



October 24, 2014

Chairman Foley and Members of the
Board of Environmental Protection (BEP)
C/o Jeff Crawford, Maine Department of Environmental Protection (DEP)
Sent via e-mil
Re: Proposed revisions to Chapter 500, Stormwater Management

Dear Chairman Foley and Members of the BEP:

My name is Nick Bennett, I am the Staff Scientist for the Natural Resources Council of Maine (NRCM), and I reside in Hallowell. I am submitting this testimony in opposition to the proposed revisions of “chapter 500, Stormwater Management” on behalf of NRCM. NRCM is Maine’s largest environmental advocacy group with over 16,000 members and supporters.

A key reason for NRCM’s opposition is DEP’s failure to reengage the stakeholders group -- which worked hard on the stormwater rules -- prior to rulemaking. As the fact sheet for this rulemaking notes, the last time DEP met with stakeholders was in 2010. Stakeholders would have benefited from a discussion of DEP’s proposed changes, and DEP would have benefited as well. We object strongly to DEP’s failure to give us the opportunity for such a discussion.

In addition, stormwater is a real threat in Maine, particularly to lakes, urban and suburban streams, and the Casco Bay watershed. Stormwater rules should be a tool not just to slow the pace of damage to these waterbodies but to clean up the ones that are damaged already. We fear these rules are not up to that task.

NRCM has the following specific concerns with the draft rules, in the order they appear in the document:

3, P. 1. This section deletes a reference to the listing of “lakes most at risk from development” and “urban impaired streams” in chapter 502. Where does DEP propose to list these waterbodies in the future?

3(O), P. 3. This language on linear projects is very difficult to understand. DEP should clarify it.

4(C)(2)(b), P. 8. The exact requirement for treating water from upgradient sources is not clear. This language needs clarification. Also, simply directing the water away from a given project may result in increased discharge to protected resources. If a developer elects to divert water flowing from an upstream source, the developer should direct that water to a buffer or other treatment measure.

4(C)(2)(c), P. 8. This language needs more explanation: “Mitigation may also include providing stormwater treatment for existing developed areas that do not require treatment under this chapter to offset other developed areas requiring treatment.”

Will treating a developed area that does not require treatment result in as much benefit as treating a developed area that does? How will DEP calculate that treating runoff from areas that do not require treatment actually offsets treating runoff from areas that do require treatment?

(4)(C)(2)(d), Pp. 8-10. The requirements for treatment for redevelopment projects that come under the Stormwater Law (as opposed to the Site Law) seem insufficient. If there is no treatment requirement at all for redevelopment projects that do not increase impervious surface, how will things get better? NRCM understands that DEP is trying to balance the need for treatment with the need to limit incentives for sprawl and that retrofitting redevelopment projects can be difficult. However, NRCM does not believe DEP has that balance right here. This is particularly true for redevelopment projects in watersheds of impaired waters.

In addition, NRCM believes it is unlikely that a requirement to retrofit a project for stormwater treatment, in and of itself, would drive redevelopment projects to greenfield sites. There are many advantages to redevelopment. The presence of existing infrastructure and location in an area that is already home to other businesses are two examples.

4(C)(4), Pp. 11-12. There should be more details about low-impact development (LID). This language does not describe what DEP will give credit for. There is no mention of specific LID strategies, such as permeable pavement, and how the different strategies stack up in terms of performance. Given that, NRCM believes this language will provide little incentive for using LID techniques. Developers are more likely to use engineered treatment systems they are familiar with, such as wet ponds, that they know the department will approve. Over the long term, this is likely to be detrimental to water quality and cost developers more money.

The advantages of LID can be significant in terms of increased performance, lower costs, and reduced maintenance when compared to heavily engineered stormwater systems. The Low Impact Development Center (see: <http://lowimpactdevelopment.org/>) provides information on how to use these techniques as well as how to educate developers, municipalities, and homeowners about them. DEP could have worked with the Center and stakeholders to develop a table of LID practices and their pollution removal rates in the years between 2010 and 2014. Such a table would have allowed DEP to provide the credit a developer could receive for different LID techniques and the corresponding reductions in required capacity of engineered treatment systems. If DEP provides this information, developers will be far more likely to use LID techniques.

(4)(C)(5)(e), P.14. This is new and surprising language. Typically, DEP has tried to encourage clustered development as a way to minimize sprawl and allow shared treatment for multiple sources of stormwater. This language looks like an incentive for sprawl and encourages low-density development. Also, what sort of deed restriction does this section require? Will it be permanent? This needs more explanation, as does the justification for encouraging low-density development.

(4)(C)(5)(f), P. 14. NRCM questions the rationale for exempting roads over wetlands. Road runoff is likely to be high in pollutants whether the road is over a wetland or not. Directing the flow to a culvert does nothing to remove these pollutants.

(4)(C)(5)(g), P. 14. Does it make sense to provide this narrow phosphorus exemption for roofs? Won't stormwater systems likely treat all the water from a property? Whether or not the roof runoff is treated for phosphorus seems unlikely to influence a decision about what overall measure to install. This exemption seems likely to result in confusion and make design more complicated.

5(E)(3), P. 16. This section applies specifically to urban impaired streams -- streams that are already failing to meet water quality standards due to stormwater. Although NRCM understands the desire to encourage redevelopment to prevent sprawl, this section does not get the balance quite right. If redevelopment does not increase impervious area and DEP requires no stormwater treatment measures for redevelopment of projects predating the Stormwater Law, water quality in impaired streams will not improve. Maine has the obligation to bring streams that are in non-attainment due to stormwater into attainment under both the Clean Water Act and Maine law.

5(F)(2), P. 17. Treatment measures based on the 25-year flood are likely to be undersized given increased precipitation in recent years. Four of the eight wettest years in the last century occurred between 2005 and 2010¹. In addition, more of the precipitation is falling in single, large events than in the past. DEP should require that developers engineer stormwater management measures to meet the 50- or even 100-year flood.

Thank you for the opportunity to comment on these important rules. NRCM looks forward to working on these rules with BEP and DEP to improve them.

Sincerely,



Nick Bennett
Staff Scientist

¹ W.M. Balch et al. Step-changes in the physical, chemical and biological characteristics of the Gulf of Maine, as documented by the GNATS time series. Marine Ecology Progress Series 42:11-35.