



Business Community Concerned with Proposed Stormwater Management Regulations

The business community is very concerned over the new DEP proposal for a statewide stormwater permit that imposes requirements on new and existing commercial, residential, industrial and institutional uses. This regulatory program is substantially more complex and burdensome than stormwater programs in other states. As currently drafted, these regulations would impose substantial costs and regulatory burdens on thousands of properties across the Commonwealth.

The fundamental premise behind the draft regulations was to respond to the Charles River Total Maximum Daily Load (TMDL). However, this has now expanded into a statewide infiltration program. While increased infiltration may in certain instances improve surface water quality and provide relief to stressed water basins, it is not a universal solution aimed at phosphorus control.

Our primary problem is that this new policy affects virtually any property owned by a business, college, or hospital – as well as affordable housing and individual condominium owners - throughout the Commonwealth. Owners of more than five acres of impervious area (roofs and paved areas used for storage and parking) will be required to comply with the proposed program. In certain watersheds that are subject to TMDL standards under the Clean Water Act (including the Charles River watershed), this threshold has been reduced to two acres. Facilities below these thresholds that share services like snow removal, stormwater systems, parking, solid waste removal, etc, will be “aggregated” and collectively regulated.

The financial impact of compliance will be substantial and in many instances, compliance will be impossible. We agree that it makes sense to take advantage of opportunities to have state-of-the art stormwater controls installed in projects that truly represent new development. However, it does not make sense to force a property owner who is merely maintaining roof tops or parking areas or adding a small amount of new pavement to undertake expensive retrofitting of stormwater infrastructure. (For example, the draft regulations require compliance for the reconstruction or repair of a paved area that is at least 5,000 square feet or five percent of the total paved area - whichever is less).

Representatives of the private sector brought up the enormous cost of compliance at the beginning of the regulatory development process, but MassDEP’s promised cost analysis never emerged. The University of New Hampshire Stormwater Center and TetraTech Rizzo conducted studies that confirm that retrofitting and structural controls for existing uses are a minimum of \$500,000 for a

parcel with five acre of impervious area, without zoning or physical feature impediments, and without regard to business disruption. **Based on a conservative estimate of the number of property owners that will be affected by these draft regulations (according to MassDEP), the total business costs will be upwards of \$5 billion.**

These regulations are problematic to the homebuilding industry for several reasons. Although the regulations purport to exempt single-family homes on individual lots, the exemption presumes that a city or town accepts the roads serving the subdivision as municipal ways. If the roads are owned and maintained by a homeowners' association, then the exemption does not apply. That could mean that those homebuilders who survive the current depression in the housing market will be saddled with additional costs that will make their product even more unaffordable to future homebuyers. Further, unless a city or town accepts the road serving a cluster subdivision, the proposed stormwater regulations may discourage efforts to preserve open space as any homeownership association owning the open space is likely to also own the road.

In addition, developers of low and moderate-income housing—especially larger multi-family developments—may find it more difficult to secure financing. Retrofitting an existing large apartment or condominium complex will mean higher rents for tenants and special assessments on unit owners to pay for the installation of infiltration basins and similar capital improvements. That is especially problematic for existing Chapter 40B rental developments where the rent paid by low and moderate-income tenants is limited.

If a property owner cannot afford the costs to comply with these requirements, there appears to be no escape. Unlike other regulatory programs, coverage under this program is triggered merely by the ownership of impervious area, and not the nature of the activities being conducted on that impervious area. Therefore, even property owners who make the draconian decision to cease operations on a regulated site because they cannot afford the compliance costs will nonetheless remain obligated to comply with this program.

Possible Solutions

The height of a recession is not the time to throw enormous compliance costs onto local businesses. We urge the Administration to retool the proposed program in the following ways:

- In order to meet state and federal objectives, a pilot general permit project should be developed for the Charles River watershed, based upon source control, targeting surface water quality and not infiltration retrofits. The pilot program should be directed at Charles River phosphorus TMDL, and the regulatory agencies should evaluate the relative costs and benefits of such a program before implementing it on a broader geographic basis.
- Second, we suggest a public education program similar to the one recently rolled out in Rhode Island that promotes the reduction of stormwater pollution at its source and the promotion of groundwater recharge to property owners and residents.
- Third, the Commonwealth should adopt a state-wide general permit program that relies on best management practices and Operations & Maintenance procedures for all sectors to improve stormwater quality. By focusing on source control, the Department can still achieve its policy objectives without resorting to expensive and controversial retro-fitting requirements.