

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

June 1, 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
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
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
Mark Hemmerlein (for Charlie Hood)	NH Dept. of Transportation
Paul Currier	NH Department of Environmental Services

**Members Absent:**

Charlie Hood*	NH Department of Transportation
Dave Danielson	NH Association of Regional Planning Commissions
Carl Paulsen	NH Rivers Council
Joe Robertie	NH Timber Owners Association
Jacalyn Cilley	NH Senate

**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 1:12 PM. .

**II. APPROVAL OF MINUTES FROM MAY 4, 2009 MEETING**

**Rep. Spang** gave grammatical changes to Ms. McCarthy. **Rep. Borden** made motion to approve the minutes from the May 4, 2009 meeting with Rep. Spang's amendments. **Ms. Ebel** seconded the motion. **All approved and none opposed.**

### III. OTHER BUSINESS

**Chairperson Sassan** explained to the Commission that he was recently given a new program to manage under the stimulus package in his position at the Office of Energy and Planning and that the time requirements for managing that program are requiring him to step down as chair of the Commission. He requested nominations for a new chairperson.

**Rep. Spang** nominated Mr. David Cedarholm. **Dr. Kahl** seconded the nomination. **Ms. Manzelli** suggested that Mr. Cedarholm be given the opportunity to confirm his ability to meet the time commitment of being Commission Chair. **Mr. Cedarholm** responded that he is honored to be nominated, and explained that his workload is more than it has ever been. He explained that it may be difficult to take on chairing another group and asked for clarification of the duties of the Chair. **Chairperson Sassan** responded that the majority of the Chair's work is in organizing and facilitating meetings, as well as overseeing drafting the final report. He explained that the majority of the work remaining for the Commission to do is happening in the subcommittees. **Mr. P. Currier** added that the subcommittees' work, when completed, should be in a format that can easily be incorporated into the final report.

**Dr. Kahl** suggested that Ms. McCarthy could have an increased role in the Commission beyond taking the minutes. The Commission asked for Ms. McCarthy's opinion. **Ms. McCarthy** responded that DES is already representation on the Commission and that she does not feel it is up to her to expand her role beyond that of Commission staff. **Rep. Spang** responded that she, Chairperson Sassan, Mr. Cedarholm, Ms. McCarthy and the subcommittee chairs should meet and make sure that the work the subcommittee are doing are not duplicating efforts. **Mr. Cedarholm** indicated that he would accepted the role of Chairperson if there was an understanding that the subcommittee Chairs would share equally in the responsibility of preparing the Commission's final report. The subcommittee chairpersons indicated agreement with the condition and Mr. Cedarholm accepted the role of Chairperson. **Chairperson Sassan** made motion to accept Mr. Cedarholm as Commission Chair. **All approved.**

**Rep. Spang** made motion to formally recognize and appreciate Mr. Sassan for his work as chair.

### IV. SUBCOMMITTEE REPORTS

**Mr. Sienkiewicz** informed the Commission that the Needs Subcommittee developed a spreadsheet documenting the needs that had been identified through presentations, discussion, and other Commission materials. He stated that the spreadsheet will be sent out to the full Commission after the meeting.

**Dr. Roseen** reported that the Funding Subcommittee has a draft final product to circulate, which was sent out in an email to the Commission prior to the meeting. He explained that the product represents a range of funding option to explore. He walked the Commission through the document, and explained each option. He explained that the purpose of the subcommittee is to identify primary funding mechanisms that can be used to fund the recommendation that come out of the Needs Subcommittee and added that these are option.

He explained that the first option is a state-wide stormwater fee. The Subcommittee proposes that this be administered on a municipal level, similar to the licensing fee for motor vehicles. He explained that the reason for a statewide fee is because there are significant political issues with passage of a local utility and a statewide stormwater fee would enable funding to go to both the state – in a stormwater mitigation fund – and the municipality to support their municipal stormwater program. He explained that there needs to be an element added for non-MS4 communities and added that most of the municipalities currently exploring utilities are MS4 communities.

**Ms. Manzelli** asked if the municipal component would not go toward MS4 communities. **Dr. Roseen** responded that the municipal component would go to all communities, as the stormwater fee would apply to everyone, but that there could potentially be a waiver for non-impaired watersheds. **Mr. LeRoy** asked what the acronyms “IC” and “EIC” stand for on the subcommittee’s handout. **Dr. Roseen** responded that they stand for impervious cover and effective impervious and explained that utilities often base their fees on impervious cover. He gave an example of a rooftop that drains directly to a storm sewer system as being effective impervious cover and disconnected impervious cover would be a roof that had a gutter downspout to an infiltration practice or other management practice so the stormwater generated does not enter the storm sewer system.

**Rep. Spang** asked if the state uses a model and not site specific information for the statewide fee if there will be pushback. **Mr. P. Currier** responded that utility fees are lot specific and use the actual square footage of impervious cover on a lot. **Rep. Spang** asked who is responsible for the impervious cover data. **Dr. Roseen** responded that it could be based on the tax record maintained by the municipality or if could be on a per lot basis using a GIS analysis, which involves photo interpretation. **Rep. Spang** suggested that obtaining the data could be difficult for small towns. **Mr. Sienkiewicz** stated that the impervious cover per lot is based on the footprint not the square footage of the building. **Mr. P. Currier** added that there is a built-in incentive for homeowners to accurately report on their properties. **Dr. Roseen** added that fee abatement could come into plat by disconnecting areas of impervious cover.

**Mr. Sassan** asked if it would be better to IC and EIC as standard components of the property assessment process instead of having individual property owners

prove what is on their site. He added that a portion of the stormwater fee generated could go toward this addition to the assessment. **Dr. Kahl** asked if there would be a threshold, and gave the example of 10% IC on a lot, that would require no fee. **Dr. Roseen** responded that an IC threshold might be a good incentive to minimizing impervious cover and that it would be in line with how DES proposes to implement antidegradation. **Mr. E. Currier** asked if the stormwater fee would apply to agricultural activities. **Dr. Roseen** responded that there may need to be land use exemptions and agriculture might be one of them. **Mr. LeRoy** pointed out that a barn would not likely be connected to a storm drain system. **Mr. Sienkiewicz** responded that a barn could still be a problem. **Mr. P. Currier** added that if a barn drains to a stream it should be included. **Mr. Sienkiewicz** reminded the Commission that the intention is to try to spread out the responsibility of managing stormwater equally.

**Chairperson Cedarholm** stated that the distinction between impaired and non-impaired watersheds and the potential for a fee waiver for non-impaired watersheds is important. **Ms. Manzelli** cautioned the Commission to be careful with using the term “impairment” and gave the example of the entire state being impaired for mercury as an example. **Dr. Roseen** stated that stormwater impaired should be specified. **Mr. P. Currier** added that DES has a list of stormwater impaired waters of the state that is a subset of the 303(d) list of impaired waters.

**Mr. Hemmerlien** stated that the statewide stormwater fee discussion has focused on private property and asked how it would apply to roads, government and non-governmental organization properties. **Dr. Roseen** responded that roads may need to be addressed separately, but that government buildings would be included. He added that Augusta, Maine created a stormwater utility that included federal buildings because it is not a tax. It is a fee. **Mr. Sassan** asked if private roads would be included. **Dr. Roseen** responded that he is unsure as they have not discussed roads yet. **Ms. Ebel** asked if any other states have done this. **Dr. Roseen** responded that there are no states that he knows of that have implemented a statewide stormwater fee. **Chairperson Cedarholm** asked what this fee system is being modeled after. **Dr. Roseen** responded that it is being modeled after a stormwater utility model.

**Ms. Manzelli** asked what would happen to the stormwater utility legislation if a statewide stormwater fee passed. **Dr. Roseen** responded that the subcommittee did not discuss that, but if a municipality had its own utility, there could be an option for them to get a waiver or some other option to get out of the state program. **Dr. Kahl** added that this could be an incentive to municipalities to adopt their own utilities because the municipality would keep all of the funds generated by the fee instead of having to give the state a portion.

**Mr. Sienkiewicz** asked about implementing a watershed utility. **Mr. Sassan** stated that a watershed utility is fully enabled. **Mr. P. Currier** clarified that it is only fully enabled in the Coastal Watershed.

**Ms. Manzelli** stated that the statewide stormwater fee sounds like education funding where everyone pays into a state fund and then the state decides where the money goes. **Dr. Roseen** responded that the subcommittee tried to address that concern by assigning ratios of the funds. He described that an option could be a one-time fee, such as an impact fee, that is paid with a building permit and explained that the fee could be abated if the project meets all state requirements and recommendations. He further explained that 25% of the fee would go to the state and 75% to the municipality. **Ms. Manzelli** asked if the 25:75 ratio would apply to the statewide utility as well. **Dr. Roseen** responded that it could. **Rep. Spang** asked if the funds generated by the fee could be used for infrastructure improvements. **Dr. Roseen** responded yes, that it could be used for infrastructure improvements in the same way that a municipality would use the funds from a municipal stormwater utility.

**Mr. Sassan** stated that there is still a problem that 25% of the funds generated by a municipality go to the state and will be used in other municipalities. **Ms. Manzelli** added that there are some areas that are stormwater problem areas. **Mr. Sienkiewicz** added that inevitable funds generated in rural areas will most likely go to urban areas. **Mr. P. Currier** suggested that the state portion of the fund be managed by watershed, similar to the Wetland Mitigation Fund. **Mr. Hemmerlien** stated that stormwater practices and maintenance are the real funding concerns. **Mr. Sienkiewicz** explained that charging people first creates revenue and secondly it discourages people from doing the things that they're being charged for. He added that it would be great if people changed their land use practices so the fee would end up being small. **Dr. Roseen** added that an effective incentive would be to use a large fee, but that would likely prevent it from being approved. **Mr. Sienkiewicz** stated that the Needs Subcommittee is not able to identify hard numbers that are needed to fund actions. **Ms. Manzelli** responded that the duty of the Commission is to make suggestions that will help manage stormwater in the state. She added to the extent that the suggestions require funding, anything beyond making recommendations for funding mechanisms, should be the responsibility of the legislature.

**Mr. Hemmerlien** stated that the federal government model is just to give money for incentives, but the state doesn't have a funding source.

**Rep. Borden** stated that if legislation is needed, it should be crafted this summer. He added that it needs careful work, but there are great ideas. **Rep. Spang** stated that all the stakeholders need to be involved if and when the legislation is crafted.

**Mr. LeRoy** asked if there could be an exemption if a property was below a certain impervious cover threshold. **Mr. P. Currier** added that it would be an incentive for property owners to disconnect their impervious cover. **Ms. Manzelli** asked if there is literature on the correlation between water quality and

impervious cover. **Mr. P. Currier** responded that there is extensive literature on the topic.

**Mr. Hemmerlien** asked if it was reasonable to charge everyone \$5.00 regardless of the amount of impervious cover they have, and let them do improvements to reduce or opt out of the fee. He suggested that an incentive could be a free rain garden or rain barrel. **Ms. McCarthy** responded that in a stormwater utility there are two common credit methods. She explained that one is to lower the fee based on reductions in impervious cover, and the other is similar to what Mr. Hemmerlien suggested, to give a one time credit of a rain barrel or similar practice. **Mr. Hemmerlien** added that by charging all properties the same fee, it would avoid the need for costly data gathering. **Dr. Roseen** responded that the data gathering part is important to be equitable and to build incentives. **Mr. Sassan** stated that he thinks a generous fee would not pass. **Mr. P. Currier** agreed and recommended having IC and IEC phased in with property assessment.

**Rep. Spang** stated that acceptance of a stormwater fee depends on the way it is worded and asked if people want to pay for necessary infrastructure repairs through an increase in property taxes or through a proactive way to adapt to increased stormwater management needs.

**Dr. Roseen** explained that he believes there are more incentives for commercial properties because redevelopment and improvements on existing development could reduce fees.

**Mr. Sassan** asked if there is a recommendation that the Commission could put forward that gets at Rep. Spang's comment on acceptance of a stormwater fee depending on how it is worded. **Rep. Spang** stated that DES is doing a good job and that the Local Government Center could be more involved. **Chairperson Cedarholm** stated that a major part of the new MS4 permit is education and outreach and that in the future, MS4 communities will have to evaluate the effectiveness of their education and outreach programs. He suggested that part of the recommendation could be to educate people on stormwater issues before implementing the fee.

**Ms. Ebel** stated that the Funding Subcommittee seems to have focused on the idea of utilities, she thought that they would also consider funding for technical assistance and other activities. She asked if the Funding Subcommittee envisions that every municipality will have a stormwater utility. **Dr. Roseen** responded that it does envision every municipality having a utility unless they see a waiver because there is no impairment. **Mr. P. Currier** stated that there are impairments on the Connecticut River, Great Bay, and the Merrimack River and that the watersheds for those systems all contribute to impairments. He explained that those watersheds essentially make up the entire, leaving very few municipalities eligible for waivers. **Ms. Ebel** asked if other Commissioners agree that the Funding Subcommittee should look at other funding sources and mechanisms

other than stormwater utilities for technical assistance, outreach and education, and enforcement and inspection. The Commissioners all agreed that the subcommittee should look at other funding options in addition to utilities. **Dr. Roseen** responded that they could add a section on all of these things with the same funding mechanism.

**Mr. Trainque** stated that when talking about utilities, they look at all of the things being discussed when they determine the fee. He explained that they need to decide the components that they want in their stormwater program and then determine the level of funding they need to implement the desired program. **Ms. Ebel** responded that her town would need technical assistance to go through the municipal regulations before they would be able to go forward with a utility.

**Mr. P. Currier** stated that there is some cost information from the Connecticut River TMDL project for Long Island Sounds and for the Merrimack River Combined Sewer Overflow Study that might be useful in preparing the final report. **Ms. McCarthy** informed the Commission that there are four municipalities in New Hampshire that were just awarded funding from DES to conduct feasibility studies including Manchester, Dover, Portsmouth, and Nashua. She added that Manchester has already conducted their feasibility study and this funding will go toward development of their implementation plan and outreach. **Mr. Trainque** added that he worked with Manchester and South Burlington in their stormwater utilities and he would be willing to present at it. **Mr. Sassan** suggested he present at the July Stormwater Commission meeting.

**Dr. Roseen** reviewed the rest of the handout including a Stormwater Mitigation Fund. **Mr. P. Currier** added that it could be an antidegradation buy-out program where a developer could use up some of the assimilative capacity and pay for it. **Dr. Kahl** stated that there is a problem with a one time fee that the wealthy can afford it and do what they want. He suggested that a regular fee should be used instead of a one time fee. **Dr. Roseen** stated that there needs to be a big fee as a disincentive and a regular fee would still be in place. **Mr. P. Currier** added that for impaired waters, there needs to be an accounting system in place, not only to verify that water quality is not getting worse, but that it's getting better.

**Mr. Sienkiewicz** stated that the stormwater mitigation fee option does not address existing development. **Chairperson Cedarholm** responded that the stormwater mitigation fee could be in addition to a stormwater utility. **Dr. Kahl** suggested that it all be lumped together under item #1 on the handout.

**Mr. Hemmerli** stated that the Alteration of Terrain Program already regulates larger projects and suggested that lowering the threshold and tracking water quality could take a lot of staff and money.

**Dr. Roseen** explained that the final item would add an incentive to the Stormwater Utility enabling legislation (HB 1581) to include assistance from the

state, likely a circuit rider for staff assistance to municipalities. **Ms. Ebel** volunteered to go to the assessor in her town to see how difficult it would be to add an impervious cover assessment to the standard assessment procedure. **Chairperson Cedarholm** stated that it should not be difficult for municipalities who have impervious cover GIS layers. **Mr. Hemmerli** responded that most municipalities do not have GIS. **Dr. Roseen** stated that the idea was to base this on municipal taxes.

**Ms. Manzelli** reported that the Regulatory Authority Subcommittee met before the full Commission meeting and that they will have a final chart of existing regulatory authority related to stormwater that includes federal, state, and general local authority. She invited the full Commission to provide input on the chart. She explained that once the Needs Subcommittee completes its work, the Regulatory Authority Subcommittee will look at what amendments or new legislation may be necessary and move toward drafting new or amending existing legislation.

**Mr. Sassan** informed the Commission that Ms. McCarthy will not attend the next meeting. **Rep. Borden** and **Rep. Spang** offered to take minutes at the next meeting.

**Dr. Kahl** stated that he feels the Commission recommendations should go for the big picture and then fine tune ideas to cover the majority of the identified needs. **Ms. Ebel** responded that the Needs Subcommittee identified and compiled a lot of needs, but that one solution may respond to multiple needs. **Dr. Roseen** added that the job of the next chair will be to limit the scope of the Commission and combine the ideas into a few good recommendations.

**IV. FUTURE MEETING DATES AND TOPICS**

**Mr. Trainque** confirmed that he will present on the topic of stormwater utilities at the July 6, 2009 meeting.

Date	Time	Location
July 6, 2009	1:00 PM	LOB 305*
August 3, 2009	1:00 PM	LOB 305*
September 7, 2009	1:00 PM	LOB 305*

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

**V. ADJOURNMENT**

**Ms. Manzelli** made motion to adjourn. **Mr. Sienkiewicz** seconded. All approved. Meeting adjourned at 2:51pm.