

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

May 4, 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
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
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH
Jacalyn Cilley	NH Senate
Mark Hemmerlein (for Charlie Hood)	NH Dept. of Transportation

**Members Absent:**

Charlie Hood*	NH Department of Transportation
Paul Currier	NH Department of Environmental Services

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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\*Representative sent in place.

**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 1:08 PM. Commissioners and attendees introduced themselves by name and affiliation. It was noted that Rep. Mike Kappler was assigned to the Commission to replace Rep. Eric Stohl.

**II. APPROVAL OF MINUTES FROM APRIL 6, 2009 MEETING**

**Rep. Spang** made motion to approve the minutes from the April 6, 2009 meeting. **Dr. Kahl** seconded the motion. **All approved and none opposed.**

### III. SUBCOMMITTEE REPORTS

**Ms. Manzelli** reported that five of the twelve members of the Regulatory Authority subcommittee held a meeting, which focused primarily on the objective of the subcommittee. She stated that the outcome proposed by the subcommittee is to provide a concise and thorough written report of all the authority that exists today in regard to stormwater and to identify and briefly describe programs and source law. She added that they would default to the Needs subcommittee to analyze whether the laws are effective or ineffective. **Chairperson Sassan** responded that he thought the Regulatory Authority subcommittee responsibility would include identification of regulatory needs. **Rep. Spang** added that several of the Needs subcommittee submissions pointed to the Regulatory Authority subcommittee to identify the regulatory gaps. **Ms. Manzelli** responded that the Needs subcommittee could use the list of existing regulations, prepared by the Regulatory Authority subcommittee. The Needs subcommittee can then inform the Regulatory Authority subcommittee of the needs identified, and the Regulatory Authority subcommittee can assess whether the needs can be met through existing regulations or if there are gaps where additional regulation should be proposed. **Mr. Paulsen** added that the Regulatory Authority subcommittee will also look at wetland permitting to assess whether it adequately addresses stormwater, and clarified that regulations and permits will be evaluated to some extent in that subcommittee.

**Chairperson Sassan** stated that it was originally proposed that the Needs subcommittee would meet first to identify the stormwater needs and then go the Regulatory Authority subcommittee to build on the gaps identified. **Dr. Roseen** responded that he thought the Regulatory Authority subcommittee was going to identify the gaps and determine if there was a need for more comprehensive regulation. **Ms. Ebel** added that the Regulatory Authority subcommittee was also going to determine the extent of existing municipal authority to manage stormwater.

**Ms. Manzelli** explained that it is important to have a comprehensive statement identifying the programs that currently exist. She reminded the Commission that during the presentations on municipal authority, Mr. Eric Williams of DES distributed a handout that explained the existing regulatory authority, but then the Attorney General's office representative stated that the authority might not be as clear as it could be.

**Chairperson Sassan** stated that the Regulatory Authority subcommittee should first compile a list of existing regulation related to stormwater, and then determine the gaps where additional regulation could be proposed.

**Rep. Spang** stated that the Needs subcommittee was originally proposed to meet quickly, but that it appears the subcommittee has more to tackle than originally thought. She added that if the Needs subcommittee does end earlier than the other subcommittees, that members should join the remaining subcommittees.

**Senator Cilley** suggested that the Commission also look at other New England state regulations, to which **Chairperson Sassan concurred**. **Dr. Roseen** responded that he has experienced difficulty getting other states to respond, and mentioned Massachusetts in particular, because they are in the middle of figuring it out. **Senator Cilley** offered to request that the Senate Research Committee would research other state stormwater regulations. **Mr. Cedarholm** suggested that the state of New York would also be good to research. **Mr. Trainque** reminded the Commission that he sent around an email summarizing what a few other states in New England are doing.

**Mr. LeRoy** asked for Ms. McCarthy to send out an email with the descriptions and responsibilities of each subcommittee clearly identified. **Ms. McCarthy** read the subcommittee member lists.

**Dr. Roseen** reported that only he and Mr. Danielson attended the meeting of the Funding subcommittee. He explained that they discussed the responsibility of the subcommittee as identifying economic mechanisms, such as impact fees and stormwater utilities, that could be pursued at the state level. **Ms. Manzelli** asked if being pursued at the state level means that it is state funding or if it also includes funding from sources other than the state. She added that there seems to be federal money potentially available. **Dr. Roseen** clarified that currently, funding to manage stormwater does not exist in most cases. The Funding subcommittee would look at ways to generate new money for funding.

**Mr. Danielson** informed the Commission that there is currently a bill to amend the Water Pollution Control Act and the Safe Drinking Water Act, called the Water Infrastructure Financing Act. He explained that the purpose is to increase funding to implement the federal Clean Water Act over the next four years. He added that it is going into committee next week and has implications for funding stormwater with a number of different grant programs. He explained that he could not find stormwater explicitly mentioned in the bill text, but that it does mention combined sewer overflows (CSO's) and pollution control, and relates to waste water and drinking water. He will keep the Commission informed on this bill.

**Mr. Trainque** informed the Commission that the original Clean Water Act made allowances for funding in the SRF (state revolving fund) for both waste water and stormwater, but New Hampshire never added stormwater. He explained that a recent change, partly driven by the economic stimulus, now makes stormwater eligible for funding under the SRF. He added that the stormwater utility

legislation is very narrow and it may need modification to enable it as a funding mechanism.

**Senator Cilley** asked Mr. Danielson if there is a distinction made between waste water and stormwater in the new legislation with a separate fund for each. **Mr. Danielson** responded that he could not find stormwater specifically mentioned in the bill text, but that it does mention grants.

**Mr. Sienkiewicz** reported that the Needs subcommittee met once, but did not have a quorum. At the meeting, subcommittee members discussed putting together a needs statement based on the nine questions outlined in the Commission's Interim Report. He stated that he received responses from some members and he would like to gather more responses before the subcommittee meets again.

#### IV. OTHER BUSINESS

**Mr. Cedarholm** informed the Commission of a Frontline special titled "Poisoned Waters". He explained that it builds on the Penn State documentary, "Liquid Assets", that the Commission watched at the April meeting, by describing sources of stormwater pollution. **Dr. Roseen** added that it can be viewed online at PBS.org under the program Frontline.

#### V. SUBCOMMITTEE BREAK-OUT SESSIONS & REPORTING

The Commission members broke into their respective subcommittees and held work sessions for approximately 45 minutes. The full Commission re-grouped and gave reports on subcommittee work sessions.

**Mr. Sienkiewicz** reported that the Needs subcommittee needs to schedule the next meeting and subcommittee members will be responsible for brainstorming needs to bring to the meeting for discussion. **Ms. Manzelli** reported that the Regulatory Authority subcommittee will meet immediately prior to the next full Commission meeting. She stated that they will work to complete the spreadsheet of applicable programs and permits, including a description of the programs and when it applies. She explained that after the Needs subcommittee provides a list of proposed needs, the Regulatory Authority subcommittee will respond to the identified needs to determine if they are covered under existing authority.

**Chairperson Sassan** reminded the Commission that there needs to be a balance between making sure that all of the issues are being captured and making sure that the subcommittees are not taking on too much.

**Dr. Roseen** reported that the Funding subcommittee compiled a list of categories to look at including, developer incentives, such as a fee structure based on the degree of compliance with stormwater regulations, stormwater utility incentives with a state level stormwater utility fee that municipalities can opt out of. He explained that a municipal incentive could be funding that would go toward local

compliance with the MS4 permit and state stormwater mitigation fund to target locations in need of restoration. **Senator Cilley** stated that identifying the funding before identifying the needs is premature. **Dr. Roseen** responded that many of the funding ideas were based on needs identified in previous meetings and presentations and that the Funding subcommittee will make sure they match up with the identified needs that come out of the Needs subcommittee.

**Ms. Manzelli** requested that all email for subcommittees be send to the full Commission.

**Mr. Cedarholm** stated that Dr. Roseen only mentioned MS4 communities and asked if the Funding subcommittee will consider incentives for municipalities that are not MS4s. **Dr. Roseen** agreed that an incentive for non-MS4 communities would need to be identified. **Mr. Hemmerlein** stated that the Commission needs to consider that the MS4 program is a federal program.

**Mr. Cedarholm** stated that the stormwater utility legislation allows for intermunicipal stormwater utilities.

**Dr. Roseen** continued that a third category to consider is municipal stormwater utilities with an incentive to help them move forward such as technical assistance to help administer the program possible from the Regional Planning Commissions or paid for by the stormwater mitigation fund. **Mr. Danielson** added that redevelopment improvements would also be considered. **Rep. Spang** responded that redevelopment projects may not trigger an Alteration of Terrain permit, but that they are a great opportunity to mitigate for stormwater. She added that state money toward stormwater retrofits could be an incentive. **Mr. Sienkiewicz** asked if a permit would be required if someone renovated a mill yard, but did not disturb an acre. **Mr. Hemmerlein** responded that a permit would not be needed. **Mr. LeRoy** added that there is an exemption for redevelopment in shoreland. **Mr. Sienkiewicz** then stated that existing development is the primary problem with stormwater, yet there is a lot of redevelopment that is not required to get a permit.

**Mr. Danielson** responded that if a community has a stormwater utility fee based on impervious cover, a redevelopment activity that removed impervious cover would see a reduction in their utility fee, which is an incentive. He added that they only discussed incentives, and that most developers want to do the right thing. He stated that the Commission needs to identify ways to help them do the right thing. **Mr. Trainque** added that most stormwater utilities are structured to incorporate credits, which decreases the fee. **Mr. Cedarholm** stated that there might be incentives in land use and zoning. **Mr. LeRoy** added that zoning requires more parking spots than necessary and takes up space that could be used for stormwater treatment. **Mr. Cedarholm** responded that underground parking or buildings over parking areas can be used.

**Mr. Paulsen** stated that antidegradation requires no additional discharge of pollutants into an impaired waterbody. He explained that there is a workgroup talking about trading to allow a project to decrease loading in one area in order to increase loading in another. He asked what incentives there are to keep areas that aren't impaired clean.

**Mr. Hemmerlein** asked how smaller development projects that are below permit thresholds can be brought into the regulatory loop other than municipal authority.

**Ms. Ebel** responded that site plan amendments gives opportunities for municipalities to ask for drainage improvements, but municipalities are afraid to ask for too much. She added that if there were funding available to help developers upgrade their drainage, they would be more willing and it would be easier for municipalities to request it.

**Mr. Danielson** asked if the number of parking spaces required in zoning is really needed. **Mr. LeRoy** responded that parking is determined based on the square footage of the business space it is serving and a study showed that there is much more parking required in zoning than is actually needed. **Dr. Kahl** added that the requirements for parking in zoning could be developed to provide an incentive for pervious pavements. He explained that Dr. Roseen stated in earlier meetings that a major barrier for pervious pavement is that there is not a big enough market for it, and that incentives to decrease imperviousness under new NH stormwater law could help develop the market for pervious paving options. **Ms. Ebel** explained that the town of New London negotiated with the hospital when they expended to include a section of pervious pavement. **Chairperson Sassan** stated that parking is currently the responsibility of each individual business owner, but that parking should be a community issue addressed in a municipal parking plan. **Rep. Spang** added that planning boards could request businesses to contribute to a community parking lot or garage. She explained that this would alleviate the concern about using up so much land for parking and added that even pervious pavement consumes natural land. She also stated that she is concerned with all of the abandoned shopping centers and thinks that there should be bonds to tear the parking out.

**Mr. Hemmerlein** stated that it sounds like the Commission is trying to give assistance to community planners and suggested that municipal planning boards could be a mechanism to increase education and awareness. **Mr. Danielson** added that planners have trainings and courses that they are required to take and that it would be beneficial to get this topic onto an agenda for technical training. **Ms. Ebel** reminded the Commission that not all towns hire planners.

**VI. FUTURE MEETING DATES AND TOPICS**

Date	Time	Location
June 1, 2009	1:00 PM	LOB 305*
July 6, 2009	1:00 PM	LOB 305*
August 3, 2009	1:00 PM	LOB 305*

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

**VII. ADJOURNMENT**

**The motion was made to adjourn at 3:12pm, and was seconded. All approved.**