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February 20, 2009

Comments given at EPA Public Hearing on Proposal MS4 General Permit
January 28, 2009
Portsmouth, New Hampshire

My name is Dean Peschel and I am the Environmental Project Manager for the City of Dover, New Hampshire. I am speaking as the person in Dover responsible for implementing the provisions of MS4 Stormwater Regulations and also as a member of the Seacoast NH Stormwater Coalition.

I want to begin by applauding the EPA for adopting the Phase II Stormwater regulations. We share the goal of protecting and enhancing the water quality of our streams, rivers, lakes and estuaries which will improve the ecologic health of our environment.

The manner in which the EPA set out to achieve this goal, in the first permit cycle from 2003-2008, was wise and timely.

We have educated ourselves, our co-workers and our communities about the impacts of stormwater and what we must do to improve the management of stormwater to reach our common goal.

EPA should be commended for using a performance standard approach in implementing the Phase II program to date. EPA set specific goals for six minimum control measures to be addressed by each permit tee. The permit tee prepared a plan for their community to meet established performance standards. It was the EPA's role to review and approve the plans and then monitor the community's progress implementing its plan. The process required each community to conduct a self assessment of current practices to figure out how to modify its current program to meet the six minimum control measures. The communities, including Dover, have responded. The City of Dover has worked independently and jointly with neighboring communities sharing and stretching resources whenever 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 to in order that they might document the proof is evident in the proposed second permit.

Did we, the regulated community, expect the performance standards to be raised for the second permit? Yes, undoubtedly! The proposed permit requirements have moved away from establishing performance standards and allowing the community to decide how it can best be achieved based on their unique circumstances. The concept that one size will fit all is seriously flawed. For example, the proposed permit requires outfall sampling of every outfall in the community during wet and dry weather. This data may

provide the Federal and State representatives a snapshot of data that is useful to their programs, but it would be money poorly spent by the community since it does not serve the local needs. Each community knows where water quality problems are likely to be. Dover has many new developments that have been inspected during the development of those sites. We know there are no illicit discharges at those outfalls. We do not need to sample fifty percent of our outfalls, or more, to find either no problem or even worse a false positive where we have to spend additional monies and resources re-sampling or looking for a non-existent problem. Why did Dover and the other Seacoast Coalition communities develop IDDE plans during the first permit cycle so we could focus our work where it was needed, and now be required to sample all outfalls regardless of the priorities we established in our IDDE plan?

Dover has made great strides in improving stormwater management. Our concerned citizens are talking about stormwater impacts and how best to reduce these impacts. Our citizens are engaging in discussions about how to pay for better stormwater management of our City-maintained system. Dover like most older cities has neglected its storm water infrastructure for some time and is now exploring the establishment of a stormwater utility. Dover's representative to the NH Legislature, Tom Fargo, sponsored the enabling legislature allowing NH cities and towns to establish stormwater utilities. Much has happened, much has improved, and we 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. The Federal and State government have cut back contributions for entitlements such as Medicare where the local community is now required to pay larger shares. Citizens are losing jobs and will be late with or default entirely on paying their taxes and properties are going into foreclosure. Local government will also be faced with cutting budgets by cutting back on staffing and programs. The additional requirements, proposed in the new permit, set the communities up to fail which subsequently sets the MS4 program up to fail. The EPA will be forced to begin enforcement action against many of the communities for not satisfying the minimum standards; thereby, going from a cooperative effort to achieve a common goal to an adversarial relationship in which progress towards the goal is lost.

The EPA's proposed prescriptive methods to implement the second permit and timing will not be successful. I urge you to rethink the permit approach in light of the economic realities and cooperative nature and success achieved with the first permit.

At the hearing I promised to give some suggestions on how to revise the proposal. The following are some suggestions.

The City of Dover strongly suggests that EPA return to the concept of setting reachable standards and allowing each community plan how it will achieve them. The results of the work done during the first permit have not gone unnoticed. Our field staff now understands the scope of the system they are responsible for. They recognize that the program of cleaning catch basins has resulted in a better functioning system noting that there are many less back ups and flooding during large precipitation events. The Phase II program has given the City staff a forum to educate our policy makers that more money is required to do the necessary work to have a fully functioning and eco friendly drainage system. Our policy makers are anticipating the need for additional funding to support the storm drainage system, but I am sure there are limits to the extent of the increases given the economic situation today. Please reconsider the proposal by selecting key items in the proposal that raise the bar requiring more of us and results in improved water quality.

Given the budget cycle and the timing of the permit it will be impossible for the communities to insert budget increases at this time to accommodate the proposed year one requirements.

My suggestion would be to require the NOI and SW management plan in the first year. Also require that the communities increase the level of catch basin cleaning by 25% over previous years. Complete an IDDE plan for their community if they have not yet done so. Then in year 2 of the permit begin to ask for more so that communities can plan and prepare for increases to their budgets in an orderly manner.

I suggest that EPA eliminate or minimize the requirement to evaluate the effectiveness of its education and public outreach initiative. The final measure of the Phase II program will be whether in years to come we see an improvement in water quality in our streams and rivers. If I explain to my City Council what needs to be done to comply and they appropriate the money then I have succeeded. The money will be used to implement the plan we have submitted and EPA approved. That's enough for now. Frankly those of us who implement the Phase II program on the ground have many other responsibilities in addition to the Phase II implementation. Spending time writing a story on whether we think our efforts are successful or not at educating and reaching the public is at best a comfort to EPA, but in reality a poor expenditure of

time and effort for those of us in the field. Please excuse the bluntness of these comments, but if EPA actually has staff to read these type of analysis, those resources would be better spent on putting together a national/ regional storm water educational campaign which will assist us in reaching the public. EPA can then evaluate how successful the campaign was in helping the communities and EPA reaching our common goal of improving water quality.

Requiring the communities to prepare IA mapping for the whole community will be costly. The effort should target only densely developed areas where disconnecting IA could help in reducing runoff.

Please delete the requirement that all outfalls be sampled. The cost of sampling low priority outfalls twice during dry and wet weather makes neither practical nor economic sense. Let the IDDE prioritization plan guide the community to where sampling needs to be performed. This approach wastes local resources to collect the samples and scarce money to analyze the samples for little benefit in the overall program goal.

The inventory and SWPPP development for all city facilities and operations needs two years rather than one to become operational.

In general I believe the permit proposal is too aggressive and unrealistic in what it expects permit holders to accomplish. The administrative burden alone is substantial and should be significantly reduced, as it does little to advance the cause.

Thank you for the opportunity to share my thoughts on how the Phase II permit can be successfully implemented in the second permit cycle.

Sincerely,

Dean Peschel
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City of Dover NH