

APPENDIX M

PUBLIC COMMENTS

Kevin A. Sheppard, P.E.
Public Works Director

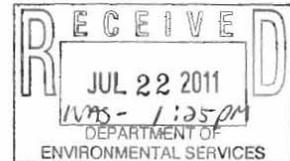
Timothy J. Clougherty
Deputy Public Works Director

Frederick J. McNeill, P.E.
Chief Engineer



Commission
Raymond Hebert
Harold Sullivan
Robert R. Rivard
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Bill Skouteris

CITY OF MANCHESTER
Highway Department
Environmental Protection Division



July 21, 2011

TMDL Program
NHDES Watershed Management Bureau
29 Hazen Drive, P.O. Box 95
Concord, NH 03301
Attention Margaret P. Foss, TMDL Coordinator

Subject: **Comments to Final Report**
New Hampshire's Statewide Total Maximum Daily Load (TMDL)
For Bacteria Impaired Waters

Dear Ms. Foss,

The City of Manchester, New Hampshire is commenting on the Final Report, New Hampshire's Statewide Total Maximum Daily Load (TMDL) for Bacteria Impaired Waters.

The last sentence of the second paragraph in the introduction states that the report will help various entities who implement the TMDL in a phased, community based approach that will ultimately result in attainment of water quality standards. The word "will" implies certainty and regardless of what measures a community may legally take they can not achieve the TMDL proposed standards as outlined in Table 2-2 (pg 16) without the intervention of the EPA on the exempt agricultural runoff or support from the State regarding suggested wildlife intervention and failing septic system measures. The document alludes to the capability of the communities taking on the full burden to resolve this issue; we believe that if it is not a cooperative effort by EPA, DES, and the community the goals of the TMDL not be attained.

The first indication that communities will carry the financial burden for implementation is in the second paragraph under the background section, item (2). "*Surface waters that are not expected to meet water quality standards even after implementation of technology-based controls.*" All of the measures outlined in the document are the establishment of watershed management plans, phased implementation of these plans, and continued monitoring of waterways to determine if the plans are working. Table 5-1 includes a listing of Waste Load Allocation for freshwater and allows an exemption for "*as naturally occurs*" if the only source is wildlife. There is no mention of "*as legally occurs as a result of agricultural exemption.*" Agricultural pollution is a very large source of bacterial contamination within New Hampshire rivers.

Point sources, which all have secondary wastewater treatment plants (WWTP), and use either ultra violet disinfection or chlorine to reduce bacteria are given a discharge limit of 406 count in class B waters with no designated beach area. WWTPs use the best available technology-based controls, yet can still not achieve the 406 criteria 365 days a year. It is safe to say that point-source pollution is controlled in excess of 99% of the time and **that non-point source pollution is the cause of the bacterial contamination within the watersheds of New Hampshire.**

CSOs are problematic during wet-weather events, but most communities are under administrative orders to close these as time progresses. Unauthorized discharges as outlined in 3.1.3 have all but been eliminated in the larger communities who have stormwater management programs. The investigation and detection into sanitary sewer overflows and illicit discharges were all major components during the first five-year implementation of these programs.

Section 3.2, Non-point Source Pollution outlines five sources of pollution. These are failing septic systems, pet wastes, wildlife waste, agriculture and contact recreation.

Failing Septic Systems - enforcement is currently being done by the NHDES (pg 61) in order to ensure strict compliance with approved plans and investigating complaints relative to subsurface systems which are, or may be causing, degradation of the state's waters. Cities and town's respond to local complaints and either enforce the criteria of their adopted ordinance or refer enforcement to the NHDES.

Pet Waste - Pet wastes are currently being addressed by stormwater communities. An interesting statistic is provided in the TMDL document in that a dog can produce 200 grams of feces (almost ½ pound) which contains up to 23,000,000 fecal coliform colonies per gram. That's four billion, 600 million fecal colonies per dog per day. That would require an eleven million, three-hundred and thirty thousand to one dilution to achieve the 406 fecal colony counts in a non-beach designated stretch of river. Quite a staggering number when you look at it statistically.

All the stormwater communities are currently in various stages of implementing their stormwater management programs and implementing the control measures as outlined on page 51, BMPs for Stormwater. Certainly, over the past five years they have implemented pet waste programs, increased the level of street sweeping and can give an account of better catch basin cleaning and sewer line inspection programs which has significantly reduced fecal pollutants to the receiving waters via these non-point source routes. This increased diligence is outlined in their annual storm water reports. Yet, we still see non-attainment of receiving water TMDLs for bacteria in these communities.

Wildlife Waste - The TMDL Document has dedicated seven pages (pg 66 to 72) to Wildlife Waste and Agricultural Waste. Wildlife measures are outlined on pages 66 and 67. One section outlines behavioral modification for wildlife by scaring wildlife (with trained dogs and loud noises) introducing physical barriers (fencing is mentioned) and to reduce the attractiveness to certain wildlife (changing landscape to reduce wildlife congregation near water). This same section talks about Population Control by expansion of the hunting season, culling, relocation or the prevention of egg hatching. Many of these measures are within the enforcement realm of the NHF&G rather than a community activity. Any changing of landscape would have to go through the rigorous scrutiny of the State's wetlands bureau, NHF&G and other agencies along with the requirement for an extensive environmental impact statement to gain final approval. It is estimated that 4.6 billion fecal colony is attributed to one dog each day! As residents witness dead deer along the sides of the highways at greater frequencies, see more foxes, raccoons, deer and even bear in their neighborhoods and notice the ever increasing amount of water fowl that fly overhead it is easy to see a cause and effect relationship of increased wildlife – increased bacterial TMDL. The contribution from wildlife is countless trillions of fecal colonies on a daily basis.

Agriculture - Agriculture controls are outlined from pages 67 through 72. Page 68 outlines agricultural practices must conform to RSA 431:35 "Best Management Practices." As agriculture is exempt under federal regulations, the State does have the right to reign in the exemption and require some form of management. The USDA estimates that more than 335 million tons of "dry matter" waste (the portion of waste remaining after water is removed) is produced annually on farms in the United States, representing almost a third of the total municipal and industrial waste produced every year. What's more, animal feeding operations annually produce about 100 times more manure than the amount of human sewage sludge processed in US municipal wastewater plants. One dairy farm with 2,500 cows produces as much waste as a city with around 411,000

residents (greater than a third of the population of New Hampshire). Unlike human waste, however, in most cases the law does not require that livestock waste be treated. Riding along the back roads of New Hampshire it is not unusual to see alpaca farms, llama farms, goat farms, and homes with three to four horses roaming in the yards, chicken coops, pigs and other domesticated agricultural type animals. There are now alpaca farms selling Paca Poo in 20 pound bags as a fertilizer.

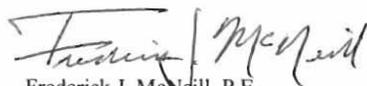
The point-source WWTPs are doing their part in bacteria reduction. The stormwater communities are doing their part regarding non-point source pollutants, pet waste, illicit discharges and sanitary sewer overflows to curb and reduce bacterial contamination. The outstanding balance of pollutants that are threatening the waters of the State of New Hampshire come from failing septic systems, wildlife feces and agricultural feces. This report outlines the State's responsibility in regards to failing septic systems, illustrates the curbs that can be initiated regarding wildlife (many of which are within the authority of the NHF&G) and outline RSA 431:35 as being a remedy for "Best Management Practices" regarding agricultural pollutants.

As the communities continue to implement their approved stormwater plans and assure bacterial limits set out in their NPDES are met, they are fulfilling a large portion of their obligation to the environment. Communities, as is the State of New Hampshire, are struggling financially and are also strapped for cash.

The State of New Hampshire, lacking the funding to assure the implementation of septic system compliance, falling behind in assuring agriculture has completed, submitted and implemented the BMPs as set out in RSA 431:35 and coordinating with the NHF&G for better wildlife controls, is abdicating its obligations as outlined in the plan. By requiring the communities to undertake actions that are the obligation of the State it is creating an unfunded mandate for all communities. Section 7, Funding and Community Resources outlines 319 and other grants that are available for eligible participants. The TMDL Final Report has clearly identified the "impaired waters" throughout New Hampshire.

In closing, we recommend that we delay implementation of this TMDL because it shifts the financial burden of compliance to the local communities and presents unrealistic mitigation measures which will greatly decrease its chance for success. I am confident that if all stakeholders continue to work together to develop a more equitable and realistic TMDL for bacteria, there will be a greater chance for success which will ultimately protect New Hampshire waters for generations to come.

Sincerely,



Frederick J. McGill, P.E.
Chief Engineer

Cc: Mr. Kevin Sheppard - City of Manchester
Mr. Rick Cantu- City of Manchester
Mr. Paul Hertzler - NHDES