

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

ORIGINAL

APEX Reporting
(617) 269-2900

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P R O C E E D I N G S

(10:15 a.m.)

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2
3 HEARING OFFICER WEBSTER: Good morning, ladies and
4 gentlemen. My name is David Webster. I am the Chief of the
5 Industrial Permits Branch of the United States Environmental
6 Protection Agency, also known as EPA. Joining me here this
7 morning is Thelma Murphy, EPA's Permit Writer for the
8 permits which are the subject of this hearing.

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

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

1 highways and other thoroughfares.

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

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

16 The permit numbers for these six general permits
17 are:

18 NHR041000 - for the State of New Hampshire Traditional MS4s
19 - meaning MS4s owned by towns and cities;

20 NHR042000 - for State of New Hampshire Non-Traditional MS4s
21 - meaning MS4s owned by other public facilities, other than
22 transportation facilities;

23 NHR042000 - for State of New Hampshire - Public
24 Transportation facilities;

25 CTR040001 - for State of Connecticut MS4s in Indian Country

1 land;
 2 RIR040001 - for State of Rhode Island MS4s on Indian Country
 3 land, and finally;
 4 VTR04000F - for State of Vermont MS4s owned by Federal
 5 Facilities.

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

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

18 The NPDES program issues permits to all facilities
 19 that discharge into waters of the United States. The permit
 20 writer develops effluent limitations, best management
 21 practices, monitoring requirements, reporting requirements,
 22 and eligibility requirements based on information from the
 23 facilities, Federal Regulations, State Water Quality
 24 Standards, technical guidance published by EPA and the
 25 state, State and Federal policy and other information. The

1 conditions in this draft permit were established pursuant to
2 Clean Water Act Section 402(p)(3)(iii) to ensure that
3 pollutant discharges from small MS4s are reduced to the
4 maximum extent and practicable, protect water quality, and
5 satisfy the appropriate water quality requirements of the
6 Clean Water Act.

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

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

25 Also available is a brief document with a summary

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

3 EPA released the Draft NPDES New Hampshire Small
4 MS4 General Permit on December 23rd, 2008 with a Notice of
5 Availability published in the Federal Register on December
6 23rd, 2008 and January 30th, 200, however EPA has extended
7 public period comment period through February 20th, 2009.
8 The legal notice for this hearing is published in the
9 Federal Register on December 23rd, 2008.

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

18 You have probably received or seen copies of the
19 draft permit fact sheet, the draft general permits and
20 appendices and fact sheets are available online. The web
21 addresses are available, I will read them once, which is
22 http://www.epa.gov/region/npdes/stormwater/MS4_2008_NH.html.
23 You may also request to receive a hard copy of the draft
24 permit or Fact Sheet. We have a few copies here today, if
25 we still have them.

1 As previously mentioned, comments can be made in
2 writing to EPA or orally during this hearing. Today's
3 hearing is an informal, non-adversarial hearing providing
4 interested parties with the opportunity to make all comments
5 and/or submit written comments of the proposed permit.
6 There will be no cross examination of either the panel of
7 the commenters. Any questions directed to the commenter
8 from the panel will be for clarification purposes only.
9 This public hearing is being recorded. The transcription
10 will become of the Official Administrative Record for this
11 permit. However, in order to ensure the record's accuracy
12 we highly recommend that you submit written statements in
13 addition to your comments made this morning.

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

1 the availability of both the response to comments and the
2 final permit will be mailed or emailed to everyone who
3 commented on the draft permit. The actual complete final
4 New Hampshire Small MS4 general permit and response to
5 comments will be available by EPA's web page, which I gave
6 before.

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

17 We look forward to hearing your comments this
18 morning. I will begin by calling those of you that signed
19 in at the registration desk indicated that you wish to make
20 comments in the order that were received. I will use
21 attendance cards to call on people who wish to comment.
22 These cards are also used to notify persons of our
23 subsequent final permit decisions. Speakers should come to
24 the podium and speak and I ask that before you begin your
25 statement please identify yourself and your affiliation. I

1 notice that some people, we ask yes no, I'll ask if you want
2 to make a comment, if you want to decline. That's fair game
3 too. Hopefully at the end I will have the time for any
4 other comments.

5 There's a fairly large group of people here that
6 want to comment today. In order that as many participants
7 as possible are allowed to express their views. I ask that
8 you try to limit your comments for five minutes. Any time,
9 if you are asked to stop, and have not finished, I will ask
10 that you to defer the remainder of your comments until each
11 person has had an opportunity to comment. Then if there's
12 time at the end of the meeting, we will give you a short
13 opportunity to finish your comments. If you have a written
14 statement, you may read it, if it can be done in five
15 minutes. If not, I will ask you to summarize the statement.
16 In either case, I encourage you to submit the comments today
17 or before the close of the public comment period on February
18 20th. Just for your timing, it looks like I have about
19 twenty people who already wish to make a comment.

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

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

1 Hampshire.

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

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

17 City employees participate in the state's water
18 quality standards and advisory board. The city understands
19 the importance of the environment and the programs that
20 protect and/or improve our natural resources. We are
21 committed to the intent and goal of the Clean Water Act. We
22 appreciate the difficulty EPA faces trying to regulate
23 stormwater that runs off of private and public lands,
24 parking lots, driveways, streets and sidewalks to our local
25 waters. Although we applaud EPAs efforts in this area some

1 aspects of the proposed permit are excessively burdensome
2 and will not improve stormwater quality.

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

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

25 I want to take this opportunity to thank you for

1 allowing me to provide these comments on the proposed
2 permit. In submitting our comments we look forward to
3 working together with the regulators to develop a permit
4 that protects the water quality in a cost effective and
5 practical manner. Thank you.

6 HEARING OFFICER WEBSTER: Thank you very much.

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

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

12 HEARING OFFICER WEBSTER: Thank you.

13 Robert Robinson from Manchester, New Hampshire.

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

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

19 There are some concerns in regards to the good
20 housekeeping and catch basin cleaning. We are not a
21 community that does get to our basins every other year.
22 Right now we have some urban ponds, which we do the catch
23 basins twice a year so those directly around there and we
24 also do other catch basin cleaning with our vacu trucks and
25 also with hiring outside consulting.

1 The City of Manchester actually has several
2 thousand catch basins. If we were to clean every catch
3 basin, yeah, 14,000 catch basins. We were cleaning 7,000
4 basins a year at \$50.00 for every basin and that would be
5 \$350,000 a year in just catch basin cleaning. Then also
6 there's an inspection component in regards to that, that
7 even if they weren't cleaned, they wanted to inspect them
8 all. So once again, we have to inspect the other 7,000
9 basins, plus we also have roughly 3,000 drain manholes.
10 This is not mentioning all our combined sewers. This is
11 strictly a separate sewer along with a 178 miles.

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

24 I will end there and I will let somebody else set
25 the time. Thank you very much.

1 HEARING OFFICER WEBSTER: Thank you, very much.
2 Is it Peter Rice, City of Portsmouth?

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

5 HEARING OFFICER WEBSTER: Steve Miller.

6 MR. MILLER: I have nothing.

7 HEARING OFFICER WEBSTER: David Cedarholm, Durham.
8 You wish to comment?

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

12 Section 2.1 of the water quality effluent
13 limitations and permit. Requires the permit to ensure that
14 discharges for MS4s do not cause or contribute to accedence
15 in water quality standards. The Section 2.2.2 discharged to
16 impaired water without an approved TMDL which requires the
17 permit need to evaluate this charge to impaired water and
18 later Section 3.0 outfall monitoring program were it
19 relative to those sections. In the absence of TMDL, which
20 is typically in the case in New Hampshire, these
21 requirements will essentially require the communities to
22 conduct their own TMDLs to comply and will require
23 municipalities to dramatically expand operations and
24 establish stormwater divisions, since they haven't already
25 done so.

1 To what extent is the permitting required to
2 evaluate the discharge. Are the parameters and acceptable
3 methods defined? Will the evaluation need to be performed
4 by a professional engineer or geologist? And will the water
5 quality monitoring need to be conducted by certified
6 technicians? State statute would appear to dictate so and
7 consulting firms are simply not yet set up to do this.

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

21 To do the work needed to investigate how to fairly
22 assess discharges and design a whole new enterprise funds
23 such as a stormwater utility will take considerably more
24 than one year. This puts a tremendous burden on small
25 communities like Durham, New Hampshire with only 10,000

1 residents, where only about have of which are within the
2 MS4. It will also require the town to establish a whole new
3 division of engineers, environmental scientists,
4 technicians, additional laborers and heavy equipment to
5 expressly manage and maintain stormwater system needs. To
6 do so, will take much more than a year and will likely
7 increase annual department and public works budget by at
8 least 25%.

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

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

1 Will the EPA and NHDES provide guidance and
2 requirements relative to what chloride impairment corrective
3 measures to implement?

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

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

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

22 Lastly, Section 2.3 indicates that requirements to
23 reduce pollutants to a maximum extent practical approach is
24 an integrate process. This section is vague and lacks
25 actual requirements. Without specific requirements and

1 interative process implies a moving target of regulation.

2 Thank you very much.

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

5 Let's call on Steven Dookran, for the City of
6 Nashua.

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

10 The 2003 permit, the city recognized, had very
11 good goals and we believe that we make a reasonably good
12 effort in trying to meet those measures especially the
13 housekeeping measures like street sweeping, catch basin
14 cleaning and so-on. We also think that this permit, five
15 years into it, is not enough. So we would like to appeal
16 for the EPA to give us an extended period to continue this
17 2003 permit.

18 Like everybody here, we are talking about a
19 burdens put on the communities for the new permit. In the
20 spirit of the federal government looking at helping in
21 economic recovery, it is the time that we should look at
22 less regulations that will put these extra burdens. So
23 that's what we try to emphasize today is that what everybody
24 is recognizing as what this permit is going to do to us. At
25 this point in time, it should be deferred to some future

1 date. Thank you.

2 HEARING OFFICER WEBSTER: Thank you very much.

3 David Allen, Portsmouth, do you wish to speak?

4 MR. ALLEN: Submitting written comment.

5 HEARING OFFICER WEBSTER: Okay, thank you.

6 Clark Mario, Nashua New Hampshire.

7 MR. MARIO: Defer to written comments.

8 HEARING OFFICER WEBSTER: Aubrey Strause, is that
9 right?

10 MS. STRAUSE: Thank you very much.

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

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

21 My first comment is I would encourage the EPA to
22 continue to include the flexibility in the final permit to
23 focus on watersheds and surface water bodies in these
24 municipalities that are known to be impaired. This is what
25 Steve Brook has been doing for example, with the Caines

1 Brook watershed. We've done higher frequency inspections of
2 those outfalls and I would like to continue to do that. So
3 specifically what I would like you to consider, is to permit
4 the use of the filed test kits for screening during dry
5 weather and even potentially wet weather inspections. What
6 the field tests kits will allow is for you to focus your
7 limited sampling budget on analytical samples for
8 third-party labs at areas where you suspect there would be
9 impact. So it's somewhat of a screening process that I
10 think will result in reduced costly analytical sampling and
11 let you focus that where it's needed.

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

21 Thank you very much.

22 HEARING OFFICER WEBSTER: Thank you very much.

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

25 MR. DURRETT: Craig Durrett. The Town of Derry

1 Environmental Engineer.

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

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

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

19 There should be some flexibility given to the
20 regulated community based upon what they've accomplished
21 over the first term of the permit so that they can define
22 better program, more achievable, logical, practical program
23 on the next term of the permit. This current permit does
24 not allow that flexibility for any of that. It doesn't
25 allow flexibility for consideration of what was done on

1 previous permit, or even in terms of the monitoring program.

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

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

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

19 That's all I have for now.

20 HEARING OFFICER WEBSTER: Thank you very much.

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

24 (No response)

25 HEARING OFFICER WEBSTER: Chris Jacobs, from

1 Somersworth do you wish to comment?

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

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

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

15 With respect to outfall monitoring program we are
16 required to under the permit to identify or to test for the
17 cause of impairment or in this particular case, mercury.
18 The Salmon Falls River runs on the east side of Somersworth
19 and is listed an impaired water body for mercury. The EPA
20 recognizes this as an airborne pollutant and is requiring or
21 requesting us to test for this contaminant. I think we all
22 recognize how the mercury gets to the water bodies located
23 within New Hampshire, it is not particularly generated
24 locally, although we do have some trash to energy facilities
25 I understand that do discharge mercury. We would ask that

1 there be some measure or allowance within the permit to
2 waive this requirement, it would come in as a financial
3 burden to a number of municipalities.

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

19 The other question that I have, is that the permit
20 requires that we develop operation maintenance procedures
21 for schools which are not currently under the city control.
22 The school department is they are not under any obligation
23 to follow with recommended procedures that we may end up
24 putting together for them. They are also not required to
25 submit stormwater pollution prevention plan under Section

1 2.3.7.2. It seems to be a shortfall. Why would we be
2 requested to go to the level putting together an operation
3 and maintenance procedures plan for them but then they are
4 not asked to follow up with a SWIP? It just seems that
5 there's no follow through. My question would be, is it the
6 expectation of the EPA that the city government would have
7 to do this work for the school departments?

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

23 Under Section 2.3.2, there is required education
24 of residential property holders within our community,
25 commercial, industrial and I forget what the fourth one was.

1 It requires education twice a year. It's been asked and
2 suggested by others that there be some allowance within the
3 permit to do this type of education as a group, ie, possibly
4 through our area of stormwater coalition, that way the
5 communities can better manage the cost associated with
6 trying to reach out and do this education. It was also
7 asked of me, or pointed out to me, what if we invite or
8 mandate, for instance, that all of our contractors attend
9 and none of them do? Have we achieved a goal permit by at
10 least offering this permit and requesting that they attend,
11 yet there again, we have no authority to mandate that they
12 attend. If we could get some guidance on the EPA on that.

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

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

17 Carl Quiram from Goffstown

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

20 I echo a lot of the sentiments you've heard so I
21 will kind of lump them into one overriding factor that, like
22 mentioned in the City of Dover earlier, the prescriptive
23 requirements within this new permit and the costs associated
24 with implementing them seem to me to be unreasonable. The
25 25% sampling cost, walking every stream mile whether there

1 are outfalls on them or not, or illicit discharges on them
2 or not, and then the chloride use monitoring and managing
3 private property holders where we lack the ability and the
4 legal authority to do so.

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

20 I also have concerns and earlier you heard the
21 comment made about the stormwater utility, although I would
22 love to have a stormwater utility because it would be a
23 great way to get additional funding, anybody who follows pay
24 as you throw in New Hampshire, can realize everybody as
25 professionals, recognize the benefits it pays as you throw.

1 But you go into a public meeting and try to implement pay as
2 you throw and it becomes a very political hot potato. I
3 don't see stormwater utility as anything different than
4 that. It's just going to be rain tax and the residents are
5 going to come out vehemently opposed to it.

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

9 HEARING OFFICER WEBSTER: Thank you very much.

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

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

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

19 I want to begin by applauding EPA in adopting
20 Phase II Stormwater Regulations. We share the common goal
21 of protecting and enhancing water quality of our streams,
22 rivers and lakes and estuaries, which will improve the
23 ecologic health of our environment. The manner in which EPA
24 set out to achieve this goal in the first permit cycle was
25 wise and timely. We have educated ourselves, our coworkers

1 and our communities about the impacts associated with
2 stormwater and what we must do to improve the management of
3 stormwater and reach our common goals.

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

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

23 Can I measure it, or show you numbers to validate
24 my claim, no. Unfortunately, the desire and need for bean
25 counters and enforcement personnel to have data to point at

1 in past judgment is evident in the second permit proposal.
2 Did we, the permittees, expect the performance standards to
3 be raised for the second permit? Yes, undoubtedly. The
4 proposed permit requirements moves away from the performance
5 standards being set that the community decides how it can
6 best achieve in their unique circumstances. For example,
7 requiring outfall sampling of every outfall in the community
8 during wet and dry weather. This standard may provide the
9 federal and state with a snapshot of information that is
10 useful to your programs but it will be money poorly spent by
11 the community. Each community knows where water quality
12 problems are most likely. We don't need to sample fifty or
13 more percent of our outfalls to find either no problem or
14 even worse, a false-positive where we have to go back and
15 spend additional resources re-sampling or looking for a
16 non-existent problem.

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

1 Hampshire's cities and towns to establish a stormwater
2 utility.

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

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

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

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

1 permit.

2 Thank you.

3 HEARING OFFICER WEBSTER: Thank you very much.

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

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

7 HEARING OFFICER WEBSTER: Thank you.

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

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

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

19 During the first permit round in 2003, you issued
20 essentially the six minimum controlled guidelines and asked
21 us to create a stormwater manager plan which we essentially
22 took stock of the goals in the general permit and looked at
23 what we could do, what we could achieve within the context
24 of our resources and prepared a plan which we felt was
25 doable by the city and its residents and within the

1 framework of the city's ability to pay and meet its
2 resources with the goal of achieving improved stormwater
3 quality into the environment.

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

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

1 past because of these constraints.

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

20 Thank you.

21 HEARING OFFICER WEBSTER: Thank you very much.
22 That ends the cards that you submitted. I ask at this time,
23 is there anybody that has not spoken that wishes to make a
24 comment during a hearing, for the record to respond to this.
25 I'm looking around, not seeing anybody coming forward.

1 If that's the case, I'd like to thank you for
2 coming out this morning and for your interest in the permit.
3 You've given us obviously an awful lot to think about. I
4 appreciate the thoughtful comments. It's very apparent of
5 all of you gone through the permit in detail and specifics.
6 I would encourage you with written comments, both submitted
7 today and then up to the 20th, particularly helpful are
8 those which have suggestions, that we try to balance the
9 need to move forward on stormwater pollution control with
10 the financial realities and practicalities, as you know very
11 well from your community.

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

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

21 This ends the public hearing. Thank you very
22 much.

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

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 Date

M. Kokinis 02/18/09
Transcriber Date