

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

September 14, 2009 12:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Paul Currier	NH Department of Environmental Services
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH
Mark Hemmerlein	NH Department of Transportation
Chris Devine	NH Local Government Center
Steve Kahl	NH Lakes Association
Rep. David Borden	NH House of Representatives
Sen. Jacalyn Cilley	NH Senate

**Members Absent:**

Dari Sassan	NH Office of Energy and Planning
Charlie Hood	NH Department of Transportation
Carl Paulsen	NH Rivers Council ( <b>resigned</b> )
L. Mike Kappler	NH House of Representatives
Dave Danielson	NH Association of Regional Planning Commissions
Joe Robertie	NH Timber Owners Association
Eber Currier	NH Farm Bureau

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Non-Members Present:**

Elizabeth Sargent	Sheehan Phinney Capitol Group
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**I. APPROVAL OF MINUTES**

Approval of minutes was postponed until later in the meeting when a quorum was present.

## II. FEDERAL DEFINITION OF STORMWATER

**Ms. Manzelli** reported that the federal definition of stormwater from 40CFR122.26(b)(13) is *Stormwater means stormwater runoff, snowmelt runoff and surface runoff and drainage.*

**Dr. Kahl** stated that this definition would not include irrigation runoff.

**Mr. Hemmerlein** added that the federal definition includes the term drainage where the state definition does not. He suggested that the state use the federal definition of stormwater for consistency.

**Rep. Spang** stated that drainage would include irrigation.

**Ms. McCarthy** added that the term “drainage” may need a definition.

## III. SUBCOMMITTEE REPORTS

**Dr. Roseen** reported that the Funding Subcommittee is waiting for the final product from the Needs Subcommittee before proceeding.

**Rep. Spang** responded that the Needs Subcommittee is waiting for comments from the full Commission before they complete their product.

**Ms. Manzelli** reported that the Regulatory Authority Subcommittee completed a list of stormwater regulations that captures what law exists today at the state, federal, and municipal levels that directly or indirectly effects stormwater. She invited the full commission to comment.

**Ms. Manzelli** stated that there is an issue of whether or not stormwater is considered sewer or water under RSA 485 A:13, Water Discharge Permits. She recapped a memo from Richard Head explaining that stormwater is essentially sewer or waste.

**Ms. Manzelli** presented on the issue of municipal authority to regulate stormwater. She explained that under the new MS4 permit, there are additional requirements for regulating stormwater. She stated that municipalities likely do not have the authority to enact the kind of ordinances that the federal permit is going to require. She explained that in NH, municipalities can only do what the state gives them the authority to do. She agreed that the authority for municipalities to regulate stormwater under state law is probably, but that it is not clear enough.

To address the authority concern, the Regulatory Authority Subcommittee went through the memo provided by Eric Williams of NHDES that summarized the RSA’s that give municipal authority. She explained that the Regulatory Authority Subcommittee concluded that one can gather that municipalities can regulate stormwater under these statutes, but it is not clear in any one statute and all together they still do not cover it clearly. She further explained that the opinion of the Subcommittee is that municipalities do not currently have broad based authority from the state to manage stormwater clearly enough to meet the requirements of the existing and new MS4 permit.

**Dr. Roseen** asked which municipalities in NH have adopted stormwater ordinances.

**Chairperson Cedarholm** responded that Dover, Exeter, Portsmouth, Somersworth and Durham [draft] have stormwater ordinances and he is not sure about municipalities outside of the Coastal Watershed.

**Ms. Manzelli** asked for Commission consensus for the Regulatory Authority Subcommittee to develop a state statute to give municipalities the authority to meet the MS4 permit and asked for suggestions on how it be done. She asked if they should add the language “manage stormwater” onto RSA 3139(I)(f).

**Mr. Hemmerlein** stated that he thought adding that language to RSA 3139(I)(f) was attempted previously and failed.

**Ms. Manzelli** presented three options for new legislation to enable municipalities to manage stormwater:

- 1.) Legislation that gives municipalities authority to do whatever they need to in order to meet the MS4 permit. She asked what happens to municipalities who are not regulated under the NPDES MS4 in this situation.
- 2.) Legislation that gives all municipalities authority to manage stormwater regardless of whether they are required to do so under the MS4 permit.
- 3.) Legislation following the Maine example, which would enact a statewide law for municipalities to adopt a model stormwater ordinance, with some flexibility to address town-specific needs. She asked if the format of that statute should include a model stormwater ordinance.

**Ms. Ebel** stated that in Maine, the DEP drafted the model ordinance, not the legislature.

**Ms. Manzelli** responded that, using Maine as an example, the statute would enable DES to propose a model ordinance for municipalities to adopt.

**Mr. Hemmerlein** stated that the only reason municipalities are adopting stormwater ordinances is because they are required to do so under the NPDES program.

**Ms. Manzelli** responded that regardless of why they are adopting ordinances, NH has a stormwater problem.

**Dr. Roseen** stated that option 3 would get at:

- 1.) Giving municipal authority to implement the MS4 permit, and:
- 2.) Creating uniformity in the model ordinance by requiring municipal adoption. He added that the Commission keeps coming back to the idea of needing uniformity in managing stormwater across the state.

**Ms. Manzelli** explained that the types of authority given under RSA 3139 are those that you do not want to encourage uniformity, such as the right to enter into contracts.

**Rep. Spang** stated that by adding it to the list in RSA 3139 it is saying to manage stormwater however a municipality wishes and provides no guidance.

**Mr. Trainque** stated that in RSA 149(I) addresses waste water and has provisions to allow ordinances. He suggested that it could be added there. He explained that the federal Clean Water Act has provisions for funding waste water and stormwater projects and that NH has just recently stated to do that under that ARRA stimulus program.

**Mr. LeRoy** asked if it goes in RSA 149(I) if it focuses more at new development and not existing development.

**Mr. Hemmerlein** reminded the Commission that Maine is a NPDES delegated state and they have a more streamlined process because they have control over the NPDES permits. He added that in NH, NPDES is administered by EPA and that it is more difficult to go through the permitting process in NH because a permit applicant has to work with both EPA and DES.

**Mr. P. Currier** added that NH is never likely to request NPDES delegation without staff or funding.

**Mr. Trainque** responded to Mr. LeRoy's comment and stated that he doesn't think 149I) specifies new or re-development.

**Ms. Ebel** suggested finding out how the approach is working in the state of Maine.

**Ms. Manzelli** stated that the Regulatory Authority Subcommittee needs to think about the 149(I) idea and see if there is an existing model stormwater ordinance that could be used. She asked for other ideas to tackle the municipal authority issue.

**Dr. Roseen** suggested a two-pronged approach to first quickly address the issue of giving municipalities authority and then to develop the ordinance. He explained that the quick version would give authority to comply with MS4 permits and give authority to other municipalities who want it.

**Ms. Manzelli** stated that this would give them the authority to adopt different ordinances.

**Ms. Ebel** suggested that if the Maine example is followed there would need to be a date identified for DES to develop the model ordinances and a date for municipalities to adopt it.

**Mr. Hemmerlein** asked if the model ordinance would be a regulation.

**Ms. Manzelli** responded that the regulation would reference the model ordinance and that DES would review municipal ordinances.

**Mr. Devine** stated that many towns are concerned with steep slopes and are looking for guidance in limitations and requirements for developing on steep slopes. He stated that the Innovative Land Use Guide has developed a model ordinance for steep slopes.

**Ms. Manzelli** stated that the Regulatory Authority Subcommittee will meet and present at a future meeting.

**Rep. Spang** asked if the Subcommittee identified any other gaps when looking at all of the regulations.

**Ms. Manzelli** deferred to the Needs Subcommittee work, which identified several gaps.

**Mr. P. Currier** stated that he will check with Maine to see how this approach is working.

**Rep. Spang** added that it is easier to get an ordinance through town meeting if it is backed by the state.

**Sen. Cilley** asked at what point the Commission will discuss the issue of unfunded mandates.

**Ms. Manzelli** responded that the Funding Subcommittee is waiting for the Regulatory Authority Subcommittee and the Needs Subcommittee work before they consider the issue of unfunded mandates. She added that the Regulatory Authority Subcommittee will look further into the definition.

**IV. APPROVAL OF MINUTES**

Corrections to the minutes were recorded by Ms. McCarthy

**Mr. LeRoy** motioned to accept the minutes with corrections from the 8/3/09 meeting. **Ms. Ebel** seconded. **All approved, none opposed.**

**V. NEEDS MATRIX DISCUSSION**

The Commission provided comments on the Needs Matrix developed by the Needs Subcommittee. Ms. McCarthy recorded the comments and incorporated them into the matrix.

**Ms. McCarthy** offered to consolidate the information contained in the Needs Matrix and distribute it to the full Commission for future discussion.

**IV. FUTURE MEETING DATES AND TOPICS**

Consolidation of the Needs Matrix will be done for the next meeting. The Commission decided the October meeting will be a two hour meeting.

Date	Time	Location
October 5, 2009	1:00 PM – 3:00 PM	LOB 305*
November 2, 2009	1:00 PM – 3:00 PM	LOB 305*
December 7, 2009	1:00 PM – 3:00 PM	LOB 305*

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

**V. ADJOURNMENT**

**The meeting adjourned at 4:02pm**