations for standards.

Mr. Sienkiewicz stated that it is difficult to separate what actually is to be done in regard to replacing infrastructure and how we regulate going forward. He suggested there are two distinct parts, the existing infrastructure and development, and the new, proposed development.

Chairperson Sassan stated that roads, chloride, and climate change had all been suggested as subcommittees previously and asked if they were still important to people. **Dr. Kahl** asked what other states are going and suggested that the Commission should not duplicate efforts. He mentioned that the climate change

task force could address part of it. **Rep. Spang** asked how not addressing climate change would impact the Commission fulfilling its duties. **Chairperson Sassan** stated that he thinks the duties have been addressed and that the Commission can pull information from the Task Force's report. **Mr. Paulsen** added that climate change clearly cannot be ignored, but that it can be woven into their recommendations. He also mentioned that there are non-regulatory barriers to stormwater management at the local level. He added that the state cannot simply create uniform standards and hand them over to the municipalities because it could be a 28A [unfunded mandate] issue. He explained that a big concern is that communities do not want to be the first on the block to implement regulations. **Rep. Spang** responded that aside from the subcommittees, the Commission needs to pull everything together and make recommendations, including addressing barriers. **Chairperson Sassan** recommended an outreach subcommittee. **Mr. Danielson** stated that the recommendations need to be made before they can conduct outreach.

Mr. Sienkiewicz asked if it is better to retrofit existing infrastructure or focus on new development, and suggested a subcommittee look at that if the answer isn't known. **Mr. P. Currier** responded that in general, the problem is the existing development, but that the current structure puts the burden on new development to maintain pollutant loading. He gave the Great Bay watershed as an example that 50% of the total nitrogen loading comes from stormwater and stated that studies in the Connecticut River watershed and the Merrimack River watershed show the same thing. The issues are due to the developed landscape. **Rep. Spang** added that there are also septic system issues in Great Bay and atmospheric deposition makes up a big part. She stated that Bill McDowall at UNH has been studying nitrogen loading in the Lamprey River watershed.

Chairperson Sassan stated that the funding subcommittee will be charged with determining how funds should be spent. **Mr. P. Currier** suggested that it might be possible to obtain estimated costs for new regulations, state technical assistance to municipalities, and retrofits for BMPs. **Chairperson Sassan** agreed that the cost information would be useful, but asked if cost would help prioritize actions. **Dr. Kahl** stated that if there are to be new regulations for existing development, new standards for new development cannot be ignored. **Rep. Spang** asked what the issue was with the new development standards being an unfunded mandate. **Mr. Sienkiewicz** explained that if every municipality has to implement the Alteration of Terrain program, they will put the review burden on the developer, which will draw out the permitting process. **Mr. P. Currier** suggested that unless funding is provided along with uniform standards, municipalities will resist. If uniform standards are going to work either the state will need to develop it and implement it, or the state will need to develop it and provide funding for municipalities. **Mr. Danielson** added that an additional option would be for municipalities to adopt stormwater utilities that can fund it.

Rep. Spang suggested that the subcommittees meet in succession and stated that she is concerned that the subcommittees are discussing funding and regulating things that haven't been identified yet. **Rep. Borden** suggested that a subcommittee focus on defining the problem. **Rep. Spang** suggested that the NH Water Primer may be a good start. **Chairperson Sassan** suggested that a needs subcommittee be a one-meeting subcommittee to pull together all the needs identified to this point. **Mr. Cedarholm** asked that the Commissioners send their thoughts on what is needed to Chairperson Sassan or Ms. McCarthy.

Rep. Kappler suggested that the authority subcommittee look at the stimulus package on land and roads.

Rep. Spang suggested that everyone pick a subcommittee to join that would like to be engaged with. The Commissioners went around the room and selected a subcommittee to join. Chairs were nominated.

VI. OTHER BUSINESS

Ms. McCarthy provided a handout to the Commissioners that summarized the comments from municipalities, planning commissions, and other organizations that DES received at the outreach events for the NH Water Resources Primer.

Ms. Ebel asked if the Commission was granted the one-year extension. **Rep. Spang** responded that she believes it passed the House.

Mr. Danielson informed the Commission that he will not attend the June 1, 2009 meeting.

VII. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
May 4, 2009	1:00 PM	LOB 305*
June 1, 2009	1:00 PM	LOB 305*

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

VIII. ADJOURNMENT

Dr. Kahl made a motion to adjourn. **Mr. Cedarholm** seconded. All approved.