UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
BOSTON REGION

In the Matter of:
PUBLIC HEARING:

RE: NPDES DISCHARGE PERMIT FOR
NEW HAMPSHIRE SMALL MUNICIPAL STORM SEWER SYSTEM (MS4)
NPDES PERMIT NOS. NHR041000, NHR042000 and NHR043000

Portsmouth City Hall
1 Junkins Ave
Portsmouth, New Hampshire

Wednesday
January 28, 2009

The above entitled matter came on for hearing,
pursuant to Notice at 10:15 a.m.

BEFORE:

DAVID WEBSTER, Chief, Industrial Permits Branch
THELMA MURPHY, Permit Writer
U.S. Environmental Protection Agency
New England Region I
One Congress Street, Suite 1100
Boston, MA 02114

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(617) 269-2900
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HEARING OFFICER WEBSTER: Good morning, ladies and gentlemen. My name is David Webster. I am the Chief of the Industrial Permits Branch of the United States Environmental Protection Agency, also known as EPA. Joining me here this morning is Thelma Murphy, EPA's Permit Writer for the permits which are the subject of this hearing.

This hearing is concerning the re-issuance of the National Pollutant Discharge Elimination System, N.P.D.E.S. or "Nip-tees," general permits for stormwater discharges from small Municipal Separate Storm Sewer System, or MS4s, to certain waters of the states of New Hampshire and Vermont, and to certain waters on Indian Country lands in the states of Connecticut and Rhode Island shall come to order.

First, for clarification, Municipal Separate Storm Sewer System or MS4, is a publicly owned system of drains, gutters, catch basins, pipes, conveyances, treatment units, outfalls and other devices used to collect, convey and treat and discharge stormwater to a surface water. Along with describing a municipality's stormwater collection system, the term "MS4" also includes systems similar to separate storm sewer systems in municipalities such as systems at military bases, large hospitals, prison complexes, and
highways and other thoroughfares.

EPA Region 1 issued the current general permit for a stormwater discharges from small MS4s on May 1, 2003. That permit expired on May 1, 2008. EPA is now proposing to reissue the small MS4 general permit for MS4s in certain geographical areas. The new small MS4 general permit continues to apply to small MS4s located in urbanized areas. At this time, EPA has not designated any additional small MS4s as requiring coverage under this permit.

Region 1 EPA has proposed reissuance of six NPDES general permits for stormwater discharges to surface waters from Municipal Separate Storm Sewer Systems, or MS4s, in New Hampshire, from federal facility MS4s in Vermont, and from MS4s in Indian Country lands in Connecticut and Rhode Island.

The permit numbers for these six general permits are:

NHR041000 - for the State of New Hampshire Traditional MS4s - meaning MS4s owned by towns and cities;
NHR042000 - for State of New Hampshire Non-Traditional MS4s - meaning MS4s owned by other public facilities, other than transportation facilities;
NHR042000 - for State of New Hampshire - Public Transportation facilities;
CTR040001 - for State of Connecticut MS4s in Indian Country

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Thus, the permit which is the subject of this hearing is actually six (6) separate general permits. Each general permit is applicable to either a particular area or particular entities within a geographical area. Since most of the permit terms and conditions are identical across the six permits, for simplicity sake I will be referring to these six general permits as to New Hampshire Small MS4 General Permit or The Permit.

The permit will be issued in final form upon consideration of the comments received during the public comment period. The comments can be made in writing to the EPA or orally during this hearing.

The NPDES program issues permits to all facilities that discharge into waters of the United States. The permit writer develops effluent limitations, best management practices, monitoring requirements, reporting requirements, and eligibility requirements based on information from the facilities, Federal Regulations, State Water Quality Standards, technical guidance published by EPA and the state, State and Federal policy and other information. The
conditions in this draft permit were established pursuant to Clean Water Act Section 402(p)(3)(iii) to ensure that pollutant discharges from small MS4s are reduced to the maximum extent and practicable, protect water quality, and satisfy the appropriate water quality requirements of the Clean Water Act.

The new draft New Hampshire small MS4 general permit builds upon requirements for the previous small MS4 general permit issued in 2003. This new draft permit requires small MS4s to continue to implement the Stormwater Management Programs required by the previous permit, including the six control measures. The new permit contains more specific requirements and best management practices for each control measure. Under the provisions of the Draft General Permit, owners and operators of small MS4s that discharge stormwater will be required to submit a notice of intent, or NOI to EPA Region 1 to be covered by the general permit and will receive a written notification from the EPA of permit coverage and authorization to discharge under the general permit.

More information on the NPDES program is available at the registration desk this morning. One of the documents is a list of web addresses where you can find additional information on the NPDES program.

Also available is a brief document with a summary

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of the permit requirements contained in Draft New Hampshire MS4 General Permit.

EPA released the Draft NPDES New Hampshire Small MS4 General Permit on December 23rd, 2008 with a Notice of Availability published in the Federal Register on December 23rd, 2008 and January 30th, 2009, however EPA has extended public period comment period through February 20th, 2009.

The legal notice for this hearing is published in the Federal Register on December 23rd, 2008.

Since December 23rd, the Draft NPDES New Hampshire Small MS4 Permit and Fact Sheet explaining the Draft permit and supporting documents that have available for interested parties to provide comment. The fact sheet describes the type of facilities, type and quantities of waste, a brief summary of the basis and the draft permit condition and significant factual, legal and policy questions considered in preparing the draft permit.

You have probably received or seen copies of the draft permit fact sheet, the draft general permits and appendices and fact sheets are available online. The web addresses are available, I will read them once, which is http://www.epa.gov/region/npdes/stormwater/MS4_2008_NH.html. You may also request to receive a hard copy of the draft permit or Fact Sheet. We have a few copies here today, if we still have them.
As previously mentioned, comments can be made in writing to EPA or orally during this hearing. Today's hearing is an informal, non-adversarial hearing providing interested parties with the opportunity to make all comments and/or submit written comments of the proposed permit. There will be no cross examination of either the panel of the commenters. Any questions directed to the commenter from the panel will be for clarification purposes only. This public hearing is being recorded. The transcription will become of the Official Administrative Record for this permit. However, in order to ensure the record's accuracy we highly recommend that you submit written statements in addition to your comments made this morning.

As I indicated earlier, the Public Comment Period will close at midnight, February 20th, 2009. Following the close of the Public Comment, EPA will review and consider all comments received during the Public Comment period both in writing and today's public hearing. EPA will prepare a document known as a response to comments that will briefly describe and address significant issues raised during the comment period and what provisions, if any, of the Draft permit have been changed and the reasons for the change. The notice of availability of the final New Hampshire Small MS4 General Permit and response to comments will be published in the Federal Register. In addition, notice of

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the availability of both the response to comments and the
final permit will be mailed or emailed to everyone who
commented on the draft permit. The actual complete final
New Hampshire Small MS4 general permit and response to
comments will be available by EPAs web page, which I gave
before.

Under Section 509(b) of the Clean Water Act,
judicial review of this general permit can be had by filing
a petition for review with the United States Court of
Appeals within 120 days after the permit is considered
issued for the purposes of the judicial review. Under
Section 509(b)(2) of the Clean Water Act, the requirements
in this permit may not be challenged later in civil or
criminal proceedings to enforce these requirements. In
addition, this permit may not be challenged by other agency
proceedings.

We look forward to hearing your comments this
morning. I will begin by calling those of you that signed
in at the registration desk indicated that you wish to make
comments in the order that were received. I will use
attendance cards to call on people who wish to comment.
These cards are also used to notify persons of our
subsequent final permit decisions. Speakers should come to
the podium and speak and I ask that before you begin your
statement please identify yourself and your affiliation. I
notice that some people, we ask yes no, I'll ask if you want
to make a comment, if you want to decline. That's fair game
too. Hopefully at the end I will have the time for any
other comments.

There's a fairly large group of people here that
want to comment today. In order that as many participants
as possible are allowed to express their views. I ask that
you try to limit your comments for five minutes. Any time,
if you are asked to stop, and have not finished, I will ask
that you to defer the remainder of your comments until each
person has had an opportunity to comment. Then if there's
time at the end of the meeting, we will give you a short
opportunity to finish your comments. If you have a written
statement, you may read it, if it can be done in five
minutes. If not, I will ask you to summarize the statement.
In either case, I encourage you to submit the comments today
or before the close of the public comment period on February
20th. Just for your timing, it looks like I have about
twenty people who already wish to make a comment.

I first call on John Boitenko. City Manager for
the City Portsmouth. Thank you.

MR. BOITENKO: Good morning, and my name is John
Boitenko. I'm the city manager of Portsmouth. I want to
thank you for the opportunity of comment with regard to the
EPA proposed changes to the general permit for MS4s in New

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The City of Portsmouth, as you may be aware, is located on the Piscataqua River. Has a population of approximately 21,000 and consists of approximately 17 square miles. Portsmouth's city storm drain infrastructure consists of approximately 323,000 lineal feet of pipe, 4,700 catch basins or manhole structures and 450 outfalls.

The City of Portsmouth has a long-standing commitment to the environment. We've adopted the eco-municipality designation resolution in 2007 which means we have aspired and developed in ecologically and socially healthy community for long-term. We've completed the first LEED certified municipality in New Hampshire with our public library. In the city's wastewater treatment master plan, we have committed to advanced treatment for nutrient removal as part of our future upgrades.

City employees participate in the state's water quality standards and advisory board. The city understands the importance of the environment and the programs that protect and/or improve our natural resources. We are committed to the intent and goal of the Clean Water Act. We appreciate the difficulty EPA faces trying to regulate stormwater that runs off of private and public lands, parking lots, driveways, streets and sidewalks to our local waters. Although we applaud EPAs efforts in this area some
aspects of the proposed permit are excessively burdensome and will not improve stormwater quality.

Some of the proposed changes will shift money and time away from infrastructure and operational improvements that yield water quality benefits and instead focus on administrative activities that offer little environmental benefit. The city has evaluated the draft permit to determine the cost impacts related to your implementation of the new requirements. We estimate the compliance will cost approximately 2.1 million dollars over the permit cycle which will require between a 6% and 7% increase in the public works department budget. This coming at a time when the city is working towards a zero budget increase is just intolerable.

It is our position that money should go to infrastructure and operational improvements that will have water quality benefits. The permit as presently drafted, would create a significant administrative burden. This distracts from the city's ability to provide direct benefits to water quality through such activities such as increased street sweeping, catch basin cleaning and/or conducting construction site inspections. The city is submitting written comments to the draft permit. Those comments include proposed changes to the permit as drafted.

I want to take this opportunity to thank you for
allowing me to provide these comments on the proposed permit. In submitting our comments we look forward to working together with the regulators to develop a permit that protects the water quality in a cost effective and practical manner. Thank you.

HEARING OFFICER WEBSTER: Thank you very much.

I next call on John St. Pierre for the Town of Amherst.

MR. ST. PIERRE: I actually don’t have any comments at this time. I will probably follow-up with written comments at a later date. Thank you.

HEARING OFFICER WEBSTER: Thank you.

Robert Robinson from Manchester, New Hampshire.

MR. ROBINSON: Good morning. My name is Robert Robinson with the City of Manchester, New Hampshire.

I have some comments, I will just make it real brief. We will be submitting written comments along with the local coalition stormwater members.

There are some concerns in regards to the good housekeeping and catch basin cleaning. We are not a community that does get to our basins every other year. Right now we have some urban ponds, which we do the catch basins twice a year so those directly around there and we also do other catch basin cleaning with our vacu trucks and also with hiring outside consulting.
The City of Manchester actually has several thousand catch basins. If we were to clean every catch basin, yeah, 14,000 catch basins. We were cleaning 7,000 basins a year at $50.00 for every basin and that would be $350,000 a year in just catch basin cleaning. Then also there's an inspection component in regards to that, that even if they weren't cleaned, they wanted to inspect them all. So once again, we have to inspect the other 7,000 basins, plus we also have roughly 3,000 drain manholes. This is not mentioning all our combined sewers. This is strictly a separate sewer along with a 178 miles.

So we are looking at some of these requirements, they would be very costly and right now stormwater is funded under general fund, therefore once again you'd be taking out of the tax base and with all the municipalities making cutbacks, I think overall in Manchester and other communities, this would be definitely financially burdensome. Not too mention some of the --- currently, we spend roughly about $15,000 for doing some testing of our water bodies and if you look at going with the requirements of permit you are looking at basically doubling that. So it is something we definitely have some concerns with in regards to the requirements of the permit.

I will end there and I will let somebody else set the time. Thank you very much.
HEARING OFFICER WEBSTER: Thank you, very much.

Is it Peter Rice, City of Portsmouth?

MR. RICE: My comments will be passed in in a written form.

HEARING OFFICER WEBSTER: Steve Miller.

MR. MILLER: I have nothing.

HEARING OFFICER WEBSTER: David Cedarholm, Durham.

You wish to comment?

MR. CEDARHOLM: I'd first like to say thank you for the opportunity to speak on behalf of the Town of Durham. I have written testimony that I'll provide you.

Section 2.1 of the water quality effluent limitations and permit. Requires the permit to ensure that discharges for MS4s do not cause or contribute to accedence in water quality standards. The Section 2.2.2 discharged to impaired water without an approved TMDL which requires the permit need to evaluate this charge to impaired water and later Section 3.0 outfall monitoring program were it relative to those sections. In the absence of TMDL, which is typically in the case in New Hampshire, these requirements will essentially require the communities to conduct their own TMDLs to comply and will require municipalities to dramatically expand operations and establish stormwater divisions, since they haven't already done so.
To what extent is the permitting required to evaluate the discharge. Are the parameters and acceptable methods defined? Will the evaluation need to be performed by a professional engineer or geologist? And will the water quality monitoring need to be conducted by certified technicians? State statute would appear to dictate so and consulting firms are simply not yet set up to do this.

How is this to be funded if not through something like a stormwater utility. Stormwater utilities are the only statutory vehicle in New Hampshire that provides the local authority to charge existing private entities to pay for extensive environmental investigations and rehabilitation of structures. Other available statutory authorities within local state plan, site plan subdivision regulations, but it only pertains to new proposed development. Similar state regulations such as alteration of terrain rules only applies with larger new developments. The idea of a stormwater utility is a dramatic paradigm shift for small municipalities that are already struggling with out of control municipal budgets.

To do the work needed to investigate how to fairly assess discharges and design a whole new enterprise funds such as a stormwater utility will take considerably more than one year. This puts a tremendous burden on small communities like Durham, New Hampshire with only 10,000
residents, where only about have of which are within the MS4. It will also require the town to establish a whole new division of engineers, environmental scientists, technicians, additional laborers and heavy equipment to expressly manage and maintain stormwater system needs. To do so, will take much more than a year and will likely increase annual department and public works budget by at least 25%.

How much guidance and financial assistance are the EPA and NHDES prepared to offer to help small communities respond to these mandates?

Section 2.2.3 Discharge to Chloride Impaired Waters. Requires private and public owners to parking lots and roads to annually report de-icing salt used applied for each storm. Durham, New Hampshire has at least two water bodies that are currently impaired for chloride. Unless a stormwater utility is in place, municipalities don’t have the authority to require private entities to provide reporting information. What mechanism will be put in place to ensure useful and accurate reporting? Will the EPA or NHDES provide criteria for how this information is to be consistently and accurately gathered and reported? How will the data be used? Has the EPA and NHDES evaluated the State of Minnesota Guidance Criteria, referenced on Page 12 of the permit for the appropriateness in New Hampshire?
Will the EPA and NHDES provide guidance and requirements relative to what chloride impairment corrective measures to implement?

Section 2.2.4 does not have increase in discharge clearly defined, but it does define a new discharge. As I mentioned before in the Question/Answer period. Is an increased discharge based on the specific rainfall frequency rate or quality? A stormwater system maybe designed to manage a twenty-five year storm event, but may not easily manage a hundred year or five hundred year event.

Does Section 2.2.4 also pertaining to increased discharges? Is the EPA or NHDES prepared to receive and respond to submission from every proposed development, regardless of size. This section essentially requires all developments to provide a design report for review by EPA. As I said earlier, it would be of little value and create a lot of work for consultants planning boards and public works reviewers, etc. if this required documentation does not generate a response from EPA or NHDES.

Does Section 2.2.4(e) require a 401 water quality certificate for all developments?

Lastly, Section 2.3 indicates that requirements to reduce pollutants to a maximum extent practical approach is an integrate process. This section is vague and lacks actual requirements. Without specific requirements and
interative process implies a moving target of regulation.

Thank you very much.

HEARING OFFICER WEBSTER: Thank you. Thanks for putting it in writing as well.

Let’s call on Steven Dookran, for the City of Nashua.

MR. DOOKRAN: Steven Dookran, City Engineer, City of Nashua. We intend to submit detailed comments within the common period. But today, I just make a brief comment.

The 2003 permit, the city recognized, had very good goals and we believe that we make a reasonably good effort in trying to meet those measures especially the housekeeping measures like street sweeping, catch basin cleaning and so-on. We also think that this permit, five years into it, is not enough. So we would like to appeal for the EPA to give us an extended period to continue this 2003 permit.

Like everybody here, we are talking about a burdens put on the communities for the new permit. In the spirit of the federal government looking at helping in economic recovery, it is the time that we should look at less regulations that will put these extra burdens. So that’s what we try to emphasize today is that what everybody is recognizing as what this permit is going to do to us. At this point in time, it should be deferred to some future...
HEARING OFFICER WEBSTER: Thank you very much.

David Allen, Portsmouth, do you wish to speak?

MR. ALLEN: Submitting written comment.

HEARING OFFICER WEBSTER: Okay, thank you.

Clark Mario, Nashua New Hampshire.

MR. MARIO: Defer to written comments.

HEARING OFFICER WEBSTER: Aubrey Strause, is that right?

MS. STRAUSE: Thank you very much.

Yes, my name is Aubrey Strause and I am a consultant with AECOM Water, in South Portland, Maine. And as I review the contents of the draft permit, I looked at them with respect to impacts to one of my clients, the Town of Seabrook, New Hampshire. I suspect that we will be submitting formal comments either on our own or jointly with the Seacoast Stormwater Coalition.

I have two relatively general comments which I am sure will be echoed by those you receive in writing from other entities at this meeting.

My first comment is I would encourage the EPA to continue to include the flexibility in the final permit to focus on watersheds and surface water bodies in these municipalities that are known to be impaired. This is what Steve Brook has been doing for example, with the Caines...
Brook watershed. We've done higher frequency inspections of those outfalls and I would like to continue to do that. So specifically what I would like you to consider is to permit the use of the filed test kits for screening during dry weather and even potentially wet weather inspections. What the field tests kits will allow is for you to focus your limited sampling budget on analytical samples for third-party labs at areas where you suspect there would be impact. So it's somewhat of a screening process that I think will result in reduced costly analytical sampling and let you focus that where it's needed.

Secondly, I would encourage the EPA to establish reasonable schedule milestones specifically with respect to identifying in eliminating illicit connections. My thought there is to have you look at the milestones in a perspective of there are reduced municipal budgets right now, as you obviously know, for inspections and enforcement and I think that should be a priority in insuring that what you are asking us to do, the time lines you are asking us to do it in are reasonable in that context.

Thank you very much.

HEARING OFFICER WEBSTER: Thank you very much.

I next call on Craig Durrett, do you wish to comment, the Town of Derry.

MR. DURRETT: Craig Durrett. The Town of Derry
Environmental Engineer.

For the town, we certainly support anything that we can do to eliminate stormwater pollution and all our efforts to date have been certainly very pro-active. We do have some concerns relative to the new draft permit.

Initially, one of the concerns is that in reviewing it, the concern that -- issues that were brought up by the regulated community over the last year, at numerous meetings, do not appear to have been incorporated into the current permit. Many of the things I would comment on for today have been voiced many times over the last year in numerous settings.

There also appears to be a lack of consideration on efforts that have been made during the first term of the permit. Over the five years, many communities have met the letter of the law and gone above and beyond that particularly with regard to what was voiced relative to the amount of catch basins we have to clean.

There should be some flexibility given to the regulated community based upon what they've accomplished over the first term of the permit so that they can define better program, more achievable, logical, practical program on the next term of the permit. This current permit does not allow that flexibility for any of that. It doesn't allow flexibility for consideration of what was done on
previous permit, or even in terms of the monitoring program.

Under the first program, an illicit program, has developed in many cases where we can identify areas that perhaps need further attention. If the permit was revised to allow us to focus on what we may be in as high pollutant areas as opposed to just a random very prescriptive approach given in the current permit.

The permit addresses that it outfalls in the MS4 communities on what we need to monitor. One of the issues associated with that is that it doesn't allow or it doesn't consider the amount of discharge given from preexisting commercial industrial facilities that are not currently regulated under the program, either under the multi-sector general permit or by other means.

So the efforts made by the towns and communities that are regulated will not necessarily be measurable in terms of improving stormwater without EPA or the state going above and beyond to look at those other facilities.

That's all I have for now.

HEARING OFFICER WEBSTER: Thank you very much.

I have a little problem with the handwriting is it Phillip Starrell, perhaps wish to comment, in Beverly Hill Road?

(No response)

HEARING OFFICER WEBSTER: Chris Jacobs, from
Somersworth do you wish to comment?

MR. JACOBS: My name is Chris Jacobs and I'm representing the City of Somersworth, I'm the City Engineer.

I would first like to say thank you to the EPA staff for taking the time today to particularly hear our concerns, but also the question and answer period that was given earlier this morning. I know it puts you on point, if you will, and it's probably the hardest part of your job and for all of us, our members of the Seacoast Stormwater Coalition, we want to say thank you, because we truly appreciate it.

I will follow up with the summary of my comments, but specifically I am going to reiterate some of the questions that I asked earlier.

With respect to outfall monitoring program we are required to under the permit to identify or to test for the cause of impairment or in this particular case, mercury. The Salmon Falls River runs on the east side of Somersworth and is listed an impaired water body for mercury. The EPA recognizes this as an airborne pollutant and is requiring or requesting us to test for this contaminant. I think we all recognize how the mercury gets to the water bodies located within New Hampshire, it is not particularly generated locally, although we do have some trash to energy facilities I understand that do discharge mercury. We would ask that
there be some measure or allowance within the permit to waive this requirement, it would come in as a financial burden to a number of municipalities.

The other thing that it requires is that we are required to ask existing parking lot owners to report how much salt they use. Currently, our community and a number of communities in the seacoast regional lack the authority to actually request this and I'd like if you could give us some guidance as to how you expect us to implement this. We are also being asked to require existing parking lot contractors to calibrate their salt spreading equipment, because I think we recognize a number of them, when they work their parking lots they literally turn the equipment on and you are asking us to make sure their equipment is calibrated, so as when they are not moving it's not running. There again, we would ask them what authority the City of Somersworth or any municipality has the right to ask presently any contractor to accomplish this.

The other question that I have, is that the permit requires that we develop operation maintenance procedures for schools which are not currently under the city control. The school department is they are not under any obligation to follow with recommended procedures that we may end up putting together for them. They are also not required to submit stormwater pollution prevention plan under Section
2.3.7.2. It seems to be a shortfall. Why would we be requested to go to the level putting together an operation and maintenance procedures plan for them but then they are not asked to follow up with a SWIP? It just seems that there's no follow through. My question would be, is it the expectation of the EPA that the city government would have to do this work for the school departments?

My last question is that the permit requires that we walk all stream miles beginning location and test of all discharges would have been two years and three months from the effective date under the illicit discharge section of the permit requirements, specifically 2.3.4.6.d. Knowing that the wording within it says that the minute we locate those discharge points and if there is a discharge occurring from them we are going to have to test for it would probably indicate that all of us will take probably up to the second year to actually locate those outfalls. Where I see it that there being a conflict is under the outfall monitored program Section 3.1.1. It states that the program needs to start within one year after the effective date of this permit. I see that as a conflict within the permit as it's written and would ask the EPA for some clarification.

Under Section 2.3.2, there is required education of residential property holders within our community, commercial, industrial and I forget what the fourth one was.
It requires education twice a year. It’s been asked and suggested by others that there be some allowance within the permit to do this type of education as a group, ie, possibly through our area of stormwater coalition, that way the communities can better manage the cost associated with trying to reach out and do this education. It was also asked of me, or pointed out to me, what if we invite or mandate, for instance, that all of our contractors attend and none of them do? Have we achieved a goal permit by at least offering this permit and requesting that they attend, yet there again, we have no authority to mandate that they attend. If we could get some guidance on the EPA on that.

As I said, I will summarize all of these comments and submit them in writing back to the EPA. Thank you.

HEARING OFFICER WEBSTER: Thank you very much for your thoughtful thoughts on that.

Carl Quiram from Goffstown

MR. QUIRAM: Thank you very much. Carl Quiram, director of public works in Goffstown.

I echo a lot of the sentiments you’ve heard so I will kind of lump them into one overriding factor that, like mentioned in the City of Dover earlier, the prescriptive requirements within this new permit and the costs associated with implementing them seem to me to be unreasonable. The 25% sampling cost, walking every stream mile whether there
are outfalls on them or not, or illicit discharges on them or not, and then the chloride use monitoring and managing private property holders where we lack the ability and the legal authority to do so.

I have concerns over other things that you've termed as suggested in this permit. One is low impact development requirements. Although I feel we need to do things to improve our stormwater quality, over my career, my experience is that relying on homeowners to maintain systems in low impact development is impractical, I see more and more developments coming in and trying to meet low impact development requirements and the public infrastructure is not designed to handle -- once these low impact areas fail, the public infrastructure isn't designed to handle it. So I see it as being a problem down the road as more and more of these low impact systems are implemented. There's going to be huge financial burdens placed on communities to then go in long after the developer is gone to correct these mistakes.

I also have concerns and earlier you heard the comment made about the stormwater utility, although I would love to have a stormwater utility because it would be a great way to get additional funding, anybody who follows pay as you throw in New Hampshire, can realize everybody as professionals, recognize the benefits it pays as you throw.
But you go into a public meeting and try to implement pay as you throw and it becomes a very political hot potato. I don’t see stormwater utility as anything different than that. It’s just going to be rain tax and the residents are going to come out vehemently opposed to it.

So again, as my colleagues has said, I will submit detailed written comment by the 20th, but I did want to bring these forth. Thank you.

HEARING OFFICER WEBSTER: Thank you very much.

Dean Peschel from Dover. Sorry if I got it wrong.

MR. PESCHEL: Close enough. Good morning. Thank you again for holding this meeting to give us the opportunity to respond to the proposed permit.

My name is Dean Peschel in the City of Dover as their Environmental Projects Manager. In speaking as a person in Dover responsible for implementing provisions of MS4s Stormwater Regulation and as a member of the Seacoast Stormwater Coalition.

I want to begin by applauding EPA in adopting Phase II Stormwater Regulations. We share the common goal of protecting and enhancing water quality of our streams, rivers and lakes and estuaries, which will improve the ecologic health of our environment. The manner in which EPA set out to achieve this goal in the first permit cycle was wise and timely. We have educated ourselves, our coworkers
and our communities about the impacts associated with
stormwater and what we must do to improve the management of
stormwater and reach our common goals.

EPA should be commended for using a performance
standard approach in implementing the Phase II program to
date. EPA sets specific goals for six minimum control
measures to be addressed by each permittee. The permittee
prepare the plan for their community to meet the established
performance standards. It was EPA's role to review and
approve the plan and subsequently monitor the community's
progress in implementing their plan.

The process required each community to conduct a
self-assessment of current practices and figure out how to
modify its current program to meet the sixth minimum control
measures. The communities including Dover, have responded.
We have worked independently and jointly with neighboring
communities, sharing and stretching our resources wherever
possible. We have accomplished much in the first five years
and I am confident that we have set a firm foundation to
continue moving toward our common goal of better water
quality. I am certain the steps we have taken during the
first five years have improved water quality.

Can I measure it, or show you numbers to validate
my claim, no. Unfortunately, the desire and need for bean
counters and enforcement personnel to have data to point at
in past judgment is evident in the second permit proposal. Did we, the permittees, expect the performance standards to be raised for the second permit? Yes, undoubtedly. The proposed permit requirements moves away from the performance standards being set that the community decides how it can best achieve in their unique circumstances. For example, requiring outfall sampling of every outfall in the community during wet and dry weather. This standard may provide the federal and state with a snapshot of information that is useful to your programs but it will be money poorly spent by the community. Each community knows where water quality problems are most likely. We don't need to sample fifty or more percent of our outfalls to find either no problem or even worse, a false-positive where we have to go back and spend additional resources re-sampling or looking for a non-existent problem.

Dover has made great strides in improving our stormwater management. Our concerned citizens are talking about stormwater impacts and how to reduce them. Our citizens are engaged in the discussion of how to pay for better stormwater management of our city-maintained system. Which like all older cities, has fallen into disrepair. Dover is looking into establishing a stormwater utility. Dover's representative, Tom Fargo, to the New Hampshire legislature, sponsored enabling legislation, allowing New
Hampshire’s cities and towns to establish a stormwater utility.

Much is happening, much is improved and will continue to improve in the area of stormwater management. As we all know, the economy is in crisis. The City of Dover has a 2.5% tax cap in place. Federal and state government are cutting back on contributions on entitlements like Medicare, which ultimately get passed down to the city to make up. Citizens are losing jobs and will be late on paying taxes. Local governments will be forced with cutting budgets that is staff and programs.

The added requirements proposed in the new program sets the communities up to fail and sets up EPA to fail. EPA will be forced to begin enforcement action against many of the communities for not satisfying the minimum standards, thereby going from the cooperative effort to achieve the common goal, to an adversarial relationship in which progress toward to the goal will be lost.

EPA’s methods to implement the second permit and timing will not result in success. I urge you to rethink the permit approach in light of the economic reality and the cooperative nature and success achieved in the first permit.

The city will be sending formal comments in writing to address specific items in the draft permit with suggestions we believe would improve the proposed draft.

APEX Reporting
(617) 269-2900
Thank you.

HEARING OFFICER WEBSTER: Thank you very much.

I next call on Alan Cote from Derry, New Hampshire.

MR. COTE: I'm all set for now.

HEARING OFFICER WEBSTER: Thank you.

Tom Willis, from Rochester, do you wish to speak?

MR. WILLIS: Good morning Mr. Webster and Ms. Murphy. Thank you for giving us the opportunity as a state and as a region to comment on these next round of general permit for stormwater management for the small MS4s.

A little background. The City of Rochester is located 20 miles north of here. The population is 31,000. I would characterize Rochester as a working class community probably in the bottom third in terms of per capita income in the State of New Hampshire and therefore its ability for its people to pay.

During the first permit round in 2003, you issued essentially the six minimum controlled guidelines and asked us to create a stormwater manager plan which we essentially took stock of the goals in the general permit and looked at what we could do, what we could achieve within the context of our resources and prepared a plan which we felt was doable by the city and its residents and within the
framework of the city's ability to pay and meet its resources with the goal of achieving improved stormwater quality into the environment.

We prepared our plan, submitted it to you and it was approved and in the intervening five years worked and met all of the elements of our stormwater management plan. In fact, during the permit period, we added some things as a result of input from our residents ideas as the program matured and in a period of pretty good economic times we were able to do some things such as build a new salt shed, and implement a new stormwater management ordinance and which enhanced our controls of property development.

Rochester was one of the fastest growing communities in the state of New Hampshire during this period. Development has slowed down considerably as a result as income into the city's coffers. Just this past year, however, with the turning south of the economy there's been increased pressures on our citizenry to essentially say stop to increased government spending. We are one of the few communities in the state, our residents voted this past November overwhelmingly to support a tax cap, and now the city is entering a new era of fiscal discipline where we really cannot add new programs, we cannot do new construction and we will essentially have to scale back on a lot of the goals that we had been able to achieve in the
past because of these constraints.

This is just at a time now where you are issuing a new permit, and it appears to be much more prescriptive and will add increased burdens and requirements that will cost significant amount of money such as the outfall monitoring as an example. Some of these things we might be able to do in-house, but many or much of it we can't. Essentially given the time line and the clash of the period of reduced revenues and increased responsibilities is something that will be much more difficult for us to do unless there is additional sources of revenue from the outside such as federal grant money, the state has stepped up now with the SRF program to now incorporate loans for stormwater purposes which has not been historically the case but loans can only go so far. It adds to a community's debt burden, regardless of the source and in order to adequately complete these things to meet your goals we really have to look at opening up grant money for programs like this if you want to have a successful permit program.

Thank you.

HEARING OFFICER WEBSTER: Thank you very much. That ends the cards that you submitted. I ask at this time, is there anybody that has not spoken that wishes to make a comment during a hearing, for the record to respond to this. I'm looking around, not seeing anybody coming forward.
If that's the case, I'd like to thank you for coming out this morning and for your interest in the permit. You've given us obviously an awful lot to think about. I appreciate the thoughtful comments. It's very apparent of all of you gone through the permit in detail and specifics. I would encourage you with written comments, both submitted today and then up to the 20th, particularly helpful are those which have suggestions, that we try to balance the need to move forward on stormwater pollution control with the financial realities and practicalities, as you know very well from your community.

I also appreciate very much your insights from your experiences during the last permit term. That's very helpful to us in hearing that, we get an annual reports but sometimes hearing some of your experiences directly is very helpful for us in fashioning the permit for the future.

As a reminder, the public comment period ends midnight, February 20th, 2009 and you may send in written comments up until that time -- to be postmarked at that time.

This ends the public hearing. Thank you very much.

(Whereupon, the hearing was concluded at 11:10 a.m.)

APEX Reporting
(617) 269-2900
CERTIFICATE OF REPORTER AND TRANSCRIBER

This is to certify that the attached proceedings before: U.S. ENVIRONMENTAL PROTECTION AGENCY in the Matter of:

RE: NPDES DISCHARGE PERMIT FOR
NEW HAMPSHIRE SMALL MUNICIPAL STORM SEWER SYSTEM (MS4)
NPDES PERMIT NOS. NHR041000, NHR042000 and NHR043000

Place: Portsmouth, New Hampshire
Date: January 28, 2009

were held as herein appears, and that this is the true, accurate and complete transcript prepared from the notes and/or recordings taken of the above entitled proceeding.

J. Mocanu 01/28/09
Reporter

M. Kokinis 02/18/09
Transcriber

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(617) 269-2900