

Long Creek Post-Construction Discharge General Permit Maine Department of Environmental Protection's Response to Comments

Comments Received from Notice and Invitation to Comment on the DEP Proposed General Permit for Post-Construction Discharge of Storm water in the Long Creek Watershed (Issued July 2, 2009)

KEY to Question/Comment Sources:

**DH DeLuca-Hoffman Associates
GGP General Growth Properties
HB Hannaford Bros. Co.
MTA Maine Turnpike Authority
OP Ocean Properties
PA Pierce Atwood
RC Rob Crawford
RH Running Hill Shopping Plaza, LLC
VE V&E Enterprises, Inc.
LANCO Lanco**

GENERAL PERMIT – POST-CONSTRUCTION DISCHARGE OF STORM WATER IN THE LONG CREEK WATERSHED

Part 1. General Permit Coverage

A. General coverage under this permit.

An operator of property from which there is a designated discharge is required to obtain a Maine Pollutant Discharge Elimination System permit. A designated discharge is a post-construction storm water discharge from a property (parcel) in the Long Creek watershed on which there are impervious surfaces or impervious areas equal to or greater than one acre. This General Permit authorizes the direct discharge of storm water from such a parcel to Long Creek or its tributaries, including discharges to municipal separate storm sewer systems or other private conveyance systems that convey storm water to Long Creek or its tributaries. Discharges must meet the requirements of this General Permit and applicable provisions of Maine's waste discharge and water classification statutes and rules. Compliance with this General Permit authorizes a person to discharge storm water, pursuant to Water Pollution Control Law, 38 M.R.S.A. Sec. 413, as described below. Discharges listed in Part I.E. are excluded from coverage under this General Permit.

The Department has determined that the cumulative effect of the designated dischargers' compliance with this General Permit, or equally stringent individual permits or alternative permits, will result in compliance with the water quality standards applicable to Long Creek and its tributaries by December 31, 2020.

Coverage under this General Permit is required if the total impervious area on a parcel is equal to or greater than one acre on or after the effective date of this permit, unless the

discharge is authorized under and individual permit or alternative general permit (as described in Part V.), or the Department determines that there is no discharge from the property to waters of the State within the Long Creek watershed other than ground water.

This General Permit is effective _____, 2009 and authorization to discharge under this General Permit expires at midnight _____, 2014.

1. Question: What are the “applicable provisions of Maine’s waste discharge and water classification statutes and rules” that an Applicant must follow? MTA

Response: The storm water permit requirement is based on the Clean Water Act. The General Permit is being issued pursuant to Maine’s Wastewater Discharge Law, 38 M.R.S.A. §413 and *Maine’s Wastewater Discharge Rules*, 06-096 CMR 522 on Application Processing Procedures for Waste Discharge License Applications, CMR 523 on Waste Discharge License Conditions and CMR 529 on general permits. The Department will be proposing new language in 06-096 CMR 523 on proposed requirements for individual storm water discharge permits. Also, see 38 M.R.S.A. §464 on Classification of Maine Waters.

2. Question: Will implementation of the Long Creek Watershed Plan as proposed as part of the General Permit have a reasonable likelihood of success in Long Creek meeting water quality classification by 2020? Certain measures in the Plan seem optimistic and an aggressive schedule may result in the unwise use of resources in a short time or large expenditures in technology that proves to be relatively ineffective. The draft General Permit requires construction of the Tier 1 and Tier 2 projects from the Long Creek Watershed Management Plan (the Plan). In reviewing the Plan, we were unable to ascertain where:

- In conformance with the apparent requirements of the Residual Designation, what % efficiency will the Tier I and Tier II projects attain of the overall impervious surface?
- What level of effective cover will result from implementation of the Tier I and Tier II projects, and will it exceed the 13.7% noted in the Residual Designation?

It would appear that these evaluations should be conducted for each branch of the stream to insure that implementation of the General Permit would result in the Creek meeting state water quality standards.

The Maine Mall property is located in the South Branch, Sub-watershed E, which is noted to include 377.7 acres (Figure 2a of Plan), an impervious cover of 57.1% or 215.5 acres of impervious surface (Figure 3b of Plan). In reviewing the Tier 1 and Tier 2 projects located within the South Branch, it appears that only 84.3 acres of impervious surface are proposed to be treated. We were unable to verify what level of treatment would be provided as the evaluation does not appear to have been of sufficient detail to determine whether the proposed improvements have a reasonable likelihood to be able to be designed to meet the Chapter 500 rules.

If only 84.3 acres of the impervious area in the South Branch are proposed for some level of treatment (efficiency to be determined at a later date), how does implementation of the Tier 1 and

Tier 2 projects in this sub-watershed result in an effective impervious cover of 13.7%; the level which appears to be necessary to meet Class “C” standards?

GGP, RH, MTA, HB, DH

Response: The rationale behind EPA’s residual designation should be viewed independently of the reasoning behind the watershed management plan and the general permit. EPA’s designation of impervious area equal to or greater than one acre is based on a finding that such parcels cause or contribute to water quality standards violations.

There are many factors besides a watershed’s imperviousness that contribute to a stream’s ability to support a reasonably healthy aquatic community, the goal of the Class “C” water quality standards - a stream with good riparian vegetative cover that provides shade, leaf fall and woody debris; with some elevation gradient so that a diverse habitat can be maintained even at low flows; and with some variety of substrate that can withstand the pressures of watershed imperviousness much better than a lower gradient stream with sand as the only substrate, and compromised riparian areas. In the case of the South Branch, once the stream becomes a somewhat natural channel, the riparian cover is essentially intact and there is sufficient gradient and there is some gravel and rubble substrate mixed with the sand. Though this portion of the stream failed to meet aquatic life standards when it was sampled in 2004, a nearby site, 0.3 miles away, did meet the standards in a sampling in 1999. Given these mitigating factors, the Department believes it is possible to reach the goal of Class C water quality.

The Department staff began a study of the non-tidal portion of Long Creek (Jackson Brook) in 1999, and we, along with EPA, have been evaluating the stream and the watershed ever since. The likely causes of impairment of the aquatic life in each portion of the stream have been identified. The storm water retrofits and the riparian and stream channel work prescribed in the Long Creek Watershed Management Plan represent the most cost-efficient measures identified to address these causes. Department staff is quite confident that these measures will be sufficient to allow biota in the South Branch, the North Branch and the upper Main Stem, including Blanchette Brook, to meet aquatic life standards. The main Stem below the Turnpike is the most impaired segment of the stream and the most challenging part of the watershed in which to upgrade storm water management. It is possible that additional retrofits will be necessary for this segment to meet Class “C” water quality standards, but at this time, the Department thinks that the Tier I and II retrofits proposed will be sufficient.

3. Question: What will the ramifications be for participating landowners if compliance with water quality standards is not achieved by December 31, 2020? MTA

Response: If a portion or portions of the stream do not meet aquatic life standards after the ten year management plan has been fully implemented, the ramifications for landowners will depend on the degree to which the standards are not met and the level of additional storm water and channel work that appears, at that time, to be necessary to bring the segment into compliance. If it seems that a relatively small amount of focused, additional work is likely to result in compliance, the Department will likely seek to have that work completed by the permittees. If it appears that the effort required to bring the segment into compliance is unaffordable, the Department will consider alternative remedies under the Clean Water Act such as a Use Attainability Analysis (UAA). A UAA would allow the Department to demonstrate that bringing a portion of the stream

to meet standards is not practically feasible, and would allow the Department to accept the stream's partially impaired condition. A UAA is only an option after significant efforts have been made to bring the stream into compliance.

4. Question: Can the length of coverage under the General Permit be extended until 2020 or the date at which DEP determines that water quality standards have been met? DH, HB

Response: The Clean Water Act limits the permit to five years. The Department intends to re-issue the General Permit at that time.

5. Question: While Hannaford Bros. Co. entirely supports the goal of improving water quality within the Long Creek watershed, the Permit, which is retroactive, will subject landowners to significant unforeseen engineering, permitting, construction, maintenance and monitoring costs. This may result in a significant financial burden, especially in the current recessionary economic conditions. Is it possible for the timing of the Permit to be reconsidered so that implementation occurs at a later time, after the economy improves? HB

Response: The process of developing a restoration plan has taken several years to unfold. The implementation of the resulting plan will take at least ten years. The Department acknowledges that recessionary economic conditions add to the challenge of implementation. However, it also has created opportunity in the form of federal stimulus funding that will have contributed approximately \$4 million toward restoration of water quality by early in 2010. While \$1.5 million of that funding is in the form of a 0% loan, repayment will not have to begin until after the work is completed and can be spread over a period of up to twenty years. At the request of the City of South Portland in 2006, the Department/EPA provided grant funding of \$181,466, drawing \$162,784 in local match, to develop a locally-supported watershed-based plan that would outline a strategy to support the restoration of a state water quality classification of "C". Additional federal non-point source program grant money of more than \$120,000 from EPA via Maine DEP has been awarded to the Cumberland County Soil and Water Conservation District to offset costs of starting up the Long Creek Management District.

Costs assessed to landowners will be spread over the next ten years, which is longer than what will be expected on individual permit holders. No one can predict for sure when the economy will make a full recovery. However, because this is a long-term restoration plan and investments have already been made through grants and zero interest loans, and because the law requires action to eliminate causes of water quality impairment, the Department concludes that it is appropriate to issue the General Permit at this time.

6. Question: If the Plan is not achieving its objectives, can an (alternative) option (to) increasing the annual fees be an extension of the deadline for compliance with the statutes? If so, how will the determination to extend the deadline vs. increasing the annual fee amount be made? DH

Response: When the Department re-issues the General Permit, it will determine what changes to the requirements are appropriate based on conditions at that time. If water quality standards are not being met, the Department will consider whether meeting standards would be achievable. If not, the Department will consider along with EPA what other options are available at that time (see response to Question 3, above).

7. Question: The General Permit expires and must be renewed in five years. If the regulatory requirements for storm water management change and become more rigorous prior to renewing the General Permit, it may result in landowners being responsible for additional unforeseen costs for engineering, permitting, construction, maintenance and monitoring. This could conceivably occur every five years under the proposed permit structure. Can the Permit be modified to have no expiration date, so that improvements made to property in compliance with the Permit and the Plan will be “grandfathered” thereafter, with further changes to storm water treatment only being required if the landowner subsequently undertakes new construction or significant improvements which would necessitate a modification of the Permit and the Plan? That would protect landowners against more rigorous regulatory requirements every five years when renewing the Permit. HB

Response: The General Permit is subject to renewal every five years as a requirement of the Clean Water Act and so must have an expiration date. Once water quality standards on Long Creek are achieved, the Department does not plan to require additional storm water treatment measures of existing development, but will likely require maintenance of existing treatment systems. In addition water quality standards will not change every five years, so it is not expected that the “goalposts” will continue to move. So once standards are met only new development or re-development projects would likely have to meet requirements for additional storm water treatment systems (See Question #3 above).

8. Question: The Department anticipates compliance by 2020. Accordingly, can the term of the initial permit be set to expire in 2020? How was this timeframe derived? HB

Response: Under the Clean Water Act, the maximum term for a general permit is five years. The Department plans to re-issue the General Permit at the end of the first five year period. The Department will assess the condition of Long Creek at the end of ten years (2020). The Department picked the ten year timeframe after consideration of the level of work that the staff believes will be required to meet water quality standards.

The Department and EPA with assistance from several technical sources, landowners and municipal staff reviewed and approved the Plan. Department staff worked with landowners and technical consultants throughout the whole process over several years. The technologies in Tier 1 and Tier 2 are viewed as the most cost-effective treatment options available. In-stream and riparian restoration projects round out a series of strategies that the Department deems to be the highest priorities for work. While there will likely be some delay in obtaining monitoring results, it is the best professional judgment of Department staff that the collaborative efforts to create the Plan represent the best chance to bring the stream back to its state “C” classification by 2020. The Long Creek Watershed Management Board will be able to use adaptive management in making its decisions concerning effectiveness of strategies in the Plan. If measures fail to meet water quality standards, requirements could be changed when the General Permit is re-issued, particularly at the end of ten years in 2020. The technologies identified in the Tier 1 and Tier 2 project list could be terminated.

Maine’s Protection and Improvement of Waters Law (38 M.R.S.A. §414-A(2)) allows the Department to set a schedule of compliance, which “must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain those standards.” No one can guarantee the water quality standards will be met after ten

years, but it is the best professional judgment of Department staff that the activities required in the General Permit will achieve that result in as short a time as possible. However, even if water quality standards are attained, there will be maintenance requirements that will likely necessitate a continuation of a general permit in some form beyond that time.

9. Question: In order to increase the effectiveness and cost benefits of the Plan, can the initial timeframe for implementing the Plan be extended until more cost-effective and proven storm water treatment systems are developed? If compliance is not achieved by 2020, can the timeframe for achieving compliance be extended? HB

Response: The initial timeframe for implementing the Plan will not be extended for the purpose of waiting for more cost-effective treatment systems. While new technologies continue to be developed, there already exist a number of cost-effective options for treating storm-water runoff, including retrofitting of existing non-functional or poorly functioning detention ponds and the re-establishment of vegetative buffer strips. The Long Creek Watershed Management Plan takes the approach of going after the lowest cost, highest benefit options first. These are the Tier 1 projects in the Plan. Tier 2 projects are also seen as much lower in cost than the Tier 3 projects. The General Permit does not require the construction/installation of any Tier 3 projects within its five year timeframe. The Department also does not anticipate that Tier 3 projects will be required in the second five year cycle. If after ten years, further work is required to attain water quality standards, the Department will work with the Long Creek Watershed Management District to determine what the most cost-effective treatment options are at that time. These would likely be identified in a re-issuance of the General Permit. (See Question #3 above)

10.. Question: Is it fair that all landowners who meet the definition for general coverage of the General Permit, but who do not contribute to the impairment of Long Creek be treated the same way as those who do? OP

Response: EPA's residual designation is a determination that all impervious areas equal to or greater than one acre are causing or contributing to a water quality standards violation in Long Creek. This is a determination that the Department agrees with. All owners of developed land in the watershed of Long Creek, with impervious areas equal to or greater than one acre (which encompasses all parties who are currently required to seek coverage under the general permit), contribute in some way, if not in many ways, to its impairment. That said, the Department recognizes that all discharges are not equal in their impact on the stream, and that the amount of impervious area associated with a discharge is not the only variable that will affect the magnitude and nature of that impact. Other contributing factors may include the type of impervious area (i.e. roof, road, parking, etc.), the intensity of use of the impervious area, what types of conveyances the storm water passes through on its way to the stream, and any existing on-site mitigation measures which can themselves be highly variable in effectiveness. As a measure of equity, the landowner's agreement will give limited credit for existing on-site storm water treatment measures.

11. Question: If the watershed property owners are to share the burden, it should be shared by all. A facility with 1.0 (-) acre of impervious surface contributes almost as much as one with 1.0 (+) acres, yet the smaller facility does not require a general permit or pay a fee. The fairest way is to require everyone to obtain a permit. LANCO

Response: Regulatory programs frequently make use of minimum size thresholds in order to keep the size of the program, in terms of numbers of required permits, manageable. For Long Creek, EPA made the determination that a 1 acre threshold would bring into the permit program 90% of the impervious area in the watershed. This was deemed sufficient to accomplish the goal of restoring Long Creek. A municipality has the option of creating a lower size threshold and enacting a stormwater utility district for those properties to contribute to stormwater control efforts throughout the town.

12. Question: If it is not “financially interesting” for the organization to do #1 (*DEP: see question 12 above*)(which is hard to understand with today’s computer technology, etc.) and if properties with impervious surfaces below 1 acre are to be exempt, then all property owners who must pay for a general permit should be allowed to deduct one acre from their calculation. This is the only fair way to treat small property owners. For sure, this changes the denominator that determines the cost per acre, and increases the proportion larger property owners contribute. But although this idea is not as perfect as #1, it is fairer than the present proposal. LANCO

Response: The Department does not agree that designated discharges should be allowed to deduct one acre of impervious area from the amount requiring permit coverage. In most every program the Department administers, there are properties, or activities, that are of smaller size than the regulatory threshold. In almost every case, this does not result in a credit for property or activity that is over the threshold. For example, in the regulations that govern wetland impacts a property owner is allowed to impact 4,200 square feet of wetlands without a permit. However if someone is impact 18,000 square feet of wetland, they are not provided the opportunity to deduct 4,200 square feet from the 12,000 for purposes of determining their compensation requirements. If distributing costs equitably among all property owners is an objective, then landowners may wish to support a local stormwater utility district, for which it would be feasible to capture all properties in the watershed.

13. Question: Determining percentage of impervious area. There should be no subjectivity to this calculation. Rather than spend thousands of dollars surveying properties and evaluating possible credits, I suggest you simply confirm and add up the building and parking lot areas and use that number. Spend the money that is saved on restoring the creek. Otherwise, you will be under tremendous pressure by some owners to reduce impervious acreage. As you mentioned, this analysis is subjective at best, and is almost impossible to confirm (you cannot check all properties during a rain storm). LANCO

Response: The purpose of the property surveys is not in very many cases to determine the percentage of impervious area, except for those areas that may be vegetated or covered with gravel, and intensively used by vehicles. The evaluations or “surveys” are used to determine whether or not a particular parcel of land contains at least one acre of impervious cover that has a direct discharge of storm water to Long Creek, which is an “urban impaired stream”. There are many ways for professionals to gather evidence of direct discharge that can limit a large part of the subjectivity from the analysis of a particular property. Simply walking the land in question, observing soil types, slopes and vegetation types are effective low-cost ways to observe whether or not there is now or has been a direct discharge in the recent past, in most cases. The age of each construction phase and the types of storm water treatment, signs of maintenance or not, on a site can all add to the visual observations made by professional storm water managers. The property evaluations have been paid for as part of a grant from the EPA/DEP Non-Point Source

Program to quickly get data for use by landowners to determine whether or not they need permits, and if they do, what type of permit is best for them. And in the event that a determination of a direct discharge is not clear from a dry weather inspection, arrangements will be made to revisit the site during wet weather.

Property owners are encouraged to reduce the amount of impervious cover which has been determined to have an impact on stream water quality or aquatic life, or which is unnecessary for public or private use. Work proposed in the approved Long Creek Watershed Management Plan may be eligible for credit to reduce yearly fees paid to the Management District. It is work that the District will not have to do, lowering the total cost of plan implementation for all participants with a General Permit.

14. Question: Merging Properties: You already know our viewpoint on this. All properties that can be sold separately should be treated individually unless a property owner has added buildings that straddle the boundaries. Also, it seems as though properties are treated as “grouped” or individual depending upon what permit is being sought. We will write a letter to our tenant giving him permission and responsibility to modify the property if he wishes to reduce impervious square footage in order to seek individual recognition. But in point of fact, if every property were required to obtain a general permit, this would be a non-issue. LANCO

Response: The definition of “Parcel” has been part of the Site Location of Development Law (Site Law) for many years. It has been used in the Storm Water Management Law within the last decade. It has been proposed as a definition in the Long Creek Post-Construction Discharge General Permit. However, only contiguous parcels on the same side of the road are included in the general permit, unless non-contiguous parcels had previously been linked under a prior permit action under either the Stormwater Management Law or Site Law. Thus, the general permit is more limiting in terms of what lots get added together than either of the two state laws. The Department concurs that if every property were required to obtain a general permit, this would not be an issue.

B. Authority. A waste discharge permit is required for the direct discharge of pollutants to waters of the state.

A General Permit may be issued for point discharges (direct discharges) of storm water. A violation of a condition or a requirement of a General Permit constitutes a violation of Maine’s water quality laws and the federal Clean Water Act, and subjects the discharger to penalties under Organization and Powers, 38 M.R.S.A. Sec. 349 and Sec. 309 of the Clean Water Act. Nothing in this general permit is intended to limit the Department’s authority under the waste discharge and water classification statutes or rules. This General Permit does not affect requirements under other applicable Maine statutes or rules. This permit does not affect requirements under other applicable Maine statutes such as Site Location of Development (Site Law), Storm Water Management, and Natural Resources Protection (NRPA).

This General Permit does not prevent a municipality from adopting stricter standards than contained in this General Permit, or in state or federal laws.

D. Continuation of General Permit Coverage. Once granted, coverage under this General Permit continues provided there are no changes in the discharge as described in the NOI and all requirements of this General Permit are met. If changes occur or are proposed, the permittee who filed the NOI must notify the Department, as specified in this General Permit. Upon re-issuance of the new General Permit, a permittee wishing to continue coverage shall submit a new NOI to the Department.

If this permit is not revoked or replaced prior to the expiration date, and the Department makes a determination that it is to be re-issued, with or without changes, this permit will be administratively continued and remain in force and effect until the Department issues a new General Permit. In that case, any permittee who was granted coverage prior to the expiration date remains covered by the continued permit provided there are no changes in the discharge and all requirements of this permit are met.

15. Question: Under what conditions can the permit be revoked or replaced? HB

Response: State statute and Department Rule, which follow, specify the conditions under which a permit can be revoked or replaced. The following rule section also includes the process requirements the Department must follow in the unlikely event that the General Permit were to be revoked or replaced.

06-096 CRM 522 *Application Processing Procedures for Waste Discharge Licenses.*

Section 4.Modification, revocation and re-issuance, or termination of permits [see 40 CFR 124.5]

(a) Permits may be modified, revoked and re-issued or terminated either at the request of any interested party (including the permittee) or upon the Department’s initiative. However, permits may only be modified, revoked and re-issued or terminated for reasons specified in 38 M.R.S.A. Sec. 414-A(5). All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) [reserved]

(c)

- (1) If the Department tentatively decides to modify or revoke and re-issue a permit under 38 M.R.S.A., Sections 414-A(5) and 341-D or 40 CFR 144.39 (UIC), it shall prepare a draft permit under Section 5 incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and re-issued permits, the Department shall require the submission of a new application.
- (2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and re-issued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

- (d) If the Department tentatively decides to terminate a permit under M.R.S.A. Sec. 414-A (5), it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 5.

38 M.R.S.A. § 414-A (5)

5. Modification, reopening and revocation. The following actions may be taken to reopen, modify or revoke and re-issue waste discharge licenses. All actions taken under this subsection must be with notice to the licensee and all other interested parties of record and with opportunity for hearing. Actions may be appealed as set forth in Sections 341-(D) and 346.

A. The Department may reopen a license to add or change conditions or effluent limitations for toxic compounds identified in 40 Code of Federal Regulations, Section 401 or to include schedules of compliance to implement industrial pretreatment rules adopted by the board. Additionally, at the time of license issuance, the department may include as a condition of a license a provision for reopening the license for inclusion or change of specific limitations when facts available upon issuance indicate that changed circumstances or new information may be anticipated.

B. A request for modification of a license may be made by the licensee for any valid cause or changed circumstance. The department may initiate a license modification:

- (1) When necessary to correct legal, technical or procedural mistakes or errors;
- (2) When there has been or will be a substantial change in the activity or means of treatment that occurred after the time the license was issued;
- (3) When new information other than revised rules, guidance or test methods becomes available that would have justified different conditions at the time the license was issued;
- (4) When a pollutant not included in the license may be present in the discharge in quantities sufficient to require treatment, such as when the pollutant exceeds the level that can be achieved by the technology-based treatment standards appropriate to the licensee, or contribute to water quality violations;
- (5) When necessary to remove net limits based on pollutant concentration in intake water when the licensee is no longer eligible for them, consistent with federal law;
- (6) When necessary to make changes as a result of failure of one state to notify another state whose waters may be affected by a discharge; or
- (7) When necessary to include pretreatment compliance schedules required pursuant to federal law.

C. Notwithstanding Title 5, Section 10051, the board may modify, revoke or suspend a license when the board finds that any of the conditions specified in Section 341-D, Subsection 3 exist or upon an application for transfer of a licensee.

3. General Permit not reissued. This General Permit expires following a formal decision by the Department to not re-issue this permit; or...

16. Question: If the DEP decides not to reissue the Permit, what options do landowners have to lawfully discharge storm water? As a matter of right with no permit required? As a practical matter, we have no control over the weather and when storm water will exist on our sites. HB

Response: If the General Permit were not to be reissued, the Department would specify at that time what options were available to landowners. Options could include an alternative general

permit or an individual permit. The Department acknowledges that development sites, in most cases, were in compliance with the storm water requirements in effect at the time they were built and that discharges of stormwater only became a problem over time as more impervious area was installed, contributing collectively to more stormwater runoff.

E. Limitations on Coverage

2. Other permit. A storm water discharge is not authorized by this General Permit if it requires an individual waste discharge permit or coverage under another waste discharge permit. Other waste discharge permits include the Maine Construction General Permit, which applies to disturbances of one or more acres, only during a site's construction phase, and the Long Creek Post Construction Discharge and Multi-sector Combined General Permit.

17. Question: Can DEP allow an operator of a parcel with two separate direct discharges to obtain an individual permit for one point source on a parcel and be covered by this proposed General Permit or other applicable general permits for the other point source discharge on the same parcel? PA

Response: The Department concurs and will allow discharges from a property to be split, provided they are separate discharges where they leave the property. This does not require a change to the general permit.

18. Question: In the event that a landowner intends to conduct construction activities and obtains coverage under the MCGP, do the permittee's obligations to these GP requirements, as well as subsequent authorization to discharge under the GP, become terminated pending coverage under the MCGP? MTA

Response: Under the Clean Water Act, only one discharge permit will apply at any point in time for a single discharge. However, a property could have multiple discharges and it is possible that more than one permit could apply across the whole property.

The Department intends to coordinate the issuance of both the Maine Construction General Permit (soon to be reissued) and the Long Creek Post-Construction General Permit, so that the same standards will apply in the Long Creek watershed, regardless of whether the operable permit is the Construction General Permit, or the Post-Construction General Permit.

19. Question: How will future regulatory changes to the MSGP (inclusion of an additional regulated sector, such as vehicle maintenance garages) and MS4 (inclusion of additional land area in the designated urbanized area based on 2010 Census Bureau data) affect the permittee relative to this GP? MTA

Response: For property in the Long Creek watershed, the Department intends to coordinate requirements for stormwater discharges, depending on what permit is applicable. In the case of industrial discharges, this will likely mean that the Multi-sector General Permit will be terminated and replaced with a combined Multi-Sector and Long Creek Post-Construction discharge permit. While currently only a small portion of the watershed is subject to the MS4 permit requirements,

this could change following the 2010 Census. If it does, the Department will assess at that time whether a combined permit is an appropriate approach.

Part II. Definitions

C. Discharge. “Discharge” means any spilling, leaking, pumping, pouring, emptying, disposing or other addition of pollutants to waters of the State other than groundwater. “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

20. Question: Can it be made clear that a “designated discharge” is a post-construction **direct** storm water discharge. This clarification makes Part 1.A.internally consistent since the General Permit later authorizes the “direct discharge” of storm water. PA, RC

Response: The Department concurs with this comment. The following clarification of the definition of direct discharge will be added to the discharge definition in the General Permit. “A direct discharge of stormwater occurs when the runoff is not attenuated (infiltrated, filtered and/or detained), as evidenced either by channelized flow, or by the lack of sufficient land area (based on soils, vegetative cover, slope, flow path distance and relative size of contributing impervious area) before it becomes channelized or reaches a receiving waterway or water body.”

D. Impervious Surface or area. “Impervious surface” or “impervious area” means the total area of a parcel or right-of-way that consists of building and associated constructed facilities; areas that are covered with a low-permeability material, such as asphalt or concrete; or areas such as gravel roads and unpaved parking areas that are compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, roads, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of storm water.

The demolition and removal of impervious area is subtracted from the total impervious area when calculating the total impervious area, provided that the area where impervious area has been demolished and removed is restored so that it no longer has reduced permeability, and is permanently stabilized using vegetation in conformance with standards in the Maine Construction General Permit, Appendix A.

21. Question: The definition of impervious surface includes unpaved parking areas that are compacted through design or use to reduce their permeability. The Landowners request that the DEP provide a more specific definition of compacted areas so that Landowners may make an informed decision as to the amount of impervious area on their parcels. PA

Response: The impervious definition includes any non-vegetated gravel or dirt surface that is now or has in the past been used to park or store vehicles or as a travel lane for vehicles, including

cars, trucks and construction vehicles, or as a travel lane for foot traffic. Non-vegetated gravel or soil areas that have not been used in this manner, will not be considered impervious if they are planted to a dense cover of vegetation and if this vegetative cover is maintained. If such areas are not vegetated they will be assumed to be impervious unless it can be demonstrated, to the Department's satisfaction, that they do not shed water as runoff or store water in puddles during rainfalls of moderate intensity. These qualifications will be added to the definition of impervious surfaces.

22. Question: Will water surfaces from planned treatment measures such as water quality ponds be exempt from the definition of "impervious surface"? DH

Response: Yes, natural or man-made water bodies are not considered impervious area.

Part III. Procedure

A. Who must submit the Notice of Intent (NOI). An NOI must be filed by the operator or an agent of the operator if the total impervious area on a parcel of land in the Long Creek watershed is equal to or greater than one acre at any point in time after the effective date of this permit.

If the project also requires a permit pursuant to the Storm Water Management Law or the Site Law, then the NOI must be filed at the same time as the Storm Water Management or Site Law application.

1.Existing Impervious Area. If there is one acre or more of existing impervious area on the parcel on the effective date of this General Permit, then the applicant must file an NOI within 180 days after receiving notice from the Department.

23. Question: Does the DEP intend to send out notice to each affected landowner, and on what date that notice will be provided? We ask that the DEP be flexible with the 180-day filing requirement because certain landowners may need additional time to assess their options for meeting Chapter 500 or obtaining credit under the landowner agreement. Many landowners have only recently become aware of the preliminary residual designation determination. PA

Response: The Department will send final notice to each affected landowner or operator. The Department will look at the planned schedule for rule-making on individual permit standards and will determine if additional time needs to be allowed for operators to determine the preferred option for complying with the permit requirement. The Department proposes to allow at least 30 days beyond the date a final rule is approved for a decision to be made. The 180 day period may be extended by the Department, if necessary, to allow this time for comparison.

E. Submission

2. Contents of the Notice of Intent (NOI)

c. Evidence demonstrating that the operator has entered into a binding contract with the Long Creek Watershed Management District. The contract must provide for participation of the operator in the implementation of the Long Creek Management Plan.

F. Notice of Termination (NOT) and Property Transfer. The permittee shall submit a Notice of Termination(NOT)on a form provided by the Department within 20 days of ceasing all storm water discharge to Long Creek from the area subject to this General Permit, or if impervious surfaces discharging to Long Creek or its tributaries are reduced to less than one acre on the parcel.

24. Question: The notice of termination provision requires submission of a form within 20 days of ceasing all storm water discharge to Long Creek. Can this language be revised to specify that it is the cessation of a “designated discharge” that is subject to the termination? PA

Response: The Department concurs and has made this change.

G. Right of Entry. Employees and agents of the Department may enter any property at reasonable hours in order to determine compliance.

25. Question: Will employees and agents who enter property of a general permittee follow any particular protocol and what type of identification will they have to verify that they are acting under the auspices of inspection of the General Permit? Will Owners have any insurance requirements relative to the safety of these personnel? DH

Response: No protocol has yet been established for Department staff inspecting a property pursuant to the General Permit. The Department will review existing standard operating procedures already in place for staff carrying out similar inspections and will apply them where appropriate. Staff will provide identification to a property owner or manager if they are conducting an inspection. There are no insurance requirements for owners relative to the safety of those personnel.

H. Changes in activity or operator. Coverage under this General Permit will be continued provided there are no changes in the discharge as described in the NOI and associated submissions, and all requirements of this General Permit are met. If the permittee proposes to expand or relocate impervious area beyond what was indicated in the original NOI, or to change the location of the discharge, then updated information must be submitted with a new NOI prior to any earth-moving activity. Information concerning minor changes on a site that do not affect the nature or amount of stormwater runoff may be submitted in a letter to the Department that describes the changes.

26. Question: If a minor change is made, the permittee must send a letter to the Department. How will the Department respond to the letter and in what timeframe? DH

Response: The Department will respond in writing as expeditiously as staff resources allow. A written response would likely be issued within 30 days.

27. Question: How does DEP intend to account for future construction activities in the watershed? It is our understanding that DEP intends to propose rulemaking changes relative to Chapter 500 requirements that may affect how future construction activities/projects could be permitted in the watershed (e.g. Chapter 500 (9) allows a quasi-municipal organization to substitute a management system for storm water permitting requirements, referred to as a “waiver” by DEP in recent meetings). Does DEP intend to grant a “waiver” of Chapter 500 permitting authority relative to future development/redevelopment in Long Creek watershed? When will the proposed changes to Chapter 500 language be circulated for public comment? When does DEP anticipate granting the “waiver” to the District? How will this affect storm water management permit requirements for future projects (i.e. changes in requirements, review process, etc. relative to Chapter 500)? Who will (a) conduct the technical review; administer permits; and (b) enforce requirements? MTA

Response: Existing language in Chapter 500, Section 9, reads in part, “The Department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for stormwater for the stormwater permit requirement pursuant to 38 M.R.S.A. §420-D(2). The management system may apply to an entire watershed, or a subcatchment, of a receiving water, and may include multiple watersheds within the jurisdiction of the municipality or quasi-municipal organization. A project located within the area served by a management system approved by the department is exempt from the stormwater permit requirements contained in this chapter.”

The above language does allow the Department to approve the Long Creek management plan as a substitute management system for the permit requirements in the Stormwater Management Law. If the Long Creek Watershed Management District requests approval of the plan as a substitute for the Stormwater Management Law permit requirement for redevelopment projects, the Department would likely rule favorably on such a request.

The exemption language cited above does not apply to a project needing a Site Location of Development Law (Site Law) permit. However, the Department will support a revision to the Site Law (38 M.R.S.A. § 484(4-A)) that would allow the Department to make a finding that the required stormwater standards will be met if a Department-approved watershed management plan is followed. The Department staff will continually be monitoring progress being made by the District in implementing the Long Creek Watershed Management Plan. As long as the plan is being implemented consistent with the requirements in the general permit, then the approval of the management plan as a substitute Stormwater Law permitting and for meeting the stormwater requirements of the Site Law for redevelopment projects would likely stay in effect.

It is unlikely that such an approval would extend to projects that would create new impervious area. Such projects would still be expected to meet Chapter 500 standards and it is not clear that the Long Creek Watershed Management District would conduct the technical review and compliance monitoring for such projects. This would need to be established if approval of the management plan as a substitute for Stormwater Law permitting were to be extended to new development. As for enforcement, DEP would enforce whatever requirements are attached to any approval it should issue.

28. Question: How will the various types of impervious cover be treated in the draft NPDES permit and will it be equitable? How will credits be assessed with regards to a property owner that proceeds under the General Permit and then chooses to redevelop? There does not appear to be any credit in the General Permit in the event that a property owner elects to proceed with a redevelopment at some time in the future (prior to 2020). Would the only way one could obtain the credit for prior contributions, be to change to an Individual Permit? GGP, RH

Response: Impervious cover that is directly discharging to Long Creek will be treated equally under the General Permit, assuming no treatment measures are in place. For redevelopment, see answer to question 30 above.

Part IV. Requirements

A. Plan Participation. The permittee must participate in the implementation of and comply with the Long Creek Watershed Management Plan dated July 2009, or a subsequent modification of the Plan, provided the modification has been approved by the Department. Annual progress reports shall be submitted by the permittee. The Long Creek Watershed Management may submit an annual report on behalf of all permittees participating in the Plan.

29. Question: Some elements of the Plan are not in a detailed condition at this point and/or are likely to change, perhaps significantly, as new information becomes available. Specifically, riparian projects, including one project designated for MTA property, are not defined in any significant detail. MTA needs information before participating in the Plan. This is particularly true because of the mention of a conservation easement, the scope of which is not defined, and which the MTA is not legally empowered to agree to in advance, if at all. How can we work with the District using the concept of Adaptive Management to get the Project built? MTA

Response: Many riparian and in-stream projects in the Plan are in conceptual stage with a ranking of value and rough cost estimates. The implementation of these projects will be spread over a ten year period. The Cumberland County Soil & Water Conservation District (CCSWCD) and DEP staff which ranked riparian projects in the Plan, will be available to listen to concerns and recommendations concerning any particular elements of proposed projects. It will enable them to better determine if the ranking still holds following a discussion with a landowner. Conservation easements take many forms and can be complicated, as you indicate. No project can be completed without consent of the landowner and a signed participating landowner agreement. No easement can be valid without agreement between the parties. The MTA can obtain a General Permit without committing to a conceptual project with rough cost estimates.

30. Question: How is the permittee assured that changes to the Long Creek Watershed Management Plan will not result in substantial cost increases or impacts to their property? DH

Response: The Long Creek Watershed Management Plan Board, which will have strong representation by private landowners, will vote on proposed changes to the Plan. The permittee will need to comment to the Board about concerns over cost impacts of any proposed changes. The Department staff does not expect changes to occur to the General Permit that will significantly increase costs.

B. Implementation of Plan. The permittee shall assure implementation of the Plan through the Long Creek Watershed Management District. The District determines the cost amount that each permittee shall pay based upon factors listed in the Plan. If a permittee agrees to carry out some activity on the property in exchange for a reduced cost, then that activity is also an enforceable requirement of this General Permit for that permittee. The failure to make timely payments of costs for implementation of the Plan, or to carry out agreed upon activities, will be grounds for termination of coverage under this General Permit.

31. Question: Will coverage under the General Permit be affected if the Long Creek Watershed Management District fails to perform its duties under the Plan or if the measures prescribed in the Plan fail to meet water quality standards? DH

Response: Yes, if the District fails to perform, the Department expects to modify or revoke the general permit. If measures prescribed fail to meet water quality standards, requirements could be changed when the General Permit is re-issued. This would be more likely to occur at the end of ten years in 2020.

32. Question: Why are the credits for prior storm water improvements previously constructed on a site so low? RH

Response: The major reasons that Long Creek and many other urban streams fail to meet aquatic life standards are (1) storm water inputs of nutrients, heavy metals and hydrocarbons, all of which tend to be either in a dissolved form or attached to very fine sediment particles; (2) high flows during relatively frequent, moderate size storm events that may not threaten infrastructure but destabilize the channels and associated habitats of small streams; and (3) elevated stream temperatures due to loss of shade and inputs of storm water discharges from hot impervious surfaces). In order to restore the stream, storm water management practices that address these issues will be needed.

Since the Department did not start collecting information on small streams until the mid 1990s (our priorities before that were major rivers and lakes) we did not, until after 2000, have a good science-based understanding on what would be required to protect and restore these streams, and certainly did not have the information required to convince the development community that we should be requiring them to spend more of their resources on high level storm water management. Most of the pre-existing storm water Best Management Practices (BMPs) are detention basins that were designed only to detain very large and infrequent storm events to protect downstream infrastructure from extreme flooding, not to protect in-stream habitat, address pollutant loading or to control the temperature of the discharge. The 1997 version of the Chapter 500 Storm water Management Rules only addressed storm water quality in a limited way via the “sliding scale TSS standard” which usually only required incorporation of BMPs that removed the coarsest sediment particles. As a result, any developments that were approved by the Department or by local planning boards prior to the 2005 revision of the Chapter 500 rules, which did focus on requiring effective storm water management in small stream watersheds, were constructed without incorporating the kinds of BMPs that are required to restore or prevent impairment of small streams. Since these historical BMPs do not provide the storm water management functions necessary to improve Long Creek’s ability to support a healthy aquatic community, the credits for most of the existing storm water management structures in the watershed are relatively low.

D. Required Activities. The permittee shall assure implementation of the following activities as described in the Plan:

1. Construction of Tier 1, Tier 2, in-stream and riparian projects. Construction of Tier 1, Tier 2, in-stream and riparian projects shall be completed as follows:

a. If operators on 100% of the properties from which there is a designated discharge participate in implementation of the Plan through this permit, permittees shall assure that the Long Creek Watershed Implementation District constructs all identified Tier 1 and Tier 2 projects of the Plan, along with all identified in-stream and riparian projects in the Plan, by December 31, 2010.

b. If less than 100% of all impervious area is covered under this general permit, then permittees shall assure that the Long Creek Management Watershed Management District constructs projects that provide a commensurate percentage of water quality benefits as provided in the Plan. For example, if permittees representing 80% of the total impervious area covered by the Residual Designation submit NOIs, then the permittees shall assure that projects that would produce 80% of the benefits of the entire Plan, as determined by DEP, are conducted.

c. Once a funding rate for a permittee is established, it cannot be increased during the term of the General Permit due to another permittee defaulting on payment. The funding rate may be adjusted during the next re-issuance of the General Permit.

33. Question: There are certain provisions in the General Permit which make it unlikely that any landowner would voluntarily agree to be covered by the permit. Of most concern are the provisions in Part IV of the July 1, 2009 draft. Part IV (B.) requirements include a provision which states that the “permittee shall assure implementation of the Plan (the Long Creek Watershed Management Plan) through the Long Creek Watershed Management District.” Similarly, in Part IV (D), the permittee is required to “assure compliance” of several listed activities which are described in the Plan, including construction of storm water control structures, in-stream and riparian projects, inspection and maintenance of storm water treatment practices on property covered in the plan, and implementation of a monitoring and assessment plan. (*See* Part IV Subsections (D.)(1.) (a.)(b.), (2.) and (3.).

The requirements in Part IV.(B.) and (D.), in particular, are not realistic given the fact that the permittee cannot assure implementation of the plan through the Long Creek Watershed Management District (the “District”), nor can permittees inspect, maintain, monitor, or assess aspects of the Long Creek Watershed Management Plan (the “Management Plan”). Individual permittees have no direct control over the District. They may or may not be on the District Board, and in any event, Long Creek permittees may not comprise a majority of the District Board which is responsible for making management decisions. Furthermore, individual permittees cannot inspect and maintain storm water treatment practices or monitor or assess progress with the Management Plan since they have no right to access private properties on which storm water treatment structure or controls may be placed. Unlike other individual or general permits issued by DEP, permittees under the Post-Construction Discharge of Storm Water in the Long Creek

Watershed - General Permit have no direct control or authority to control the implementation of the Plan or other required activities listed in Part IV. of the proposed permit.

The only current option that an affected landowner has with regard to the Management Plan is to participate through an agreement with the District. Many landowners appear willing to enter into such an agreement. The agreement will set out each permittee's obligations and the District's obligations to implement the Management Plan. Few landowners will agree to be covered by a general permit which requires them to undertake activities over which they have no control or legal access necessary to perform required activities.

In summary, the provisions in Part IV of the proposed General Permit need to be substantially modified. Interestingly, the first draft of the permit dated March 26, 2009, contained language regarding the plan participation requirements which would be acceptable to most landowners and which reflects the reality of a permittee's participation in the Management Plan. It is not clear why such significant and expansive changes were made to Part IV from the March 26th draft to the July 1, 2009 draft. To the extent that the DEP relies on the EPA Preliminary Residual Designation of December 5, 2009, as a basis for these changes, the Landowners are submitting these comments to the U.S.E.P.A. to be made part of the Residual Designation record.

EPA formally approved the Long Creek Watershed Management Plan on July 1, 2009. It is understood that the DEP has also verbally approved the Management Plan. Long Creek landowners are currently negotiating an agreement under which the approved Management Plan will be implemented. Landowners entering into such an agreement will obviously be bound by its terms and expected to fully comply with their responsibilities under the agreement. If a landowner fails to abide by the agreement, it is appropriate that the General Permit coverage be withdrawn until the agreement is complied with. It is not appropriate that an individual landowner/permittee be held to requirements over which they have no control or legal authority to implement. HB,PA, MTA

Response: It is important to make clear that the rationale behind EPA's residual designation decision is independent of the State's permitting decisions. The designation is a legal finding that impervious areas equal to or greater than one acre require a NPDES permit. Given that determination, Maine is now fulfilling its responsibilities as the NPDES permitting authority.

Landowners collectively will have a strong voice in what the Long Creek Watershed Management District carries out for activities in that the District Board will be populated by a high percentage of participating landowners. Individually, however, it is true that a landowner or operator cannot directly control, on a daily basis, what the District carries out for work. The Department, therefore, agrees that it is not appropriate to include a requirement that a permittee assure implementation of activities by the District listed in Part IV. However, permittees must support the District's implementation of required activities. The Department's recourse, if work is not carried out by the District in accordance with the Long Creek Watershed Management Plan, would be to modify or revoke the General Permit and either require individual permits of all operators or replace the General Permit with an Alternate General Permit. The requirement in Part IV has retained the language that states that failure of the permittee to make timely payment of costs for the implementation of the plan, or to carry out agreed upon activities, will be grounds for termination of coverage under the General Permit.

34. Question: How was the \$3,000.00 /acre/year funding rate determined? At this funding rate, what assurance is there that adequate treatment measures will be in place by 2020 without a substantial increase of the funding rate during the ten-year period? Should a reasonable cap be included so that landowners are not exposed to unforeseen liabilities and a potentially high escalation of costs in perpetuity?

If a cap is reached, can the timeframe for implementing the Plan be extended beyond 2020? HB

Response: The funding rate of \$3,000 per acre for the first year was determined by the CCSWCD based on the estimated costs for activities needed to carry out implementation of the Plan as required by the General Permit and does not factor in credits that may be awarded to a site. The CCSWCD staff believes the \$3,000 amount is conservative, but acknowledges the difficulty in accurately assessing a per acre cost when it is still unknown how many landowners or operators will participate in the General Permit. Once that number is known, future annual assessments will be easier to determine. Future assessments will be subject to review by the Long Creek Watershed Management District Board, which will have strong representation from property owners.

There is no funding cap limit set through the General Permit. It does include language in Part IV.D. (1.) (c.) to protect participants from a fee increase during the five year permit term as a result of a permittee defaulting on payment.

(2). Inspection and Maintenance. Inspection and maintenance of all storm water treatment practices is required, along with recommended pollution prevention and good-housekeeping practices on property covered by the Plan.

(3). Monitoring and Assessment. Implementation of a monitoring and assessment plan, as approved by the Department, is required for use in measuring progress in restoring Long Creek.

35. Question: What are the responsibilities of the permittee in this matter? The current language is vague and leads one to believe that there are action items for each permit to participate in monitoring and assessment. It is our understanding that the monitoring plan will be conducted by another party (such as the CBEP) acting on behalf of the District. Furthermore, we understand that the responsibilities and requirements for monitoring, sampling and assessing water quality data have not been finalized at this time. Because the monitoring program will ultimately be the determining factor as to whether or not water quality classification is attained, MTA believes and requests that these responsibilities should be better defined (perhaps as part of refinement of the Plan) before the GP is finalized. MTA, PA

Response: A permittee who has obtained a General Permit has no duty to directly participate in the implementation of a monitoring and assessment plan for the purpose of measuring the progress in restoring Long Creek. One of the advantages of landowners working together in a watershed management district is that the cost and time spent on complicated and expensive tasks can be spread through time and across the membership in the District. The monitoring program will be reviewed and approved by DEP in January or February of 2010 in time for landowners to decide whether or not to obtain a General Permit.

E. Periodic assessment of Plan. The Department will periodically re-assess whether the Plan and its implementation are sufficient to provide for necessary improvement in water quality prior to any reissuance of this General Permit and will provide for stricter or more relaxed requirements as necessary. In approving the Plan and any modifications, the Department is making a determination that implementation of the Plan will result in attainment of water quality standards by December 31, 2020. The Department may require any or all dischargers to apply for individual permits if the Department determines that any requirements in this General Permit are not met.

36. Question: How often will the Department assess whether the Plan and its implementation are sufficient? How will this be measured? How will this be quantified to determine “sufficiency”? How will data be processed to determine compliance? How long will it take to gather adequate data to generate meaningful results, to determine compliance, and to determine what adjustments to the Plan are appropriate?
If deemed insufficient, how might the Plan be adjusted, and what are the future costs of the landowners? HB

Response: There will be an on-going monitoring program that the Department will be tracking to determine what is happening to water quality in Long Creek. Sufficiency of the Plan, and of the General Permit requirements, will be formally assessed when the General Permit comes up for renewal in five years. The Department could determine, based on monitoring results, that certain activities are providing more benefit than others, and should be given higher priority in the re-issued general permit. The District may also initiate such an assessment on its own at any time. Future cost to landowners are not expected to increase significantly as a result of such assessments and adjustments within the ten year timeframe, provided cost for materials and labor do not change significantly.

37. Question: What is the scope and extent of monitoring? When and how will monitoring take place and how will it be quantified? HB

Response: A monitoring plan for Long Creek is still under development. Three primary goals for monitoring Long Creek are under discussion. They are: 1) Knowing whether and when the stream meets applicable water quality standards; and documenting progress towards meeting those standards; 2) Gathering information to improve the understanding and management of the stream; and 3) Documenting the effectiveness of restoration programs. To accomplish those goals, discussion has been focused on water quality parameters that have been documented as failing to meet water quality standards and parameters that document watershed processes such as geomorphology and system hydrology. The Department has to determine the amount of data necessary for a statistically valid analysis of trends in water quality. The monitoring program will include all the information responsive to the questions asked here and is subject to Department approval.

38. Question: Under what conditions may the Department require individual permits? If a landowner is complying with the terms of the General Permit and the Plan, shouldn't it be the District that is sanctioned for non-compliance and not the individual landowners, since the District is charged with implementing the Plan under the Permit? DH, HB

Response: The department may terminate the General Permit and require individual permits of designated landowners if the requirements of the General Permit are not being met, regardless of whether it is the landowner or the Long Creek Management District that is not meeting them. The District is not a permittee, but is essentially acting as agent for the landowners in carrying out the Plan implementation work. While individual landowners do not have direct control over the activities of the District on a daily basis, landowners collectively do have control over District activities through participation on the District Board and through their ability to enforce their contractual rights in the Participating Landowner Agreement.

Part V. Relationship to Other General and Individual

A. The requirements of this general permit apply unless one of the following conditions applies:

1. The individual permit is applied for and obtained; or

2. An operator with a project having both post-construction storm water and industrial storm water discharges obtains authorization through a combined general permit that includes both the Long Creek Post-Construction Discharge of Storm Water and Multi-Sector discharge requirements.

39. Question: Could DEP revise Part V. A. (2) to reflect that an Alternative General Permit is listed as one of the specific conditions as referenced throughout the GP? MTA

Response: The Department concurs that this revision is helpful and necessary.

40. Question: Does the DEP intend to issue a separate General Permit for industrial dischargers in the watershed? PA

Response: Yes, following issuance of the Long Creek Post Construction Discharge General Permit, the Department intends to issue a combined general permit for industrial dischargers in the watershed. This is expected to occur when the Multi-Sector General Permit comes up for renewal in October 2010.

General Questions

41. Question: Why does it appear that Property Owners choosing an Individual Permit are being held to a much greater standard than those choosing coverage under the General Permit? Why would the Department require Individual Permit applicants to meet the Chapter 500 General Standards when there is no evidence that there is the equivalent treatment in the Tier 1 and Tier 2 projects? Why would the Individual Permit applicant be required to fund their improvements on a faster schedule in comparison to the improvements proposed in the General Permit? Why would the Individual Permit applicant be required to meet interim milestones (in the event of greater than five acres of impervious cover) when there are no interim milestones for implementation of the Tier 1 and Tier 2 projects? GGP, RH

Response: One of the guiding principles that the stakeholders insisted upon in developing the Long Creek Management Plan was that the effort to restore the stream be equitable and provide appropriate incentives. The General Permit offers an option for all designated landowners to contribute equitably, on the basis of their impervious area, to the implementation of the group of Tier I and II storm water retrofits and in-stream/riparian projects that are expected collectively to result in bringing the stream up to state water quality and classification standards. Individually some of these Tier I and Tier II storm water retrofits will bring the properties in question into compliance with the Chapter 500 general standards, some will not.

Under an Individual Permit, the Department must address each landowner's individual contribution to the impairment of the stream and make a finding that the discharge will not cause or contribute to the impairment of the stream. The Department is confident that if a property complies with Chapter 500 General Standards, it will have adequately addressed its contribution to the impairment of Long Creek and meet the statutory criteria of not causing or contributing to an impairment. There is no other way for the Department to evaluate an individual parcel other than requiring it to meeting Chapter 500 standards. This requirement treats all individual permittees equally in terms of the statutory standards, but does potentially place a higher burden on individual property owners.

Holders of Individual Permits are expected to have only two to five years to meet the requirements of their permit, depending on the size of the development, while the General permittee's burden of supporting implementation of the plan is distributed over a 10 year period. The Clean Water Act requires that discharges achieve compliance with water quality standards as soon as possible. Based on the Department's experience with time needed to plan, design and construct BMPs, two years for smaller sites and five years for larger sites are ambitious, but reasonable schedules.

42. Question: Can DEP coordinate the programs governing storm water so there is minimal inefficiency or redundancy in the review and permitting process? RC

Response: We agree that permitting inefficiencies should be eliminated. The General Permit eliminates the need for individual review at the state level for existing stormwater discharges. The Maine Stormwater Management Law contains a provision for allowing an approved municipal or quasi-municipal stormwater management system to substitute for the state permit requirement. See the response to question #27 above.

43. Question: How does a potential Applicant determine which course of action is appropriate for their property until both Permits (General and Individual) are adopted in final form and an adequate time period has elapsed for that review? GGP, RH

Response: The Department will be proceeding with rule-making on standards for individual permits over the next several months. We expect to have a final rule approved before a decision must be made and documentation submitted. We have already released a proposed draft rule, so comparison of the two approaches can already begin. While there may be some further changes

made in the rule, we expect that the comparison will be able to be completed with little time delay, particularly if comparison with the draft rule is carried out.

44. Question: Why were the Long Creek Management Plan and the General and Individual Permits developed here and not somewhere else? Why are these activities concentrated here first? Where else is this being done? VE

Response: Long Creek is one of the most impaired urban streams in the state. The Department and others have evidence collected over the years that demonstrates this. Federal and state laws require DEP ensure that restoration plans are developed and implemented for impaired water bodies according to a schedule that DEP and EPA develop. Most importantly, there is strong local interest to restore the stream and its watershed. In 2006, the Department and EPA gave a grant to the City of South Portland to assemble a steering committee local people and others who were interested in the restoration of the Long Creek watershed. This effort generated the participation of a diverse group of local landowners, industries, businesses, MDOT, MTA, municipalities and state agencies in developing an environmentally sound and cost-effective management/restoration plan that would have local support and meet specific needs of this watershed.

There are other urban impaired streams in the state. Lewiston and Bangor have been assessing their streams and also working towards locally-derived plans. However, this is the first effort of its kind in the state and only one or two in the country. This effort is being watched closely country-wide to use as a model for urban stream restoration.

45. Question: What is it that makes this all the responsibility of the landowner – and not automobiles (which are a significant part of the pollution problem)? My land is not contributing to the problem; it's cars. Can't we go after them at the time of car registration? Cars need to be looked at as a way to pay for some of the degradation. The Mall area is heavily-taxed and more fees will be more of a burden and potentially force more businesses out of business and lower overall property values. VE

Response: DEP has assessed that land use activity is the cause of water quality impacts to Long Creek, and that impervious area, especially roads and parking lots is a significant contributor. Owners of the roads have been participating in the watershed planning effort from the beginning. It is difficult to pinpoint all problems with the stream to cars and it's difficult from a practical perspective to go after automobile drivers to pay towards fixing Long Creek. A large part of the stakeholder process was aimed at addressing the impact of parking lots and roads.

46. Question: Stimulus funds – why can't our senators bring funding into the state? We should be going after more stimulus money. I'm also concerned about the negative impacts of these fees on businesses. VE

Response: We have received stimulus funds: 1) Maine Mall Road is a MDOT project (~\$2 million) 2) the Cumberland County Soil and Water Conservation District received a zero interest loan (\$2.1 million with \$0.5 million in principal forgiveness).

47. Question: We should not stop there; help us to contact whoever (e.g. senators) can assist us to get more money. VE

Response: The Long Creek Management Plan sub-committees are still active, including the Models and Outreach Committee. Landowners have participated in looking for funding opportunities. The Cumberland County Soil and Water Conservation District has also been awarded federal grants through the DEP for the Long Creek database development and for landowner outreach and parcel assessment.

48. Question: Would we still be here today if the Stimulus Bill had not passed? VE

Response: Yes. There is a legal requirement to fix the water quality in Long Creek, as well as the other impaired waters in the State.

49. Question: South Portland – Clark’s Pond inquiry – You stated that the City had set standards and setbacks and they did not help the Pond. The stream corridor has been looked at and sites identified to do in-stream work. Has there been an analysis to see if things like setbacks worked? Shouldn’t you look at whether you can change those setbacks to offset the cost of these new fees? VE

Response: Much of the development in the Maine Mall area took place before space efficient BMPs that addressed the issues in Long Creek had been developed. There haven’t really been any detailed studies of potential benefits of setbacks. VE

A draft credit system has already been established to provide landowners for components of their properties that provide some storm water treatment. Property assessments will be done in the next couple of months and we will examine the potential benefits of setbacks.

50. Question: Who is the contact person at EPA? VE

Response: Jennie Bridge – her address (bridge.jennie@epamail.epa.gov).

51. Question: How will DEP view a four year lease when it is a five year permit? What is considered a “long-term lease”? VE

Response: The term “long-term lease” has been dropped from the General Permit. If a lessee has control over stormwater management activity on the property, even under a four year lease, then the permit would fall to that lessee during the next four years. If the lease were, not extended, the permit requirement would then shift to the landowner in year 5.

52. Comment: Most tenants have triple - net leases, which means the tenant would be responsible for the expenses involved with permit compliance. VE

53. Comment: All landowners will need to include verbiage about “who controls storm water”. The language of the permit having the Operator directly responsible of storm water isn’t the norm, as far as lease language. This will affect tenants with long-term leases. This should be considered. VE

Response: The Department acknowledges that landowners and tenants will need to work out the question of who is responsible for stormwater management on the property. While this has not

been typically addressed in lease language to date, we believe it should be a topic of concern in future lease arrangements.

54. Comment/Question: Situations putting more than one property under a common scheme will cause problems. The landlord doesn't control the properties. And the tenants end up being confused too. It concerns me that properties have been grouped together to add them to be more than one acre impervious. Will there be site visits to look at this? VE

Response: Yes, there will be on-site visits occurring, but these will be to determine available credits should a property owner decide to participate in the General Permit.

55. Question: Let's say a determination is made... If impervious land creating a concentrated discharge is less than one acre, then that land would not need a permit? VE

Response: A number of parcels were determined to not need a permit based on field evaluations. Those properties were not given notice.

For those who did receive notice, Jeff Dennis at DEP is the appropriate contact, if a landowner disagrees, or has questions about a field determinations.

56. Question: How many permits are expected to be issued? How much impervious surface is there in the watershed? VE

Response: There are about 130 parcels with approximately 110 operators receiving preliminary notice. The Department expects that most will participate under the General Permit to implement the Long Creek Watershed Management Plan. Approximately 451 acres of impervious acres are counted – not including roads. MDOT, MTA and the municipalities are not exempt under this permit – they all have to comply as well. State and municipal roads add approximately 100 acres. There is a total of 640 acres of impervious surface in the watershed as a whole and approximately 550 acres are designated.

57. Question: As Chris Baldwin (CCSWCD) visits the sites, will he be able to estimate the amount of credit that will be given? VE

Response: Yes, he will provide a report that documents how his assessment was completed and the proposed credit for your parcel. The fee structure is \$3,000/acre of imperviousness (baseline fee for the first year) – then after the first year everyone's fee will be based on who is participating and what credits are being provided. Fees will also factor in the Stimulus funds.

So, we assume a certain level of participation, but if a landowner decides to apply for an individual permit, that landowner's amount of impervious area will be deducted from the total area that the participating group has to pay for.

Fees can't go up if someone goes out of business. We will do what we can with what we have.