

MEMORANDUM

TO: Board of Environmental Protection

FROM: Don Witherill, Bureau of Land & Water Quality, Augusta DW

DATE: February 18, 2010

RE: Adoption of Chapter 521, Applications for Storm Water Discharges

Statutory and Regulatory Reference: The applicable regulatory framework for this rule is Title 38 M.R.S.A. §413 et. seq., the Maine Waste Discharge Law, and §341-D(1-B), Board responsibilities and duties. The proposed rule-making is routine technical.

Scope: Existing rule Chapter 521 pertains to applications for waste discharge licenses. Section 9 of the rule pertains to storm water discharges. This proposed rule amendment would create a new section, 9-A, which would apply to an owner or operator of property in an urban impaired stream watershed that has been designated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§1251 et seq., and 40 C.F.R. §122.26 (a)(9)(i)(D), or the Department pursuant to Chapter 521(9)(a)(1)(v) as requiring a storm water discharge permit due to post-construction stormwater flow from impervious area.

Timeline:

- ♦ January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referenced as the Maine Pollutant Discharge Elimination System (MEPDES) permit program.
- ♦ December 3, 2008, USEPA, in consultation with the State of Maine, made a preliminary determination that a designation of stormwater discharges from parcels with one or more acres of impervious area in the Long Creek watershed is appropriate because the discharges are contributing to violations of applicable water quality standards.
- ♦ October 28, 2009, USEPA designation became final. As a result, designated discharges must obtain permit coverage under either a general permit or individual permit.
- ♦ November 6, 2009, the Department issued a general permit that provides coverage for operators who choose to participate in the implementation of the Long Creek Watershed Management Plan. This proposed rule sets forth requirements for an operator who chooses to apply for an individual permit.
- ♦ December 3, 2009, the Board posted the proposed rule amendment to public hearing.
- ♦ January 7, 2010, the Board held a public hearing at the Augusta Civic Center. No members of the public testified at the hearing. Written comments were received during the public comment period from the Maine Turnpike Authority and the Maine Department of Transportation.

Department Recommendation: The department recommends the Board adopt the proposed rule amendments with minor revisions from the posted draft.

Estimated Time of Presentation: Approximately 20 minutes.

Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: Department of Environmental Protection

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CHAPTER NUMBER AND RULE TITLE: Chapter 521 Rule Amendment Pertaining to Post-Construction Storm Water Discharges in Urban Impaired Stream Watersheds

STATUTORY AUTHORITY: The applicable regulatory framework for this rule is Title 38 M.R.S.A. §413 et. seq., the Maine Waste Discharge Law, and §341-D(1-B), Board responsibilities and duties.

DATE AND PLACE OF PUBLIC HEARING: January 7, 2010; 9:30 A.M. at the Augusta Civic Center; Augusta, ME

COMMENT DEADLINE: January 19, 2010 at 5:00 P.M.

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

Existing rule Chapter 521 pertains to applications for waste discharge licenses. Section 9 of the rule pertains to storm water discharges. This proposed rule amendment would create a new section, 9-A, which would apply to an owner or operator of property in an urban impaired stream watershed that has been designated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§1251 et seq., and 40 C.F.R. §122.26 (a)(9)(i)(D), or the Department pursuant to Chapter 521(9)(a)(1)(v) as requiring a storm water discharge permit due to post-construction stormwater flow from impervious area.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

This rule will be applied by licensing staff in the Division of Land Resource Regulation and technical staff in the Division of Watershed Management through the processing of permit applications and through technical assistance. This will be carried out in a manner similar to the processing of applications filed pursuant to the Maine Storm Water Management Law. Application process times are also expected to be similar to current processing times for Storm Water Management Law applications.

FISCAL IMPACT OF THE RULE:

Owners or operators of property with designated stormwater discharges will require permits for their discharges. To date, Long Creek is the only watershed in Maine to have designated storm water discharges. In that watershed, a general permit has been issued that provides an operator with the option of entering into a contract to implement the Long Creek Watershed Management Plan to carry out stream restoration work. The initial cost to participate in the plan is set at \$3,000 per acre of impervious area with a direct stormwater discharge per year. Chapter 521 sets forth standards that would need to be met for an operator who chooses to apply for an individual permit instead of seeking coverage under the general permit.

The cost to meet the individual permit requirements will be variable, depending on the size of the lot, percentage of the lot already developed, whether or not there are existing Best Management Practices in place and how they are functioning.

For the Long Creek watershed, the Long Creek Watershed Management Plan includes the following estimated assessment for the cost of an individual permit:

Table 7a. Estimated costs of meeting individual permit requirements.

Range of Costs per acre of IC		
Capital Costs	\$30,000	\$50,000
Annual Payments on a 10 Year Loan at 5%	\$ 3,885	\$ 6,475
Annual Maintenance		
Street Sweeping	\$ 1,000	\$ 1,500
Other Inspection, Maintenance and Reporting	\$ 1,000	\$ 2,500
Total Annual Costs*	\$ 5,885	\$10,475

*These estimated costs do not include monitoring costs, which will be required for individual permits.

“For most landowners, participation in the coordinated Restoration Program is likely to cost significantly less than the cost of work needed to get an individual permit. The cost of implementing treatment equivalent to Chapter 500 requirements is estimated to average in the range of \$30,000 to \$50,000 per acre of existing impervious area, with additional costs to meet good housekeeping, maintenance, inspection, and reporting requirements (Table 7a). These are typical costs, and actual costs for individual parcels may be either higher or lower.

(Please note that individual permit costs are estimates only, and would vary by property. Landowners will be urged to do their own analysis of the cost of complying with individual permit requirements.)”

source: “Long Creek Watershed Management Plan, July 2009; p. 70-71.

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

The economic impact of the proposed rule is highly uncertain because of the availability of an alternate, general permit that will be much less expensive for most landowners. Also, while there are currently 31 urban impaired streams in Maine, only one, Long Creek, has had stormwater discharges designated as requiring permits. It is unknown how many others may eventually be designated.

Assuming the following: 1. Long Creek is representative of other urban impaired stream watersheds in terms of land ownership; 2. 20% of landowners file for an individual permit; 3. 520 acres of impervious area requires permitting in each watershed @ \$30,000 per acre to comply (any higher amount would be more expensive than a general permit at \$3,000 per impervious acre over 10 years); 4. Five of the watersheds become designated over the next 10 years with a 1 acre impervious area threshold.

The total cost for those landowners would be \$15,600,000. The cost for Long Creek alone would be \$3,120,000 for the individual permittees, based on the above assumptions. Total cost for restoring Long Creek, including the general permit participants is estimated to be \$14,000,000.

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

Landowners with at least one acre of impervious area (roads, parking, buildings) in a designated watershed (currently only Long Creek) will be affected by the proposed rule, but only to extent that they choose to apply for an individual permit instead of seeking coverage under a general permit. Municipalities are also subject to the designation of stormwater discharges from their impervious area. In the Long Creek watershed, the Cities of South Portland, Westbrook and Portland are all expected to seek coverage under the general permit, unless compliance with the individual permit would be less than the \$3,000 per impervious acre per year less any credits they would receive for carrying out maintenance work.

BENEFITS OF THE RULE: The rule, in combination with any applicable general permit, provides a landowner with means to compare costs of the two approaches for restoring an urban impaired stream. The ultimate benefit of the rule will be streams with water quality that meets the State's Water Quality Classification Standards. Improved water quality has been shown to increase adjacent property values.

Note: If necessary, additional pages may be used.

A BRIEF SUMMARY OF THE RELEVANT INFORMATION CONSIDERED DURING THE DEVELOPMENT OF THE RULE

Information considered during the development of the rule include the following:

- The Maine Waste Discharge Law and the Maine Stormwater Management Law; texts of Maine statutes can be found at: <http://www.mainelegislature.org/legis/statutes/>
- Rules for Waste Discharge Applications and for Stormwater Management: 06-096 CMR 500 and 521. The text of Department rules can be found at: <http://www.state.me.us/sos/cec/rcn/apa/06/chaps06.htm>
- The Federal Clean Water Act; text can be found at: <http://www.epa.gov/npdes/pubs/cwatxt.txt>
- Federal rules pertaining to stormwater discharges. The text of Title 40, Part 122 of the Federal rules can be found at: http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr122_08.html
- U.S. Environmental Protection Agency Preliminary Residual Designation of stormwater discharges to Long Creek pursuant to the Clean Water Act. The text may be found at: <http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekRD.pdf>

- The Long Creek Watershed Management Plan dated July 2009, and supporting information. These can be found at www.restorelongcreek.org.
- Additional information concerning stormwater in Maine may be found at: <http://www.maine.gov/dep/blwq/docstand/stormwater/index.htm>