



City of Rochester Dept of Public Works

45 Old Dover Road
Rochester, NH 03867
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Memo

To: Public Works and Buildings Committee
From: John B. Storer, PE
Director of City Services
Date: November 12, 2015
Subject: Public Works and Buildings Committee
Meeting Thursday, November 19, 2015

There will be a Public Works and Buildings Committee Meeting on **Thursday November 19, 2015 at 7:00 PM. *This meeting will be held in Council Chambers, at City Hall.***

AGENDA

1. Approve Minutes from October 15, 2015 meeting
2. Public Input
3. Pending Street Acceptances
4. City Hall Annex Renovations
5. FY2017 CIP City Hall Annex
6. HVAC Projects
7. MS4-Pending Storm Water Regulations
8. NH Mutual Aid Program Participation
9. Electronic Message Board
10. Project Priorities
11. Community Center – Long Term Plan
12. City Hall Mailboxes
13. Snow Removal – School Dept Properties
14. Project Updates
15. Other



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Memo

To: Public Works & Buildings Committee
From: John B. Storer, P.E. Director of City Services
CC: Dan Fitzpatrick, City Manager
Date: September 14, 2015
Re: November Meeting – Supporting Information

The following information is provided to support discussion of items on the Agenda.

Pending Street Acceptances – Chesley Farm Estates & Heritage Road

Our new Assistant City Engineer, Owen Friend-Gray, has been with us about a month and he is quickly getting up to speed with ongoing private development projects. He attended the recent Planning Board Meeting and gave an update on the status of all the existing sureties. Two projects will likely be forthcoming for possible street acceptance. Those are Chesley Farm Estates and Heritage Road. Owen will likely attend the Public Works Committee Meeting to provide an update on where those stand.

Annex Renovation

Oak Point Architects should be submitting a set of schematic design plans by the first of December. Meetings were coordinated with the department heads and staff of Economic Development, Planning and BZLS. Some shuffling of design concepts has been on-going to optimize the new space. The architects also coordinated a meeting with Fire, MIS, Codes, and Buildings & Grounds to review all of the electrical, mechanical and information-technology requirements.

We received some bad news in regards to potential grant funding through the Land and Community Heritage Investment Program (LCHIP). The LCHIP application period closed for the year. Applications would next be considered in June 2016 for possible award by January 2017. We asked whether the LCHIP would consider any type of special application exemption, but our request was denied. Michelle Mears is going to continue exploring other grant opportunities along with a possible private-donation fund raising effort. Folks at LCHIP referred her to an effort in Wolfeboro that raised renovation money via private fundraising.

One technical item – I would like to proceed with relining the existing sewer line with a synthetic liner. This would avoid having to open-cut trench for a full replacement. The approximate cost is about \$10,000. An open cut trench out to the street, including pavement disruption would be more costly. A video inspection of the line showed it was structurally sound, but did have root intrusion.

There is good news that the architectural team remains confident that we are on-budget with the proposed scope of work.

Proposed 2017 CIP Items related to the Annex

During the initial design work for the Annex Renovation, a couple of items became apparent that should get addressed concurrently with the restoration. One is the removal of an underground, abandoned heating oil tank at City Hall. The other is that the electrical service entrance currently feeding City Hall and the Fire Station should be split into 2 separate services. The current electrical wiring does not meet code.

According to NH DES records, there is a 2,000 gallon underground storage tank at City Hall that was used to store #2 Heating Oil. The date of installation was October 1990. The records indicate the tank is 64 inches in diameter, made of composite material, and includes secondary containment. Based on this information it is very unlikely that we would expect any leaks or contaminated soil. However, the tank, fill system, and secondary containment system are due for extensive testing by December 2017. There doesn't appear to be any reason to maintain this tank. The City Hall heat system was converted to natural gas. If the tank is to be removed, it would make sense to complete that work prior to the Annex Renovation wrapping up. The renovation work will have a new access path between City Hall and the Annex, right across where the storage tank is located.

In reviewing the electrical service to the Annex, there was a mess of wiring that does not comply with current codes. City Hall, the Annex, and the Fire Station are all served by one metered account. The service entrance enters into the basement of the Annex then splits off in three separate directions. The service for the Fire Station actually runs straight across the basement of the Annex. This service line needs to be relocated outside in buried conduit.

In regards to the electrical service, the current design scope for the architects is to proceed with the assumption that City Hall and the Annex would be fed by a single transformer and service entrance. The goal will be to re-use the existing generator that is on-site to power City Hall and the Annex. While running a new dedicated electrical service for the Fire Department, it makes sense to consider installing a separate generator. It is critical for the Fire Department to have a dedicated electrical service and back-up generator. This is required per Chapter 700 of the National Electric Code to ensure the electrical service lines are isolated from any conflicts or potential disruptions from interconnected services.

I would like to gage the Public Works Committee's support for including an emergency generator for the Fire Station in the upcoming 2017 CIP.

Various HVAC Projects

The 2016 Budget had several heating, ventilation, or air conditioning (HVAC) related projects.

Library - Replace Rooftop Units (2 of them)	\$50,000.00
Ductless AC - City Hall	\$20,000.00
Central Fire - Replace Boiler	\$30,000.00
Central Fire - Replace Rooftop Units (2 of them)	\$30,000.00
<u>Community Center - 2nd Floor Offices (HVAC)</u>	<u>\$12,000.00</u>

The library units had gone to bid this spring, but we had to reject the bids due to a wide contrast in what was being proposed. The City did not prepare a detailed scope of work or technical package, therefore two vendors simply made suggestions. Funding was through the CDBG program, and the proposals had to be rejected.

It appeared we were looking for simple replacement units without considering alternatives that might provide much higher efficiency. It did not make sense to replace 20 or 30 year old units “in kind”. We retained an HVAC consultant to review all of the installations and make recommendations. The library work already went back out to bid and was awarded and should be completed by mid-December. Some very basic things were added to the bid package, such as a requirement to fully insulate all of the exterior duct work.

In reviewing the engineer’s recommendations for Fire Station and the Community Center, it does not appear we have sufficient money in the CIP to cover installation. The Fire Station CIP had a combined \$60,000 for the rooftop air handlers and the boiler. The engineer estimated a total might approach \$90,000. The proposed work would include air handlers with variable speed controls, and a 2-boiler heat system instead of the massive single unit currently in service. The 2 boiler system would engage two smaller units, such that one would likely be sufficient for much of the heating load, with the exception of only the extreme coldest days. This would improve firing efficiency for much of the heating season. It’s sort of analogous to a modern 8-cylinder engine dropping down to only 6-cylinders for high-efficiency highway operation. The two smaller boilers would also help with redundancy. Even if a unit was lost on the coldest day of the year, the other boiler would be sufficient to maintain at least a baseline load of heat to ensure the station and components did not freeze.

The budget for the Community Center included \$12,000 for what was expected to be a re-heat coil within the existing air duct work. Although this option might provide heat, the space lacks tempered air for the cooling season. It looks like a re-heat coil will likely work for heat loads, but the office space should have a rooftop condensing unit to provide AC.

The City Hall budget is likely sufficient to install a mini-split heat pump system in at least one office location, possibly two office locations. However, in meeting with City staff there are 3 locations (Finance, City Clerk, and Human Resources) that all need attention. We are considering 3 separate units that could handle 2 locations each.

Our current plan, pending direction by the Public Works Committee, is to prepare a single bid package for all of the remaining HVAC work. There would be a line item for each unit. We need to have actual bid prices to know whether we will actually have a budget shortfall. The expectation would be to request some type of supplemental appropriation, or to seek new CIP funding in the coming 2017 Budget. We expect there would be some cost advantage to proceeding with all projects simultaneously.

MS4 – Pending Stormwater Regulations

Attached as an FYI is a letter we crafted in consultation with our legal and technical advisors in response to the EPA’s open comment period on the pending General Permit for New Hampshire Municipal Separate Storm Sewer Systems (MS4).

As the letter indicates, we have numerous concerns with the regulations as currently proposed. We also participated in a joint effort with various other municipalities through a loosely-formed NH Stormwater Coalition group. That letter is also included as an FYI.

The next step in the regulatory process is to review and comment on NH DES's latest list of Impaired Waters throughout the State. Comments are due by December 11. Also, the revised Chapter 50 Stormwater Ordinance should be headed back to the full Council for approval within the next few weeks. We had delayed approval pending the MS4 review.

Participation in NH Mutual Aid Program

We are requesting support from the Public Works Committee to participate in the NH Public Works Mutual Aid Program. I was surprised to learn that we weren't already a member. Information is attached.

Back in late September, when some tropical storms were working their way up the east coast, we were reviewing Emergency Response plans and noticed that the City was not participating in the Statewide Mutual Aid network. There is only a \$25 membership, and responding and participating is not mandatory. One of the benefits of membership is that if we did respond, or if we received help, our involvement in regards to insurance, liability and financial obligations would be covered and protected via the Mutual Aid Agreement.

The City Manager suggested this be discussed at the Public Works Committee.

Electronic Message Board

The 2016 CIP included an allowance of \$60,000 for a potential electronic message board. The City Manager suggested this item be brought to the Public Works Committee.

Included within the packets are a couple of color renderings of a potential message board installed at the intersection of Wakefield Street and Union Street. We tried this location to see what size and type of sign might work effectively. Fire Chief Sanborn mentioned he has potential access to emergency management grant funds for a second sign should the City decide to proceed. Pricing is estimated in the vicinity of \$60,000 for a single unit.

Looking for guidance on whether to pursue these message boards, and if so – where would best installation sites be, and how should signs be designed?

Project Priorities

We have been picking away at trying to set priorities for current or future CIP items. Hopefully we will have a spreadsheet to share at the Public Works Committee Meeting.

Community Center – long term plan

Wanted to hear what the Public Works Committee had for a long-term vision for the Community Center. Has a Master Plan ever been considered? We have been working on several different projects there, but it would be helpful to understand what the expected longevity of the building should be. For instance, we are renovating the Boys Locker Room. A moderate "sprucing-up" could have improved the appearance, but we elected to replace all the floor and wall tiling in the showers and changing rooms. We are also replacing all the plumbing fixtures, but some of the supply and drainage plumbing probably should have also been addressed. Do we expect to get 10 years, or 50 years out of the building?

With Parks & Recreation tentatively set to relocate their main offices to the Arena, it will leave a fair amount of space that could be filled with a new tenant(s). Do we want to market the space to the highest paying customer, or should we consider some type of community-based, non-profit? Curious how we might set equity in establishing rental fees on a per SF basis.

City Hall Mailboxes

The City Manager requested that we look into options for installing City Councilor mailboxes that would be accessible should the Managers office be locked. This would afford wider access after regular business hours.

For something in the range of \$1,000 to \$1,500, we could install a set of mailboxes similar to what you might expect at a regular US Post Office. They could be equipped with combination style locks, such that access was restricted, but Councilors would not have to carry an extra key. Some basic information is attached.

Snow Removal Assistance – School Department Properties

Apparently the School Board will be considering the purchase of a front end loader at their meeting of Thursday, November 12. The loader is intended for snow removal efforts.

I met with Richard Bickford from the School Department to discuss past arrangements for snow removal, along with what the School Department might be requesting moving forward. I was surprised that there are quite a few informal arrangements already in place. However, I do have a concern about the financial implications and how some of the materials and labor are allocated.

Our Highway Foreman, Ken Henderson, indicates we pre-treat all of the school parking lots with salt. We use our own supply of salt, and our trucks and labor. We also supply the school department with all of their winter sand. But they bring their own trucks to Public Works and we load them. It doesn't appear there is any tracking of the related expenses. My current objective is to discuss the plowing and maintenance collaboration to understand how we might move forward this winter, while equitably tracking labor and costs. Attached in your packets is a 1-page summary that Richard Bickford provided for my review. We all want safe roads and safe schools this winter.

Project Updates

- Strafford Square – met with the NH DOT Cultural Resources Board on Thursday, November 12 to review the impacts of the slight alignment modifications on the environmental and archeological reviews. The hope is that we do not have to fully re-open the National Environmental Policy Act review process. We would like to be on schedule to have all of the utility work relocated in calendar year 2016, with construction of the roundabout to occur in calendar year 2017.
- Paving – Pike Industries was the low bidder for the annual pavement contract. They already completed work on Winter Street, which was a grind and overlay of the surface pavement. Surface pavement was placed Friday, November 6. Pike also performed a “drag-shim” along Franklin Street, from Chamberlain down to South Main Street. Work should also be wrapping up for this season on Gear Road. The road underwent a full depth reclaim and binder pavement was scheduled to be placed the week of November 16. We may wait until spring to place the final wear surface. The decision may be dependent upon the weather.
- Water Main Leak – Transmission Main between Rochester Reservoir and Round Pond. We had a leak on this old 1870's vintage transmission line which was apparently the third leak to occur within the last 5 years. The 24-inch diameter transmission line provides raw water to either Rochester Reservoir or Round Pond from the impoundment upstream in the watershed at Berrys River. The recent leak has not allowed us to divert sufficient water to keep Round Pond at full capacity. Repairs had been delayed, as we tried to obtain permission from an abutting land owner to allow us to remove a beaver dam on their property. The beaver dam is causing water to impound, essentially flooding the site where our transmission main is located. The land owner was unwilling to grant permission.

They had lingering animosity towards the City from the last two times the water main was repaired. Our City Attorney reviewed case law and determined we have no legal authority to enter onto the property without permission to remove the dam. It was very disappointing not to have cooperation. We even offered monetary considerations for permission, and also contacted the State Wildlife Biologist to discuss the survivability of the beavers. S.U.R. Construction was slated to finally begin repair work on November 12. The standing water is going to make the repair very difficult.

- Future CIP Item – Transmission Main Replacement. Since the City does not own all of the property along the path of the raw water transmission main, we are pursuing long-term repair/replacement options. The impounded water is going to cause problems with any future repairs. We've had a specialty company look at the site to determine if we might use some "trenchless" replacement options, such as slip-lining or pipe bursting. Slip-lining would be the easiest, as we would slide a smaller diameter pipe into the existing transmission main. Pipe bursting is a bit more expensive, but the process actually allows for the installation of a much larger pipe. The contractor believes we could install all the way up to a 30-inch diameter main, if necessary. We need to look at the hydraulic conditions and flow capacity very closely. We've discussed a potential project with one of our consultants to raise the impoundment at Round Pond to allow for an additional water storage depth of 10 feet. The engineering firm felt we might need a pump station to transfer water from Berrys River to Round Pond. This needs to be examined closely, as we might be able to avoid mechanical pumping by increasing the size of the transmission main. We will include a priority project in the upcoming draft 2017 CIP for replacement of the existing line.
- Route 125 Pedestrian Bridge – progress is moving along well. The old bridge is slated to be removed on Saturday, November 14. The new bridge is being fabricated and might be ready for delivery by December 22. With weather considerations and the holiday schedule, it is most likely the new bridge will be installed the first or second week of January. The bridge contractor has been working on the existing bridge abutments. The old foundation section had to be jack-hammered and the old structure base plates were cut and removed. After the existing bridge is removed the contractor will start prepping the abutments for the new bridge almost immediately. They would like to pour and cure the concrete before the colder weather of winter sets in.

One important note is that we are currently right at our upper budget limit of \$250,000. There may be some specialized inspections required that could challenge our budget limit. We are still waiting to see how much engineering time is required for onsite inspection and testing, but we might be facing as much as a \$5,000 cost increase. In order to expedite the bridge replacement we are probably paying a slight premium to mobilize crews for a late-December, early January installation date. But it will be relief for both pedestrian and vehicle traffic to restore normal flow across both bridges.

- DPW Facility Study - We engaged the consultants to complete the Phase I & II Environmental Assessment of the Old Brickyard site off Pickering Road. We limited their investigation to only environmental remediation and did not task them with conducting preliminary geotechnical evaluations. The Environmental Assessments will be critical towards determining the viability of the site for future development. This would be necessary assuming that either a DPW gets constructed on the site, or should the City decide to sell the parcel for outside development.

We also have the consultants reexamining the existing facility based on the fact that the City owns two abutting parcels that could form a contiguous parcel in excess of 14 acres, which is twice as large as the minimum lot size the consultants recommended. One part of their work involves a thorough examine of some structural and electrical concerns within the existing facility. The hope is that a phased approach might work at the existing site which

would take advantage of the existing features, while adding recommended improvements and upgrades.

- Community Center Gym Floor – Each year the gym floors get refinished, but this year was a much more thorough process where all three basketball floors were mechanically stripped to bare wood. Existing boundaries and graphics were all updated and replaced with new. The final finish and urethane should be complete by November 20.
- Boys Locker Room at Community Center – As mentioned earlier, the shower stalls and changing area are getting completely renovated. The flooring and wall tiles were in severe disrepair, and several of the shower fixtures were either missing or inoperable. Work should be completed just after Thanksgiving.
- New Accountant Office – The Buildings & Grounds staff is renovating the finance office space in the basement of City Hall. They are creating two office areas within a storage room that was used to house the mailing machine.
- City Hall, Structural Wall Repair – Work is wrapping up and hopefully the Council Chambers will be completely restored by the time of the Public Works Committee Meeting. The sheetrock on the exterior wall had to be removed to allow the installation of a structural beam member to reinforce an overloaded column. This had been flagged as an urgent item from last winter.
- Rochester Reservoir – West End Spillway. The contractor is getting underway to reconstruct the spillway at the west end of the reservoir. The intent is to modify and improve the spillway such that it will be structurally sufficient to handle the discharge expected with a 100-year storm event.
- Lowell Street – Culvert/Bridge Repairs. S.U.R. Construction will likely be onsite beginning the week of November 16 to repair the existing 10-foot diameter culvert and re-route a section of storm drainage piping that was discharging directly into the culvert. This work should enhance the structural reliability of the culvert and will allow us to avoid full replacement of the culvert.
- Salmon Falls EDA Project. The last remaining easement was finally obtained without having to go through eminent domain. However, the issue dragged on through an extensive review via the homeowner's own personal attorney. The final bid package has been sent out for EDA review and approve. The project should be ready for bidding late winter or early spring.
- Several other projects are moving towards design. Franklin Street & Western Avenue should be ready for a spring 2016 bid process. We are waiting on a cost proposal from the engineers for the Dewey Street bridge replacement. We hope to proceed with survey work this fall for the abutment portion of the bridge. Additionally, we also hope to proceed with survey work for the next phase of the Catherine/Sheridan Street reconstruction project, which will tentatively include portions of Beaudoin Court, Ela Court, Congress Street, Myrtle Street, Woodman Avenue, DavyAnne Locke, Liberty Street, Charles Street, and Academy Street.



Owner: City of Rochester, NH
45 Old Dover Road
Rochester, NH 03867
Attn: John Storer

Contractor: Ted Berry Company, Inc.
521 Federal Road
Livermore, Maine 04253
Phone: (207) 897-3348
Fax: (207) 897-3627
Project Number: T-15-907

CONSTRUCTION SERVICES AGREEMENT

This Agreement is made on the 10th day of November 2015, by and between Ted Berry Co., Inc. ("contractor" or "TBCI") of 521 Federal Road, Livermore, Maine and City of Rochester, NH ("Owner"), in connection with a project (the "Project") known as Annex Building trenchless sanitary sewer line rehabilitation.

Owners Responsibilities

1. Provide suitable access to the site
2. Provide accurate "as build" information regarding the location, size (ID), length and connections to the existing sewer line

Ted Berry Company Responsibilities

1. Provide a qualified trenchless rehabilitation team to structurally rehabilitate the existing sewer line by the trenchless CIPP (cured in place pipe) method from the existing cleanout located in the basement of the Annex Building to a point under the roadway approximately 5' from the mainline to lateral connection. New CIPP liner to be a minimum of 3.00mm 4" nominal size.
2. Provide pre rehabilitation line cleaning to remove debris, pre-rehabilitation CCTV inspection and post-rehabilitation CCTV inspection

For the consideration set forth herein, Owner covenants and agrees with TBCI as follows:

Owner and TBCI agree that the materials to be furnished and work to be done by the TBCI on the Project are identified herein. In the prosecution of the work, TBCI agrees to employ a sufficient number of workers skilled in their trades to suitably perform the work.

TBCI agrees to commence services following execution of this agreement. The established completion time shall be determined by the owners representative and the Ted Berry Company Project manager and be extended because of any delays not attributable to TBCI.

The parties acknowledge that the nature of the Work to be performed hereunder at the Property is such that the sewer line and other characteristics and conditions of the site and Property cannot be fully assessed by Contractor until the Services identified have commenced. Neither party, at this time, can satisfy itself as to coordination of such schedules and as to the existing condition of all parts of the Property and its location, including, without limitation, access to the Site, availability, location, and condition of the sewer line, all necessary utilities, climatic conditions, surface and subsurface conditions, potential exposure to hazardous or toxic wastes and substances, gases and other hazardous conditions and the condition of all improvements in or on the Property.

The price, specifications, responsibilities and conditions listed are satisfactory to the parties and are hereby accepted by the undersigned Owner. TBCI is hereby authorized to do the work as specified in the conditions contained herein. Payment to TBCI shall be due in full within thirty (30) days of the completion of TBCI's work hereunder.



TBCI shall maintain and pay for all insurance required by the state in which the work is performed, including Worker's Compensation coverage as prescribed by applicable law. Owner shall maintain full insurance on the Project during the progress of the work, in its own name and that of TBCI.

Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable contemplation of either party.

TBCI warrants that all materials and services are free from defects in materials or workmanship.

To the fullest extent permitted by law, Owner shall defend, indemnify and hold harmless, TBCI, and its respective agents, officers, employees, shareholders, and partners from and against all claims, damages, losses, expenses (including, but not limited to, attorney's fees), liabilities, interest and judgments which: (i) are attributable to injury, sickness, disease, or death or to injury or to destruction or damage to property (other than the TBCI's work itself) and (ii) are caused in whole or in part by any default or negligent act or omission of the Owner, its other contractors, suppliers or anyone directly or indirectly employed by Owner or anyone for whose acts Owner may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable.

If the Owner at any time defaults in any of its obligations under this contract, TBCI may, after twenty-four (24) hours written notice to the Owner and without prejudice to any other remedy TBCI may have: (i) provide any such labor and materials at the expense of the Owner or (ii) terminate this contract and enter the Project and take possession of all materials and equipment whatsoever, including materials stored offsite, and employ any other person or persons to finish Owner's work and provide related materials.

TBCI shall not be responsible for the indirect, consequential damages, or punitive damages related to rendering of its performance hereunder. TBCI shall not be responsible for liability, loss or expense related to the rendering of or failure to render architectural, engineering or surveying professional services. TBCI shall not be responsible for liability, loss or expense (including damage caused by the backup of basement sewers) where the primary or proximate cause of the claim or damage is a preexisting condition, including faulty, inadequate or defective design, construction, maintenance or repair of property or contamination of the subsurface where the condition existed prior to commencement of work.

Total Lump Sum Project Cost = \$9,225.00

IN WITNESS HEREOF, TBCI and Owner, for themselves and, their successors, executors, administrators and assigns have executed this Agreement the day and year first above written.

Ted Berry Company, Inc.

Owner: City of Rochester

By: _____

By: _____

Printed: Matthew Timberlake

Printed: _____

Its: President

Its: _____

Date: _____

Date: _____



City of Rochester, New Hampshire

PUBLIC WORKS DEPARTMENT

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VIA ELECTRONIC AND FIRST CLASS MAIL

November 2, 2015

Newton Tedder
US EPA—Region 1
5 Post Office Square—Suite 100
Mail Code OEP06-4
Boston, MA 02109-3912

RE: Comments to September 1, 2015 Draft NH MS4 Permit

Dear Mr. Tedder:

These comments are submitted on behalf of the City of Rochester, NH ("Rochester") to the Environmental Protection Agency's ("EPA") Notice of a Re-Opening of the Public Comment Period on Select Sections of the Draft Small Municipal Separate Storm Sewer System (MS4) NPDES General Permit - New Hampshire (hereafter "NH MS4 Permit") published for public comment in the Federal Register on September 1, 2015, and found at [http://www.epa.gov/region1/npdes/stormwater/MS4 2013 NH.html](http://www.epa.gov/region1/npdes/stormwater/MS4%2013%20NH.html). Rochester appreciates the opportunity to submit these comments.

Introduction/Reservation of Rights

As an initial matter, Rochester notes that it previously submitted comments on the original draft of the NH MS4 Permit by letter dated August 14, 2013, in which it incorporated by reference comments submitted by the New Hampshire Stormwater Coalition ("Coalition"), to the February 12, 2013 draft NH MS4 Permit. Rochester incorporates those comments herein to the extent such comments may apply to the sections of the NH MS4 Permit published on September 1, 2015. Moreover, Rochester is also participating in the broader NH municipal coalition's comments submitted under cover letter from the law firm of Sheehan, Phinney, Bass + Green dated November 2, 2015. Rochester's comments set forth below are in addition to such comments.

Rochester notes that there are a number of issues in play, both in NH and nationally, that impact its ability to provide complete comments on the NH MS4 Permit. Such issues include, but are not necessarily limited to, the ongoing uncertainty regarding which 303(d) list will be in effect when the permit is finally issued as there are major differences between the approved 2012 list and the proposed Draft 2014 list, particularly for water bodies into which Rochester discharges. Most notably, the 2012 list removes or downgrades the status of the bacteria impaired waters

(currently listed in Appendix F and based on the 2010 list). The proposed 2014 list also delists many of the nitrogen impaired waters that were listed in the 2009 amendment to the 2008 list. Finally, the newly introduced term “water quality limited waterbodies,” appears to allow other water bodies to be added during the permit term that are not currently listed. Neither the process nor the criteria used in determining whether other water bodies will be considered “water quality limited” is set out. These issues raise a great deal of concern and uncertainty as to future efforts and costs that will be required to comply with this draft permit.

In light of the uncertainties referenced above, as well as the ongoing uncertainty regarding the overall jurisdiction of the Clean Water Act and EPA’s Waters of the US Rule, Rochester is limited in its ability to fully assess the impact of the NH MS4 Permit and the outstanding technical issues associated with the changes to the NH MS4 Permit only recently proposed. Rochester hereby reserves the right to submit additional/supplemental comments on all or any portions of the NH MS4 Permit to the extent necessary, applicable, and/or allowed by law.

Request for Hearing

Rochester hereby requests the EPA hold a public hearing on the September 1, 2015 draft changed sections of the NH MS4 Permit in accordance with 40 C.F.R. §124.12 and other applicable law, particularly given the significant degree of public interest in this permit and these changes.

Request for Incorporation of Comments into the Administrative Record

Rochester hereby requests that EPA incorporate its comments into the official administrative record for the issuance of the NH MS4 Permit.

Comments

For the reasons stated herein, Rochester objects to the issuance of the NH MS4 Permit as proposed. The proposed NH MS4 Permit will impose significant burdens and costs on both Rochester and its citizens, without adequate scientific or legal basis and without any reasonably clear evidence that such burdens/costs will in fact result in any meaningful improvement to the waters into which Rochester discharges and/or downstream waters, given, inter alia, the presumptions of impacts to such waters and the continued unregulated non-point discharges into such waters. Therefore, and as further set forth below, Rochester believes that the NH MS4 Permit is both technically and legally flawed and requests that EPA withdraw the draft or modify it consistent with these comments.

Rochester’s below comments are organized as follows. General comments are provided first, followed by comments on specific permit sections and appendices.

I. General Comments:

- Costs – The costs to Rochester and other municipalities to implement the NH MS4 Permit requirements are considerable. Resources at the municipal level are scarce, and

there is currently no federal or state funding, of which Rochester is aware, to assist in compliance efforts. Compliance obligations should be balanced with the municipalities' ability to accomplish necessary stormwater discharge reductions while not experiencing economic hardship. In its Preamble to the Phase II SW regulations addressing storm water discharges from small MS4s, EPA stated "[o]ther factors [to be considered] may include MS4 size, climate, implementation schedules, **current ability to finance the program**, beneficial uses of receiving water, hydrology, geology, and **capacity to perform operation and maintenance**." (Highlighting added.) 64 FR 68722 at 68775-68776 (December 8, 1999). EPA should make modifications throughout the NH MS4 Permit to take into consideration affordability and practicality for implementation.

- **Compliance Schedules** – In addition to the factors to be considered as set forth above, EPA should also provide greater flexibility in the manner in which SW requirements are to be implemented, including an adaptive schedule for doing so. The State of New Hampshire now has in place a regulatory framework that allows for an extended timeline in the form of a Compliance Schedule that may be incorporated into an NPDES permit. A Compliance Schedule may extend the compliance deadlines beyond the 5-year term of a permit. Without incorporation of a Compliance Schedule, the draft MS4 Permit may place municipalities in immediate violation of some of the restrictive prohibitions in the permit. Extended Compliance Schedules that allow implementation to go beyond 5 years should be considered.
- **Administrative Burden** - The NH MS4 Permit imposes considerable administrative burdens on Rochester and other municipalities, including considerable reporting, sampling, investigative fieldwork and "public education" obligations, among others. Administrative reporting and tracking obligations should be consolidated and streamlined. EPA should develop outreach materials and modeling tools to share with municipalities to assist in meeting these obligations. Such considerations are consistent with EPA's stated approach cited in the preamble cited above.
- **The NH MS4 Permit Represents a Significant Change in Applicable Standards** - The Clean Water Act (§402(p)(3)(b)), as well as EPA's and NH's Stormwater ("SW") program (administered by EPA under 40 CFR §122.34) generally apply the "maximum extent practicable" ("MEP") standard to SW reduction requirements, which has long been the standard governing municipal responsibility for SW management. The NH MS4 Permit uses terms like "maximum extent feasible," "where feasible," and where "possible." It also requires implementation of strict controls "if they can be incorporated." (See, for example, §2.1.1(d), §2.3.6(a)(ii), §2.3.6(b)(ii), §2.3.6(f)(ii), and §2.3.6(c) of the NH MS4 Permit.) These phrases are undefined in the regulations and appear to impose obligations beyond "practicable;" such obligations are therefore contrary to law. The NH MS4 Permit should be revised to make clear that the MEP standard, through the implementation of Best Management Practices ("BMPs"), defines the municipal obligations under the NH MS4 Permit.
- **Misapplication of Discharge Standards** - The NH MS4 Permit further misapplies CWA standards when it refers to the "elimination" of discharges that "cause or contribute to an

exceedance of water quality standards (“WQS”)) (see for example §2.1.1(d) and 2.2.2(d)) rather than imposing the use of BMPs under the MEP standard. As such, the use of this standard effectively eliminates the concept of BMPs in the SW program and effectively requires the actual elimination of certain discharges. In addition, it appears to remove any impracticability standard. This is well beyond any conceivable MEP standard. Moreover, the use of the phrase “cause or contribute” also shifts the standard beyond the SW BMP-based program and imposes more of an “effluent limitations” permit program that is applied unilaterally to all “water quality limited water bodies” regardless of other source contributions, pollutant transport mechanisms and the nature or priority of the impairment status. Finally, SW regulations require nothing beyond “minimum control measures” where a TMDL is not in place (e.g., 40 CFR §122.34(b)). The NH MS4 Permit goes well beyond this standard.

- The NH MS4 Permit Ignores Listing Categories - Virtually all of the 303(d) listings, and draft listings of waters into which Rochester discharges list the sources of impairment as “unknown” and as “low priority.” The NH MS4 Permit ignores these limitations in the listings and treats all of the municipal sources as if stormwater clearly causes the impairment and all are equal/immediate priorities. The assumed contribution to impairment and the equal treatment of all discharges is contrary to both fact and law. The NH MS4 Permit must be revised to recognize the lack of information regarding certain impairments and the low priority of certain of the listings. It must also provide additional time for discharges such as Rochester’s to comply in light of these listing categories.
- Lack of Flexibility – The CWA SW program is intended to provide flexibility to MS4s to design appropriate BMPs using MEP concepts in an iterative process. In its Preamble to the Phase II SW regulations addressing storm water discharges from small MS4s, EPA made very clear that the SW program is to be both flexible and iterative.

“EPA has intentionally not provided a precise definition of MEP to allow **maximum flexibility** in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, **current ability to finance the program**, beneficial uses of receiving water, hydrology, geology, and **capacity to perform operation and maintenance**. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. ... EPA envisions application of the MEP standard as **an iterative process**. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. ... EPA envisions that this process may take two to three permit terms.” (Highlighting added.) 64 FR 68722 at 68775-68776 (December 8, 1999) (See also EPA’s final rule on SW applications a 55 FR 47990, 48990-48991 (November 16, 1990) – “The language of CWA section

402(p)(3) contemplates that, because of the fundamentally different characteristics of many municipalities, municipalities will have permits tailored to meet particular geographical, hydrological, and climatic conditions.”)

The NH MS4 Permit removes all flexibility and the iterative nature of SW permits and imposes a “one size fits all” approach, contrary to law.

- **Use of Outdated Information -** The NH MS4 Permit assumes impairments and the need for stringent controls without consideration of current data or recently implemented remediation programs. By way of example, the listing of bacteria impaired waters in Appendix F is out of date. Moreover much of the data relied on to initially list these water bodies is quite old (more than 10 years old in some cases) and does not meet the water quality objectives of NH’s most recent CALM. Finally, it fails to take into account actual work to reduce discharges that has already been completed in certain waters and has been recognized by the NH Bacteria TMDL Report (e.g., Axe Handle Brook-Howard Brook). EPA’s use of this outdated information significantly undermines the assumptions on which the NH MS4 Permit is based.
- **Inappropriately Allows other Water Bodies to be Considered “Water Quality Limited” Outside of the NHDES 303(d)/CALM Assessment Process Creating Uncertain Future Changing Conditions -** The NH MS4 Permit incorporates additional requirements to address the listing of additional “impaired waters” or the addition of “water quality limited” waters during the term of the permit. (See for example §2.2.2(a)(i)(2), §2.2.2(b)(i)(2) and §2.2.2(c), (d) and (e).) Such language would potentially, and automatically, require significant changes to a permit during the pendency of the permit term. This is inconsistent with the manner in which most NPDES permits are implemented. While a typical NPDES permit may be modified based on changed conditions or changed regulations, such modifications require specific actions that may be appealable. (See for example 40 C.F.R. §122.62.) No such process is required here. To the contrary, the NH MS4 Permit provides no process to request removal of unnecessary controls should waters be delisted, determined no longer to be impaired, or determined to have improved during the term of the permit. The NH MS4 Permit should contain language making it clear that permit requirements will not automatically change during the course of the permit term, and that changes may be implemented through the process of permit amendment, consistent with law.

II. Section specific comments:

- **§2.1.1.c –** This section of the NH MS4 Permit uses the term “water quality limited water body” (WQLWB) for the first time and is not clearly defined. Its use is repeated a number of times thereafter. WQLWB is a term that is not defined in the CWA or applicable regulations. It is however defined in §2.2.2 of the NH MS4 Permit more broadly than the terms “water quality limited segment” which is specifically defined and has specific regulatory significance (See 40 C.F.R. §130.2). Its use could impose requirements on waters not yet determined to be impaired based on limited data, or even waters that have been or may be delisted. Moreover, its use could potentially allow EPA to disregard the settlement agreement Rochester entered into with NH, dated April 2014

that was based on the “Joint Peer Report of Peer Review Panel” commissioned by Coalition members and NHDES, dated February 13, 2014, which found little support for the assumption that eel grass loss in the Great Bay is directly related to nutrient inputs.

- §2.1.1.d – requires that certain discharges be “eliminated” w/in 60 days – a potentially impossible/illegal standard. There is also no consideration of other discharges that may be causing most or even all of the problem. Elimination of such MS4 discharges could be required even for fractional contributions to alleged impairments and even where no contribution is proven. Such “elimination” goes far beyond the MEP standard, and the minimum controls, that should apply to such discharges. Its application in the NH MS4 Permit is therefore contrary to law.
- The change of wording in §2.2.1(d), (e), and (f) appears, without explanation, to exclude non-traditional and transportation MS4s, where the wording used in §2.2.2 (a) specifically includes these other MS4 permittees. The wording in all sections should be consistent to avoid confusion. Such inconsistency may have the effect of imposing disparate requirements on other MS4s, while ignoring the contribution of such excluded MS4s.
- §2.2.2.a/b – refers to WQLWB for nitrogen/phosphorus. Such reference clearly attempts to impose requirements on waters beyond those listed on the 303(d) list. More importantly, this seems to assume actual impairment. Peer reviewers who assessed such potential listing disputed such assumptions and there is no proof, Rochester contends, of such impairment in most cases. NHDES’ Draft 2014 303(d) list recognizes the uncertainties raised by the peer review and proposes delisting or downgrading the water quality status to Insufficient Information- Not Potentially Supporting (3-PNS), which is considerably different from a Category 5 listing of an impaired water body.
- §2.2.2.a.i.2 – requires reductions if the permittee “becomes aware” during the permit term that the water into which it discharges is impaired (or presumably is a WQLWB). This changes permitting requirements mid-permit, which is contrary to law. The term “becomes aware” is not defined. The impaired waters status should be based on the §303(d) listing assessment process, which is presumably based on certain data quality assurance and control standards. See also general comment above.
- §2.2.2.c – there is confusion over bacteria/pathogen requirements. It is unclear how the requirements for 2.2.2.c (water quality limited water bodies) dovetails with the 2.2.1 requirements for water bodies with approved TMDL’s on page 3 of the permit. One cannot reasonably determine what measures may be needed for stormwater since the NH Statewide Bacteria TMDL Report did not provide estimates of bacteria contributions by source(s) nor did it provide a breakout of target allocations for various sources. Moreover, the TMDL Report did not account for site specific sources such as time of travel, flow conditions or dilution in the area streams, which are major factors in developing TMDL allocations consistent with EPA guidance. Any such requirements should be clarified and unified. Also, since the recently approved 2012 NHDES 303(d) list delisted many of the various bacteria impaired waters located in Rochester, the list of

bacteria impaired waters included in Appendix F (currently based on the 2010 list) is out of date and needs to be corrected.

- §2.3.6 – states the objective for new development is to “mirror” pre-development hydrology and “improve hydrology and reduce SW” for re-developed sites. Rochester believes such standards are ambiguous and may not be achievable at any reasonable cost. Moreover, such a standard is clearly beyond MEP and is therefore unlawful.
- §2.3.6.a.ii (a) requires Low Impact Development (“LID”) to the maximum extent “feasible.” Rochester believes such a requirement is not reasonably achievable. Moreover, such a standard is clearly beyond the MEP standard and beyond applicable law.
- §2.3.6.a.ii (b) contains ambiguous requirements for salt/snow storage areas on new/re-development sites. By way of example, it requires “no untreated discharge” and fails to define “treatment of stormwater.” Such requirements may not be reasonably achievable and are clearly beyond MEP and applicable law.
- §2.3.6.a.ii(d) applies NH Alteration of Terrain (AoT) regulations (NH Code of Administrative Rules § Env-Wq 1500) to all new and redeveloped sites, well beyond the current regulatory threshold that requires only sites disturbing more than 50,000 sf or 100,000 sf of area, depending on location, to comply with these regulations. The overly broad statement of the application of these regulations is therefore contrary to law.
- §2.3.6.a.ii(e) – imposes a requirement to “retain” or “treat” all runoff regardless of effect. Such requirement is ambiguous and well beyond the scope of the SW MEP standard and applicable law.
- §2.3.6.a.ii(f) – the language of this section is confusing in distinguishing how the proposed 10 percent threshold applies to redevelopment and road widening, and appears “arbitrary and capricious” as no basis for these thresholds was provided. Presumably, as written, any road widening (unclear if this includes repaving work) that increases the road width by 10 percent or any redevelopment, involving more than 1 acre, that increases the impervious area by 10 percent or more, would be required to fully meet all of the AoT stormwater management requirements. This standard is well beyond what is required by the AoT regulations and is inconsistent with the recommended guidelines included in the DES and Southeast Watershed Alliance Model Stormwater Management Ordinance/Regulations, which relies on MEP principles for redevelopment and has been adopted by many NH communities. It also imposes a requirement to “improve existing conditions” for virtually all redevelopment and all roadway widening where the impervious area and road width increases are less than 10 percent. The imposed standard, “improve SW where feasible” is ambiguous and undefined. These provisions are overly broad and may capture many re-paving projects. Such provisions are beyond the scope of MEP and beyond applicable law.

- §2.3.6.c – requires extensive reports on street design and incorporates LID “if it can be” incorporated. Such requirements are ambiguous, beyond the scope of the SW reduction requirements in applicable regulations and beyond MEP standards and applicable law.
- §2.3.6.d – requires the conduct of broad feasibility studies to implement all green infrastructure possibilities. Such requirements are unlikely to be reasonably achievable and clearly beyond MEP and applicable law.
- §2.3.6.e – requires an extensive inventory of all permittee-owned properties that “could be” retrofitted with BMPs. This requirement contains ambiguous terminology (e.g., “could be”) and is clearly beyond the scope of MEP. Moreover, it removes all flexibility afforded to the municipality to determine the most cost-effective alternatives. Modifications to other municipal activities and practices such as fertilizer use, sewer extensions and wastewater treatment could provide equal or greater pollutant load reductions. Finally, such a requirement is unlikely to be reasonably achievable and beyond applicable law.

III. Appendix H comments:

- Appendix H/§I/II creates a number of new housekeeping requirements for municipalities with respect to nitrogen and phosphorus. Such requirements unlawfully simply *assume* such sources are causing impairment. By way of example, Section I.1.a.i requires use of slow-release fertilizers, proper management of grass cuttings and leaf litter (including a prohibition on blowing organic waste onto impervious surfaces) and increased sweeping of all streets/roads in a municipality twice per year. Such requirements create significant burdens of municipalities (e.g., not all roads are paved and therefore able to be swept), and are unable to be reasonably achieved. Moreover, such requirements ignore the fact that a municipality may determine that there are other more effective and cost effective solutions and they remove flexibility on municipalities contrary to law.
- §I.1.b.i – requires a nitrogen source report that may not be reasonably achievable and is based on unsubstantiated assumptions regarding nitrogen impacts to the Great Bay Estuary.
- §I.1.1.c – requires the permittee to evaluate all permittee-owned properties for structural BMP retrofit opportunities within 5 years. This is highly prescriptive and may not be necessary if other nitrogen control strategies can be demonstrated to show similar reductions through other structural or non-structural measures, including offsets provided by additional treatment for redevelopment projects. Requiring that only stormwater retrofit opportunities be considered is likely to add unnecessary costs, be infeasible and is beyond MEP and applicable law.
- Under the NH MS4 Permit, the only way to “waive” out of many of the requirements mentioned above is through extensive and expensive sampling to

show - to EPA's satisfaction - "no measurable amount of nitrogen/phosphorus" in discharges. (See for example §I.2.) Such a requirement unlawfully shifts the burden to the permittee to comply with an impossible (e.g., "no measurable amount") standard. Such requirements are well beyond MEP and are contrary to law.

- Appendix H/§III - §3.i.2 requires the designation of any catchment discharging to a water that has been determined to be impaired for bacteria/pathogens as a problem/high priority that requires significant upgrades. These provisions impose arbitrary and ambiguous requirements in that they are undefined and assume such catchments contribute to such impairment. Municipalities should be provided flexibility to utilize their local knowledge and knowledge of their own systems to undertake the most cost effective approaches to reductions of such discharges. In addition, the only mechanism to waive out such requirements is to prove – to EPA's satisfaction – that there is no measurable discharge of such pollutant. Particularly in the case of bacteria/pathogens, such standard is impossible, and therefore arbitrary and capricious. One visiting goose would cause an inability to waive out of these requirements. Moreover, there is a confused overlap between the requirements of Appendix F and Appendix H. One applies to waters with TMDLs, while the other does not even require listing. These requirements are well beyond MEP and applicable law and ignore the concepts of BMP and flexibility. This requirement also ignores recent data and implemented improvements in these waters.

IV. Appendix F comments:

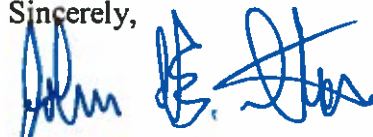
- Appendix F recommends implementation on a watershed basis, suggesting that more specific watershed plans be developed, where appropriate, to focus and prioritize appropriate restoration measures. Although this language allows greater flexibility in allocating resources and selecting effective measures, which we applaud, it is inconsistent with municipal-specific requirements set forth throughout the permit.
- Appendix F requires the implementation of enhanced BMPs. By way of example, one significant requirement is the illicit discharge section (A.1.i.2), which requires the designation of all catchments draining to any waterbody impaired for bacteria or pathogens as either "Problem Catchments" or "High Priority" and the implementation of a strident, prescribed Illicit Discharge Detection and Elimination ("IDDE") program. This "one-size-fits-all" approach assumes that SW is the primary source and ignores other significant factors involved with bacteria source contributions. This could impose considerable and unnecessary administrative and financial burdens for municipalities to meet the prescribed completion schedule for IDDE investigations without considering other potential source contributions. Such requirements may not be feasible and are beyond MEP and applicable law.
- Unlike Appendix H, Appendix F does not provide a mechanism to demonstrate that the MS4 discharges are not impacting receiving waters. This is particularly important for

bacteria impaired waters since the statewide bacteria TMDL report did not provide any estimates of source contribution. The NH MS4 permit assumes that SW is a major source of bacteria, which is likely *not* to be the case in many areas. Reasonable provisions to "test out" should be incorporated.

- The list of bacteria impaired water bodies needs to be corrected as it based on the 2010 303(d) list and the recently approved 2012 303(d) list delisted many of these water bodies due to a lack of sufficient information, particularly for water bodies located in Rochester.

Rochester appreciates the opportunity to provide these comments and looks forward to further revisions of the NH MS4 Permit consistent with these comments. Please call me at 603-332-4096 if you have any questions or if additional detail would be helpful.

Sincerely,



John B. Storer, P.E.
Director of Public Works

cc: Daniel Fitzpatrick, City Manager
Terence O'Rourke, City Attorney
Michael Bezanson, City Engineer
Attorney Steve Miano
Attorney Sherry Young
Bill Arcieri, VHB
Renee Bourdeau, GeoSyntec

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November 2, 2015

Newton Tedder
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U.S. Environmental Protection Agency – Region 1
5 Post Office Square – Suite 100
Boston, MA 02109-3912

**Re: New Hampshire MS4 Communities' Joint Comments in Response to
Proposed Draft General Permits for Stormwater Discharges from
Small Municipal Separate Storm Sewer Systems, NPDES Permit Nos.
NHR041000, NHR042000 and NHR043000**

Dear Mr. Tedder:

On behalf of the following New Hampshire MS4 Communities that
comprise the New Hampshire Stormwater Coalition:

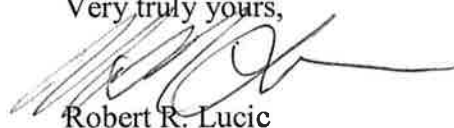
Town of Amherst
Town of Bedford
Town of Danville
City of Dover
Town of Hampton
Town of Londonderry
City of Manchester
Town of Merrimack
City of Portsmouth
Town of Raymond
City of Rochester
Town of Rollinsford
Town of Salem
Town of Stratham

Pursuant to the re-opening of the comment period on select sections of the
Draft Small Municipal Separate Storm Sewer System (MS4) NPDES General
Permit-New Hampshire, Hall & Associates and Sheehan Phinney Bass + Green,
PA submit these joint comments in reference to Sections 2.1.1, 2.2 (including all
subsections), Appendix F and Appendix H.

In addition to these joint comments, many of the above-listed communities are submitting separate comments to address specific issues that relate to the individual concerns of those communities.

If there are any questions on the comments or further information is required, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. Lucic', with a long horizontal flourish extending to the right.

Robert R. Lucic

Enc.

Comments on Stormwater Rule Amendments

The following presents the comments of the following New Hampshire MS4 communities: Town of Amherst, Town of Bedford, Town of Danville, City of Dover, Town of Hampton, Town of Londonderry, City of Manchester, Town of Merrimack, City of Portsmouth, Town of Raymond, City of Rochester, Town of Rollinsford, Town of Salem and Town of Stratham regarding the proposed MS4 general permit provisions EPA has republished for comment on September 1, 2015.

Incorporation by Reference

The prior comments submitted by the NH Stormwater Coalition are hereby reiterated and incorporated by reference. In particular, comments on pages 6-12, 15-17 and 23-29 are also applicable to this set of proposed changes.

General Comments

EPA is proposing a permitting approach in revised permit provisions (*e.g.*, Sections 2.1.1, 2.2, 2.2.2, 2.3.6) that are (1) not authorized by Section 402(p) of the Clean Water Act, (2) not authorized by the adopted storm water permitting rules 40 CFR 122.26 *et seq*, (3) inconsistent with data and analysis requirements applicable to establishing water quality-based permitting under 40 CFR 122.44(d) and are contrary to the agency's published decision addressing various petitions for residual designation under CWA Section 402(p). In essence, EPA is acting beyond its statutory and regulatory authority in seeking to enact these provisions. Specifically, EPA's proposal concludes that it is acceptable to presume that all MS4 stormwater sources have the reasonable potential to cause and contribute to water quality standard violations, without the use of any site-specific data analyses or assessment of the various loading sources causing an exceedance to exist or any existing or proposed controls that are intended to address or resolve the exceedance. Such "probabilistic" analyses (*i.e.*, claiming that one can presume the specific stormwater discharge is causing a violation of applicable water quality standards based on generalized information) (1) are not authorized by the APA or the applicable NPDES rule for stormwater permitting and (2) was expressly rejected by EPA in turning down the various petitions for rulemaking filed by NRDC and others (*e.g.*, CLF) on this subject.

Clean Water Act provisions, like their Clean Air Act counterparts, are based on a causation demonstration confirming the need for the addition pollution reduction requirements (*See, e.g.*, *Sierra Club v. EPA*, No. 12-2853 (7th Cir. Dec. 16, 2014).) Such causation demonstration must be "more than simply draw[ing] a correlation in the absence of an adequate causative link." *Id.* Moreover, the impact must be "reasonably attributed" to the pollutant sources. *Id.* While 40 C.F.R. § 122.44(d) doesn't require the relationship to be documented to a scientific certainty, the

phrase “reasonable potential” was not intended to allow the imposition of limitations simply based upon speculation that a discharger is causing or contributing to an impairment. EPA’s misplaced claim aside, the entire Clean Water Act is premised on the idea of regulating when “necessary” (assessing causes and effects) to ensure one is regulating the proper pollutant at the proper level. For instance:

- All EPA WQS/criteria are based on a cause/effect demonstration or at the level necessary to protect use; [See 40 C.F.R. § 131.3(c); 40 C.F.R. § 131.2(a)]
- Water quality-based effluent limitations when dischargers are interfering with attainment of water quality; [CWA § 302(a)]
- EPA guidance on nutrient regulation for estuaries explicitly requires cause and response relationship; [See Att. 65, EPA Estuarine Criteria Guidance at 7-5, *passim*]
- EPA guidance providing how to use ambient data to make valid cause and effect predictions for nutrients. [See Att. 59, EPA Stressor Response Guidance, at 6, 32]

The NPDES permitting program merely integrates these aspects of the CWA (*e.g.*, water quality standards, impairment listings, etc.); it isn’t an independent program that creates additional effluent restrictions without a site-specific demonstrated need. Put differently, EPA can’t just arrive at the permitting stage and do what it pleases. *Am. Paper Inst. v. United States EPA*, 996 F.2d 346 (D.C. Cir. 1993). The point is simple – without some reasonable cause/effect analysis, which EPA agrees that it does not possess in this case, there is no objective basis to determine (1) if the pollutant is part of the problem, (2) if something else is responsible, or (3) how much control is needed. Consequently, this proposed permit action is fundamentally flawed and must be withdrawn.

These are precisely the same conclusions drawn when EPA rejected multiple petitions from NRDC and CLF to use “residual designation” authority to establish more restrictive “water quality-based” requirements on presently unregulated stormwater sites. (*See*, EPA Region 1, 3, and 9 petition response letters from March 2014). In rejecting the petitions, EPA observed that it was required to (1) evaluate the nature of the individual watersheds (2) assess the nature of the impairment (3) determine the extent to which stormwater discharges contributed to the problems and then, if appropriate, only regulate “significant contributors”. (*See, e.g.*, EPA Region I response of March 11, 2104 at 1). EPA noted that the available data must be sufficient to allow these assessments to occur and that Section 303(d) listings “*alone do not provide the connection between the impairments and any ...stormwater sources.*” (*Id* at 9 – emphasis supplied). EPA ultimately concluded that the available data “does not provide the Region with specific information about the specific sources within the Region.” *Id.* In rejecting the petition, EPA concluded that “Petitioner’s approach is too simplistic.” *Id.*

It is not apparent how EPA could conclude that certain data requirements and specific showings are necessary to regulate stormwater discharges on the basis of alleged water quality impairment and then, a mere 18 months later, assert that the same “simplistic” approaches (without the necessary data and analyses) are now acceptable for imposing more restrictive requirements on the MS4 communities. Such action is a quintessential example of arbitrary and capricious behavior under the Federal Administrative Procedures Act.

General Objections Applicable to Entire Regulatory Action

Case Specific Impact Demonstration Is Required by the Act and Existing Rules to Impose More Restrictive Water Quality-based Limits

EPA’s Nov. 26, 2014 MS4 stormwater policy paper¹ states that in order to impose a water quality-based limitation on a stormwater discharge, a site-specific finding must be made on an individual permit basis showing that a discharge needs a specific water quality based limitation:

“Where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality standard excursion, EPA recommends that the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations as necessary to meet water quality standards.” (at 4).

Page 10 of EPA’s stormwater guidance provides a sample permit provision that illustrates how such a limit is to be structured:

“Discharges from the MS4 must not cause or contribute to exceedances of receiving water limits for Diazinon of 0.08µg/L for acute exposure (1 hr averaging period) or 0.05µg/L for chronic exposure (4-day averaging period), OR must not exceed Diazinon discharge limits of 0.072 µg/L for acute exposure or 0.045µg/L for chronic exposure (2013 San Diego, CA Regional MS4 permit).”

Rather than complete the necessary analysis considering the requisite site-specific factors and create the specific limitation necessary to resolve the impairment concern, EPA has created a general conclusion that since all stormwater contains metals, nutrients, and bacteria, one may simply presume that the discharge significantly “causes or contributes” to downstream water quality exceedances, whenever those pollutants are identified as exceeding water quality standards on a Section 303(d) list. This “guilty until proven innocent” approach is not authorized by any implementing regulations under 40 CFR 126 *et seq* and is clearly contrary to the requirements of 40 CFR 122.44(d) for the following reasons:

¹ http://water.epa.gov/polwaste/npdes/stormwater/upload/EPA_SW_TMDL_Memo.pdf

- EPA is presuming that the stormwater discharge contribution to an alleged impairment is more than “*de minimis*” with no data or analyses to support that conclusion. The Act does not authorize EPA to regulate “*de minimis*” pollutant contributions. (*Alabama Power Co. V. Costle*, 636 F.2d 323 (D.C. Cir. 1979) (“the law does not concern itself with trifling matters”); *Public Citizen v. Young*, 831 F.2d 1108 (D.C. Cir. 1987) (statutory implementation should not yield “futile results”). EPA itself has stated such contributions do not have to be regulated under the federal stormwater and water quality-based permitting programs.²
- All water quality based analyses must consider the factors identified in 40 CFR 122.44(d)(ii) regarding current data on the relative contribution of other sources, available dilution and existing and anticipated pollutant reductions from the major sources of the pollutant of concern – EPA’s analysis does none of this. It is axiomatic that an agency must conform its actions to its published rules. *U.S. v. Nixon*, 418 U.S. 683 (1974). EPA’s action plainly fails to consider the factors required by the adopted rules as a prerequisite to imposition of a water quality-based limitation. These are the prerequisites EPA itself applied to the NRDC/CLF petitions. Such action is therefore, *per se*, arbitrary and capricious under *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (U.S. 1983), the seminal case governing review of agency decision making under the federal Administrative Procedures Act.
- The existence of a Section 303(d) listing at some downstream location does not provide a rational basis for concluding that all contributing or upstream stormwater sources must be regulated to achieve water quality standard compliance. (See, EPA Region I NRDC/CLF petition response). First, fate and transport of the pollutant must be considered as pollutants settle and bacteria die off. Thus, the amount of pollutant reaching the area of concern could be of no relevance for standards compliance. Second, the source of and timing of the conditions surrounding the impairment listing could have nothing to do with MS4 contributions (e.g., combined sewer overflow, natural runoff, farm land contribution, local wild geese population, nutrient impact under low flow conditions when MS4 contributions are essentially non-existent). There is no rational basis to presume, *a fortiori*, that regulating MS4 loadings is always required to abate an impairment listing. In fact, as noted earlier, EPA’s response to a similar approach requested by CLF/NRDC was rejected as contrary to existing rules and statutory requirements.

² EPA authorizes *de minimis* changes to water quality under the federal antidegradation program. EPA’s petition responses to NRDC and CLF concurred that the stormwater discharge must be more than *de minimis* for it to be regulated, it must be a “significant source of pollutants”.

- Where the MS4 is not directly contributing the pollutant of concern to the segment where the impairment exists, it is plainly improper to presume further reductions must occur to achieve compliance downstream. *National Mining Ass'n v. Jackson*, 880 F. Supp. 2d 119 (D.D.C. 2012). In this instance, the MS4 is not causing or contributing to a standard violation at the point of discharge. This meets the terms of 40 CFR 122.44(d) under which no water quality-based limit is to be established. Unless EPA can demonstrate that some type of “cumulative” pollutant effect is only manifesting itself at a downstream location no limit is allowed. Absent such analysis in this document, EPA is acting beyond its statutory authority by regulating more stringently even discharges that meet water quality standards.
- EPA is also improperly presuming that whatever data used to develop a Section 303(d) listing reflects current conditions in the water body – this is also not objectively accurate. For example, the most current Section 303(d) listing for New Hampshire, at the time this action was proposed in 2015, was the 2010 Section 303(d) list – based on data from 2008 which are presently 7 years out of date. 40 CFR 122.44(d)(ii), however, requires that the Agency use “current data” in determining the need for water quality based limitations. As noted by EPA’s Environmental Appeals Board “using the most currently available data is logical and rational in light of the need to assure compliance with water quality standards.” *In re Town of Concord, Dep’t of Pub. Works*, NPDES Appeal No. 13-08, 16 E.A.D. __, 14 (EAB 2014) (internal citations and quotations omitted). This regulatory action plainly fails to meet that requirement. The need for current information is underscored by the NHDES action on the proposed 2014 303(d) list, which has deleted many water bodies as not impaired, based on more recent regulatory analyses and data collection. This includes numerous nutrient impairment delistings for Great Bay Estuary – in consideration of a 2014 independent peer review conducted by DES and the local communities. It is plainly arbitrary and capricious for EPA to have created a rule – frozen in time – that fails to accommodate any assessment of current water quality data or other relevant scientific analyses to confirm or refute the need for more restrictive water quality based requirements for MS4 communities, as evidenced most clearly by the DES impairment actions for Great Bay Estuary.
- EPA’s assertion that using approved Section 303(d) listings as conclusive proof of the need to regulate MS4 contributions of certain substances is directly at odds with EPA’s legal arguments submitted to the DC Circuit and accepted by that court on that issue. *See Dover, et al. v. EPA*, Docket No. 1:12cv1994 (D.D.C. Dec. 13, 2012). The Court agreed with EPA that impairment listing do not trigger any specific regulatory mandates for communities discharging the pollutant of concern. Such action is merely a preliminary step in the process which may or may not result in the need for specific pollutant reductions from point sources. EPA’s assertion that any downstream

impairment listing should always result in further restrictions on MS4 contributions is specifically at odds with the holding of that case - *that EPA itself sought*.

In summary, EPA's approach regulates by presumption and fails to develop the case-specific analyses (using current information) that is, by rule, required to impose a more restrictive water quality-based limitation. EPA is therefore acting inconsistent with the adopted rules and is acting beyond statutory authority.

A Prohibition on “Causing or Contributing” a Pollutant to Waters Exceeding Standards Does Not Exist Under the Act or Implementing Regulations

The revised Section 2.1.1.a. seeks to impose a new discharge prohibition for all MS4 dischargers – “such discharge may not cause or contribute to an exceedance of water quality standards.” Once again, this new regulatory provision is infirm for a host of legal and technical reasons, as follows:

- As described in EPA's stormwater permitting guidance, noted above, a water quality-based limit must identify the specific numeric characteristics of the discharge that constitute compliance (*e.g.*, milligrams of pollutant for a specific flow rate or the allowable pounds of pollutant). See, 40 CFR 122.45(e),(f). Moreover, rather than establish a specific water quality-based limit regarding the pollutant of concern, EPA seeks to impose a vague “no cause or contribution” mandate – the most restrictive limitation possible. Such a non-specific compliance requirement is “void for vagueness” as it provides no objective basis to determine what actually constitutes compliance. See *McClellan Ecological Seepage Situation v. Weinberger*, 707 F. Supp. 1182, 1198 (E.D. Cal. 1988). Prohibitions based upon “contamination,” “pollution” or “nuisance” lack precision and objectivity that led courts in NYS to dismiss similar CWA claims.³ EPA must identify the specific limitation that would apply in this circumstance.
- The CWA does not allow for non-compliance to be based on the mere “contribution” of a pollutant to alleged water quality impairment or permit violations. (See, *National Ass'n of Metal Finishers v. EPA*, 719 F. 2d 624 (D.C. Cir. 1983)). Any alleged violation of CWA requirements must be based on a causation analysis that demonstrates the connection between the pollutant discharge and the alleged violation at issue.⁴ (*Id* at 640

³ EPA has, in other circumstances, indicated that not establishing a water quality-based limit may occur if (1) the pollutant is not discharged or (2) the discharge meets the applicable standard end of pipe. However, no such rule has ever been established and EPA Headquarters has not issued specific guidance asserting that meeting such limitations constitutes compliance with Section 301(b)(1)(C) of the Act.

⁴ See *Upper Blackstone Water Pollution Abatement Dist. v. EPA*, 690 F.3d 9, 14 (1st Cir. 2012) (“State water quality standards generally supplement these effluent limitations, so that where one or more point source dischargers, otherwise compliant with federal conditions, *are nonetheless causing a violation of state water quality standards*, they may be further regulated to alleviate the water quality violation.”) (emphasis added); *id.*, at 25-26

“that neither the language of the Act nor the intent of Congress appears to contemplate liability without causation.”) *rev'd on other grounds Chemical Mfrs. Ass'n v. Natural Res. Def. Council*, 470 U.S. 116 (1985); *Ark. Poul. Fed. v. Env'tl. Prot. Agency*, 852 F.2d 324, 328 (8th Cir. 1988) (stating the discharge must at least be “a cause” of the violation). Simply claiming someone “contributed” a pollutant does not objectively provide such a demonstration and was rejected by EPA in its petition responses. Therefore, attempting to hold a community in violation of its MS4 permit simply because it contributes some amount of a pollutant is beyond EPA’s statutory authority.

- The “no cause or contribute” discharge prohibition is contrary to both the adopted NPDES rules and the US Supreme Court case in *Oklahoma v. Arkansas*, 473 U.S. 610 (1985). As confirmed by the Supreme Court, the CWA does not contain a discharge prohibition simply because a discharge is contributing to a downstream water quality impairment or violation of a downstream state’s standards. This restriction is certainly not contained anywhere in 40 CFR 122.26. Moreover, under the existing NPDES rules, and consistent with the Supreme Court decision, the “no cause or contribute” restriction only applies to *new sources* seeking permits to discharge to existing impaired waters (See, 40 CFR 122.4(i)). MS4 communities are not “new dischargers” under the Act. The relevant provision, 40 CFR 122.44(d), established that some limitation may be required for a discharge that “causes or contributes” a pollutant – it plainly does not establish that any such discharge may not “cause or contribute” as EPA has attempted to establish here. EPA is illegally seeking to amend the requirements of 40 CFR 122.44(d) to be more restrictive.
- EPA’s action also illegally seeks to prevent communities from offsetting loadings of a particular pollutant from a different source and thereby obviate the need for any MS4 reductions – assuming that the contribution of the pollutant to a problem was significant. If the pollutant can be removed more cost-effectively by a POTW or another source, there is no requirement that the pollutant nonetheless be further restricted by the MS4 source.
- The Appendices (F/H) indicate that to avoid the more restrictive requirements the community must show that the pollutant is not “measurable” in the discharge. This effectively imposes the detection levels contained in 40 CFR Part 136 as effluent limitations that must be attained. There is no analysis, however, showing that these detection levels have anything to do with demonstrating standards compliance. On its face, the selection of detection levels as the required effluent limitations for all MS4 communities is arbitrary and capricious as the establishment of Part 136 detection levels has nothing to do with water quality standards attainment in general, and most certainly

nothing to do with the needs of specific water bodies identified as impaired on a state's Section 303(d) list.

- Finally, EPA's immediately applicable prohibition contained in this rule is contrary to the state's rules which allow for schedules of compliance where needed to achieve water quality standards compliance. Based on the existing state law, NPDES permits may contain extended schedules of compliance to achieve water quality-based limits. By establishing the discharge prohibition, EPA negates state law and places communities in immediate non-compliance for every Section 303(d) impairment listing for any pollutants EPA claims are measurable in all stormwater discharges (metals, bacteria, chloride, nutrients). EPA is required to issue permits consistent with the applicable state laws for proper implementation of water quality standards – not to run roughshod over those requirements. *See, In the Matter of Star-Kist Caribe, Inc.*, 3 EAD 172 (Apr. 16, 1990).

EPA's Non-TMDL Available Reduction Mandates Are Arbitrary and Capricious

EPA seeks to establish, presumptively, that anytime a discharge “causes or contributes” a pollutant related to some identified water quality impairment – the community must act to immediately eliminate the contribution of the pollutant. *See, e.g., 2.1.1.d.* The record, however, contains no analysis showing that such a level of control (pollutant elimination or reduction to the level that does not “cause or contribute”) is “necessary” to bring the waters of concern into compliance. In essence, EPA is leaping to the conclusion that the most restrictive effluent limitation possible (*e.g.,* meet water quality standards end-of-pipe or prove it can no longer be measured in the effluent) is the limit that is justified by the situation. This regulation is presumption, not analysis, and is contrary to the requirements of both the CWA Section 301(b)(1)(C) and 40 CFR 122.44(d) which require that only the “necessary” effluent limitation be established. This is beyond EPA's statutory authority and is inconsistent with the requirements of 122.44(d) since no objective basis is presented to demonstrate that the most restrictive limitation is required, in advance of a TMDL that could certainly establish that no limitation at all is required.

EPA is establishing that, in advance of a TMDL being prepared, a stringent “meet WQS end-of-pipe” is mandated by the adopted rules. EPA has never adopted such a rule and this would be a major modification to 40 CFR 122.44(d) which contains no such provision, but directs the permitting authority to use discretion considering the site-specific circumstances to fashion a reasonable effluent limitation, where a TMDL is not available. There are literally thousands of permits that have been issued and reissued in advance of TMDL completion that did not mandate WQS compliance end-of-pipe pending TMDL completion. Even the federal mercury and PCB TMDLs do not require any specific action to reduce mercury in MS4 discharges, though the level of mercury in stormwater is “measurable” and often exceeds the applicable WQS due to

atmospheric deposition. Plainly, the existence of a pollutant in a discharge does not and cannot create a presumption that a ban on “causing or contributing” the pollutant applies. EPA has not mandated that states follow this more restrictive approach when acting in their delegated program capacity in issuing permits or in issuing TMDL decisions. To the degree EPA is claiming that 40 CFR 122.44(d) mandates the result they are imposing, they are undertaking an illegal modification to the applicable rules.

Specific Objections

Approved TMDL Implementation Is Not Apparent for Bacteria – Section 2.2.1.e

An approved statewide bacteria TMDL has been approved by EPA. EPA has stated that the communities that “cause or contribute” bacteria must comply with the approved TMDL. *See, e.g., 2.1.1.b.* However, the Bacteria TMDL, on its face, states that specific effluent limits are not to be applied to intermittent discharges and that the dilution in the receiving water must be considered in deciding what if any additional pollution reduction measures are needed. (Bacteria TMDL at 37, Note 2). Therefore, unless and until instream dilution is considered, which has not occurred in this TMDL, further measures to implement the approved bacteria TMDL are not apparent. Moreover, where CSO discharges or other illegal contributions (*e.g.,* direct discharge from septic systems) are the source of the bacteria exceedance, mandating more restrictive action by MS4 discharges is plainly inappropriate.

EPA Statements Regarding Aluminum Compliance Are Unsupported and Vague - Section 2.2.1.c

EPA’s proposal recognizes that the TMDL analyses for aluminum do not mandate any action by MS4 communities, but asserts that if any contribution in excess of that present atmospherically is encountered, more restrictive “elimination” requirements automatically apply. The “elimination” of the condition is nowhere justified by the analyses presented in support of this regulatory action and is therefore arbitrary and capricious. There is no basis to conclude that where waters are presently not meeting standards due to atmospheric sources that any increment above that level must be eliminated – even if the incremental impact is *de minimis*. *Alabama Power Co. V. Costle*, 636 F.2d 323 (D.C. Cir. 1979) (“the law does not concern itself with trifling matters”); *Public Citizen v. Young*, 831 F.2d 1108 (D.C. Cir. 1987) (statutory implementation should not yield “futile results”). At a minimum, some site-specific analysis would be needed to justify the level of pollutant reduction needed under the specific circumstances.

Phosphorus Requirements – Section 2.2.1.f

Whether or not action is required by any and all MS4 areas tributary to a lake or pond with a phosphorus TMDL should be determined on a case-by-case basis, not ordered unilaterally by this rule. Such determination must be made consistent with the TMDL analyses, as mandated by 40 CFR 122.44(d)(1)(vii).

Chloride Requirements – General

The present chloride criteria utilized to derive TMDL reductions and identify waters as chloride impaired are seriously out of date. EPA has approved updated, less restrictive chloride criteria for several states in consideration of the extensive database of new studies confirming that less restrictive chloride criteria are protective of aquatic life resources. Before further implementation of the TMDLs that were based on the outdated standards, NH communities will be requesting either statewide or site-specific use of the updated criteria.

Claim to Regulate Non-Water Quality Listed Segments – Section 2.2.2

EPA asserts that any existing “water quality limited” segment without an approved TMDL must be addressed by implementing more restrictive requirements by the MS4 discharge in that area, or at times, tributary to the area of concern. Additional implementation and study requirements are identified in Appendix H. Beyond regulating waters that are specifically found to be water quality impaired, EPA is also asserting authority to impose more restrictive MS4 requirements on (1) waters that NHDES expressly concluded are NOT impaired at this time (*e.g.*, Great Bay Estuary – see proposed 2014 listing) and (2) any waters not previously identified as impaired by NHDES, but new information indicates may be impaired (“any other permittee that, during the permit term, becomes aware that its discharge is to a water body that is water quality limited...”). EPA’s proposed approach is inappropriate for several reasons:

- Where more recent data under evaluation by NHDES indicate that a prior impairment no longer exists (such as in the case for nitrogen in Great Bay Estuary), EPA must provide for an allowance to use the most current information and analyses. Continued reliance on outdated information is plainly not consistent with the NPDES program requirements. The Cities of Dover, Portsmouth, and Rochester are most certainly not causing or contributing to a nitrogen induced water quality impairment. As confirmed by the 2014 Independent Peer Review and verified by NHDES in its settlement agreement (and current 303(d) assessment), existing information does not show that nitrogen is causing impairment in the areas of Great Bay Estuary materially impacted by these discharges. (See Attachments). Available data confirm that existing TN levels in the system are lower than those present in 2003 when no concerns over eelgrass or macroalgae impairments existed. The growing season average TN levels are, in fact, well below those reported in the literature as fully supporting eelgrass populations. They are also at or below the levels EPA has acknowledged are safe for eelgrass growth in Massachusetts estuaries (*i.e.*, < 0.35 mg/l TN growing season average). There is no rational scientific or regulatory basis for EPA to assert that the communities of Dover, Rochester or Portsmouth are causing or contributing to a TN impairment in estuarine waters.

Imposition of Appendix H enhanced BMP requirements and additional study requirements are not supportable.

- EPA should not be seeking to impose more restrictive requirements on any MS4 discharge where NHDES has expressly determined that the current data do not verify an impairment for that pollutant (*e.g.*, TN for Great Bay Estuary and fresh water section of the Cocheco River). Likewise, EPA should not seek to substitute its judgment regarding nutrient impairments on rivers or streams or seek immediate action simply because new data are collected. A process of data evaluation, verification and analyses must precede any determination that more restrictive actions by an MS4 community is required, as occurs with the State's 303(d) evaluation process and the issuance of NPDES permits. This case should be treated no differently.

The Requirement to Mirror Pre-development Hydrology Is Beyond Federal Authority

Section 2.3.6 seeks to impose a pre-development hydrology requirement on any new development or redevelopment. Federal courts have repeatedly informed EPA that it lacks authority to regulate based on flow or, to put it differently, to treat flow as a surrogate pollutant. *Va. Dep't of Transp. v. EPA*, No. 1:12-CV-775 (E.D.Va. Jan. 3, 2013). Therefore, all flow-based restrictions contained in this proposed rule must be deleted.

The following directives on requirements for stormwater programs/ordinances in Section 2.3.6.a.ii are also beyond federal authority and more restrictive than the adopted regulatory requirements found in 40 CFR 122.26:

1. Provision a - mandating use of low impact development "to the maximum extent feasible" – EPA is illegally dictating the design of pollution reduction requirements which is beyond its statutory authority *See Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013).
2. Provision b – mandating "no untreated discharge" for chloride found in a snow storage area. No treatment technology can assure such a requirement regardless of the circumstances. This must be qualified "as practicable" pursuant to the statute.
3. Provision c – mandating compliance with a state design practices manual, "as amended, as applicable." This manual must be subject to formal notice and comment if it is to be federally enforceable. Moreover, the requirement to comply with "amended" documents violates NPDES rules which only allow permits to be derived based on existing requirements, not some future document that is not presently available for review. Finally, the inclusion of the statement "as applicable" renders the entire provision void

for vagueness. Who determines what is “applicable” and when do they do this? The applicability of requirements must be known presently to allow a permittee to understand the significance of a requirement and to ensure it knows what to comply with.

4. Provision d – mandating groundwater recharge, control of peak flow rates and channel protection – the Clean Water Act controls pollutants – it does not address any of these requirements which are not within EPA’s statutory authority to regulate.
5. Provision e – also illegally regulates groundwater recharge as a CWA requirement. This requirement is beyond the CWA and therefore should be deleted.

Appendix F Comments - Existing TMDLs

Chloride TMDLs – It is not apparent how the specific measures outlined in this section are demonstrated to be both necessary and appropriate for meeting any adopted chloride TMDL reduction requirements. The Appendix, however, outlines a series of measures that must be implemented “at a minimum.” EPA is again improperly dictating the corrective measures that must be implemented, rather than allowing the permittee to determine what makes sense, is required to address TMDL load reductions and is practicable in this instance. Unless EPA can demonstrate that these requirements are the minimum ones necessary to ensure water quality is attained (which is not presented in the background materials), the “at a minimum” language must be struck and replaced with “at the permittee’s discretion as necessary to meet water quality objectives.”

Bacteria TMDLs – As noted earlier the statewide bacteria TMDL did not establish specific effluent limits but recommended that future assessment efforts consider available dilution in determining what load reductions (if any) are necessary. Given the amount of time that has transpired from the adoption of those TMDLs, it is not apparent that any of the other TMDL recommendations are based on current information regarding existing water quality for any of these areas. Note, for example – stating that the goal of implementation of the Hampton/Seabrook Harbor TMDL is “remove all human sources of bacteria to extent practicable” is not an effluent limit and would certainly require further definition. Some load reduction recommendations (like that of Little Harbor – 12%) are well within the variation of the test method itself. Finally, as recognized by the Statewide Bacteria TMDL, many beach impaired waters are often impacted by bacteria loadings from the swimmers themselves or local septic systems. So, the MS4 loads may not be the material factor controlling compliance. While seeking to educate dog owners may be a common sense step, implementing the illicit discharge program (enhanced BMP i.2) and designating all catchments draining to the water body as a HIGH priority for IDDE implementation is not justified by the background documentation or the TMDLs themselves.

Phosphorus TMDLs – The reported load reductions required for the MS4 communities ranged from 40-80% TP reduction. The CWA requires that MS4 load reductions occur “to the maximum extent practicable.” There is no information in the record showing that these load reductions are attainable. EPA needs to recognize that the duty to reduce loadings is governed by the statutory language.

Appendix – H – Nitrogen (and Other) Reduction Requirements Where No TMDL Is Established

The section proposes imposition of enhanced BMPs for all MS4 communities tributary to an area designated as nutrient impaired due to nitrogen. This is inappropriate and premature. The extent of existing nitrogen impairments are poorly understood as confirmed by the recent draft 2014 Section 303(d) list and the 2014 Peer Review Report that are in EPA’s possession. Pending the resolution of these uncertainties on whether or not any nitrogen impairment actually exists in the Great Bay system, it is premature to mandate enhanced BMPs and additional studies. Moreover, establishing that nitrogen must be “unmeasurable” (Provision I.2) to avoid enhanced BMPs and study requirements is arbitrary and capricious. This provision essentially established that a zero nitrogen discharge must exist for BMPs to be avoided. This is a form of effluent limitation that has no basis in the administrative record.

Likewise, the mandates for additional BMP measures and other detailed/costly studies simply because a water body is listed as impaired for a pollutant, prior to determining whether or not the MS4 is a meaningful cause of the situation, is arbitrary and capricious as it regulates on presumption rather than data and analyses. EPA should not be squandering local resources based on speculation and innuendo rather than sound scientific analyses. Finally, there is no information showing that enhanced BMPs rather than the BMPs typically intended to be implemented will not be more than sufficient to address concerns with contributing MS4 loads. Until such information is presented, it is not defensible to presume that special, additional reduction methods must be employed.




City of Rochester Dept of Public Works

45 Old Dover Road
Rochester, NH 03867
Phone: (603) 332-4096
Fax: (603) 335-4352

Memo

To: Dan Fitzpatrick, City Manager
From: John B. Storer, P.E. Director of City Services
CC: Terence O'Rourke, City Attorney; Blaine Cox, Asst. City Manager
Date: October 2, 2015
Re: Authorization to participate in NH Public Works Mutual Aid



Requesting City Manager approval to participate in the New Hampshire Public Works Mutual Aid Program. A Mutual Aid and Assistance Agreement is attached for your review and approval. The City Attorney has been copied so he can review the Agreement language. There is only a \$25 application fee and participation during an active event is voluntary, depending on availability of resources. A list of FAQ's and a response "cheat sheet" are attached to provide more information.

In reviewing the storm track for Hurricane Joaquin, I noticed that Rochester is not an active participant in the New Hampshire Public Works Association Mutual Aid Program. That was a surprise and I thought it didn't reflect well on the City's image.

In chatting with DPW staff, it sounded like prior Director's felt our department was too lean or lacked resources such that we could respond outside City limits for an event in another community. I couldn't find any other valid reasons for not participating. It sounds like we support our neighboring communities on a regular basis, and vice-versa, so there doesn't appear to be a valid deterrent from actively joining the mutual aid program.

Active participation in the mutual aid program should enhance eligibility for future FEMA funding. Participation could also help us secure resources should we experience some type of crisis or emergency event.

Thank you for your consideration.

FAQs on Mutual Aid and Assistance

Participation will assure that municipalities are prepared to assist each other when emergencies or disasters strike. The following are some frequently asked questions about what mutual aid is and how it works.

What is mutual aid and assistance?

- Mutual aid and assistance is one municipality helping another based on a written agreement.

What is the purpose of mutual aid and assistance?

- It establishes an agreement and protocols for sharing resources among municipalities statewide that is in place before disaster strikes.
- It provides a forum for establishing and maintaining emergency contacts.
- It provides access to specialized, certified, and knowledgeable municipality personnel, heavy equipment, tools and supplies used by municipalities.

Why is mutual aid and assistance important?

- Municipality resources are specialized.
- Municipalities must be self-sufficient and able to fill the gap before arrival of any governmental aid.
- Road restoration is key to disaster response not only for residents but for emergency vehicles.

What are the benefits of a mutual aid and assistance program?

- Prompt and effective response.
- Low cost to participate (\$25/year), akin to a low cost insurance policy to access resources when needed.
- In case of a federally declared emergency, it facilitates FEMA reimbursement since reimbursement is contingent upon a pre-existing, signed mutual aid and assistance agreement.
- Increases emergency preparedness and coordination.
- Provides a single agreement to access resources statewide.
- Expedites arrival of aid. Administrative items and protocols and all the paperwork are already worked out in advance for you.
- Agreement contains indemnification and worker's compensation provisions to protect participating utilities.
- Provides reimbursement protocols.
- Does not require any disaster declaration to activate, which means utilities can request aid at almost any time (even for small scale events).

How does a municipality use their mutual aid agreement during an emergency?

- Initial access may be made 1) directly to other members using the website (t2.unh.edu/ma); 2) through the member email listserv; or 3) by calling the ER number: 877-731-9908 (toll-free)

- Members are able to match the equipment, skilled labor, and other resources that they need.

Are member municipalities required to respond and send resources?

- There is no obligation to respond.
- The needs of your own community always come first.

My system is too small, so I have nothing to offer.

- Any assistance can be helpful to a system in need.
- Small systems may not have the equipment, but they have certified and knowledgeable personnel.

My system is too large. I will always be the one helping and no one can help me.

- Not true. It's not just about equipment but personnel too, including administrative and secretarial assistance especially if a pandemic hits your system.
- When a major emergency hits hard, a large system will need all the help they can get, even if it comes from several different smaller systems.

What happens if a municipality sends resources and then needs to withdraw them?

- Under no circumstances is a municipality to send resources if it impacts their ability to manage daily operations or response to its own emergency.
- It is up to the lending municipality to determine what resources to send.
- Resources remain under the authority of the sending municipality and as such can be recalled.

What happens if equipment on loan is damaged or stolen?

- The lending municipality is responsible for insurance in case this happens.

How can I find out more information about the NHPWMA?

- Additional information about the program can be found at www.t2.unh.edu/ma. There you will find program information, agreement, forms, inventory lists, FEMA forms, and a list of participating communities.

Questions?

If you have any questions about NHPWMA please contact:

Beth Hamilton
Training Program Manager
UNH Technology Transfer Center
(603) 862-1362
e.hamilton@unh.edu

David Danielson
Circuit Rider for Mutual Aid
SEA Consultants Inc.
(603) 714-5430
d.danielson@comcast.net

Note: This fact sheet is accurate as of May 2013. Statutory or regulatory changes, or the availability of additional information after this date may render this information inaccurate or incomplete.

ITEM A - (1) D/F MONUMENT SIGN W/ MASONRY BASE & 10mm. EMC

SCALE: 3/4"=1'-0"

OPTION 1



ELECTRONIC MESSAGE CENTER	
<input type="checkbox"/> Red	<input type="checkbox"/> Amber <input checked="" type="checkbox"/> RGB
Cabinet Size: 4'- 1 3/16" x 7'- 9 5/16"	
Viewing Area: 3'- 8 1/8" x 7'- 4 3/16"	
Matrix: 112 x 224	Pixel Size: 10 MM
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Master/Master	Master/Slave Computer Provided: Y N
ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.	

PTM PLAQUE FINISH

JOB#:		MONUMENT SIGN		GENERAL NOTES	REVISIONS		Job Name: MAIN ST. WELCOME SIGN		<div><div>BARLO SIGNS</div><div>158 Greeley St., Hudson, NH 03051 (603) 882-2638 Fax (603) 882-7680 For Service: 800-227-5674</div></div>		
SCOPE OF WORK		Cabinet: ALUM. CABINET TO HOUSE (2) EMC's Cabinet Depth: 18"		SITE SURVEY REQUIRED	Date	Comment	Location: ISLAND AT HANSON ST. & MAIN ST., ROCHESTER, NH				
ITEM A - MANUFACTURE & INSTALL D/F MONUMENT SIGN W/ MASONRY BASE & 10mm. EMC		Face/Background: 10mm. EMC			11-04-15	CHANGE SEAL/FCO LOC. ADD EMC DETAIL BOX ADD ARTWORK REQ. NOTE	Design Specifications Accepted By:				Drawn By: JOE N.
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Sign Area: 38.55 SQ. FT.		Seal: CAST PLAQUE MOUNTED W/ STUDS				PROJECT APPROVAL		© COPYRIGHT 2015 THE BARLO GROUP THIS DESIGN CONCEPT IS THE PROPERTY OF THE BARLO GROUP, ALL PRODUCTION AND DUPLICATION RIGHTS ARE RESERVED BY THE BARLO GROUP. THIS PRINT IS DESIGNED FOR YOUR PERSONAL USE AND IS NOT TO BE USED OUTSIDE YOUR ORGANIZATION OR EXHIBITED IN ANY FASHION. <div><div>UL</div>Underwriters Laboratories Inc.®<div>UNITED STATES SIGN COUNCIL</div><div>MEMBER</div><div>NSA</div></div>			
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						Sales: Date:					
Sign Deposition: REMOVE EXISTING & DISPOSE		Post/Base: BRICK MASONRY				Production: Date:					
		ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.				Installation Date:		File Name: Main Street Welcome Sign 151015539 11-04			
								B-15-10-15539			
								SHEET: 1.0			

ITEM A - (1) D/F MONUMENT SIGN W/ MASONRY BASE & 10mm. EMC

SCALE: NTS

OPTION 1



PROPOSED NOT TO SCALE

ELECTRONIC MESSAGE CENTER		
<input type="checkbox"/> Red	<input type="checkbox"/> Amber	<input checked="" type="checkbox"/> RGB
Cabinet Size: 4'- 1 3/16" x 7'- 9 5/16"		
Viewing Area: 3'- 8 1/8" x 7'- 4 3/16"		
Matrix: 112 x 224		Pixel Size: 10 MM
T & T	Weather Station	
Comm: Fiber DC RF PM Cell		
Master/Master	Master/Slave	Computer Provided: Y N
ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.		



SIMULATED NIGHT VIEW

JOB#:		MONUMENT SIGN		GENERAL NOTES		REVISIONS		Job Name: MAIN ST. WELCOME SIGN		<div>BARLO SIGNS</div> <div>158 Greeley St., Hudson, NH 03051 (603) 882-2638 Fax (603) 882-7680 For Service: 800-227-5674</div>	
SCOPE OF WORK		Cabinet: ALUM. CABINET TO HOUSE (2) EMC's Cabinet Depth: 18" Face/Background: 10mm. EMC		SITE SURVEY REQUIRED		Date	Comment	Location: ISLAND AT HANSON ST. & MAIN ST., ROCHESTER, NH			
ITEM A - MANUFACTURE & INSTALL D/F MONUMENT SIGN W/ MASONRY BASE & 10mm. EMC		Illumination: <input type="checkbox"/> Fluorescent <input type="checkbox"/> LED <input checked="" type="checkbox"/> Non-Illuminated				11-04-15	CHANGE SEAL/FCO LOC. ADD EMC DETAIL BOX ADD ARTWORK REQ. NOTE	Design Specifications Accepted By:			Drawn By: JOE N.
								Client:			Sales Rep: MALT
								Landlord:			PM:
											Date: 11/04/15
Sign Area: 38.55 SQ. FT.		Cap: .125" ALUM. CAP PAINTED BLACK		PROJECT APPROVAL				© COPYRIGHT 2015 THE BARLO GROUP			
Artwork Req: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Copy: <input type="checkbox"/> Vinyl <input type="checkbox"/> Digital <input type="checkbox"/> Painted <input checked="" type="checkbox"/> FCO <input type="checkbox"/> Push Through <input type="checkbox"/> WHITE		THIS DESIGN CONCEPT IS THE PROPERTY OF THE BARLO GROUP. ALL PRODUCTION AND DUPLICATION RIGHTS ARE RESERVED BY THE BARLO GROUP. THIS PRINT IS DESIGNED FOR YOUR PERSONAL USE AND IS NOT TO BE USED OUTSIDE YOUR ORGANIZATION OR EXHIBITED IN ANY FASHION.							
Photos Avail: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Material: .5" ACRYLIC		UL Underwriters Laboratories Inc.®		UNITED STATES COUNCIL		I-90 A			
Corp Specs Avail: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Spacers: TBD		File Name: Main Street Welcome Sign 151015539 11-04		B-15-10-15539		SHEET: 1.1			
		Seal: CAST PLAQUE MOUNTED W/ STUDS				Production: Date:					
		Post/Base: BRICK MASONRY				Installation Date:					
		ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.									

ITEM A - (1) D/F MONUMENT SIGN W/ MASONRY BASE & 12mm. EMC





SCALE: 3/4"=1'-0"

OPTION 2



ELECTRONIC MESSAGE CENTER	
<input type="checkbox"/> Red	<input type="checkbox"/> Amber <input checked="" type="checkbox"/> RGB
Cabinet Size: 3'- 6 15/16" x 7'- 6 3/16"	
Viewing Area: 3'- 1 13/16" x 7'- 1 1/16"	
Matrix: 80 x 180	Pixel Size: 12 MM
T & T	Weather Station
Comm: Fiber DC (RF) PM Cell	
Master/Master	Master/Slave Computer Provided: Y N
ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.	

CUSTOMER SUPPLIED SUITABLE .EPS VECTOR ARTWORK REQUIRED

JOB#:		MONUMENT SIGN		GENERAL NOTES	REVISIONS		Job Name: MAIN ST. WELCOME SIGN		<div><div>BARLO SIGNS</div><div>158 Greeley St., Hudson, NH 03051 (603) 882-2638 Fax (603) 882-7680 For Service: 800-227-5674</div></div>		
SCOPE OF WORK		Cabinet: ALUM. CABINET TO HOUSE (2) EMC's Cabinet Depth: 18"		SITE SURVEY REQUIRED	Date	Comment	Location: ISLAND AT HANSON ST. & MAIN ST., ROCHESTER, NH				
ITEM A - MANUFACTURE & INSTALL D/F MONUMENT SIGN W/ MASONRY BASE & 12mm. EMC		Face/Background: 12mm. EMC			11-04-15	CHANGE SEAL/FCO LOC. ADD EMC DETAIL BOX ADD ARTWORK REQ. NOTE	Design Specifications Accepted By:				Drawn By: JOE N.
		Cap: .125" ALUM. CAP PAINTED BLACK Copy: <input type="checkbox"/> Vinyl <input type="checkbox"/> Digital <input type="checkbox"/> Painted <input checked="" type="checkbox"/> FCO <input type="checkbox"/> Push Through <input type="checkbox"/> WHITE Material: .5" ACRYLIC Spacers: TBD					Client:				Sales Rep: MALT
							Landlord:				PM:
									Date: 11/04/15		
Sign Area: 33.66 SQ. FT.		Seal: CAST PLAQUE MOUNTED W/ STUDS			PROJECT APPROVAL		© COPYRIGHT 2015 THE BARLO GROUP THIS DESIGN CONCEPT IS THE PROPERTY OF THE BARLO GROUP, ALL PRODUCTION AND DUPLICATION RIGHTS ARE RESERVED BY THE BARLO GROUP. THIS PRINT IS DESIGNED FOR YOUR PERSONAL USE AND IS NOT TO BE USED OUTSIDE YOUR ORGANIZATION OR EXHIBITED IN ANY FASHION.				
Artwork Req: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Photos Avail: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			Design: Date:		 Underwriters Laboratories Inc.®		 UNITED STATES COUNCIL	 UNDERWRITERS FOR RESIDENTS	 UNDERWRITERS
Sign Deposition: REMOVE EXISTING & DISPOSE		Corp Specs Avail: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Engineering: Date:		File Name: Main Street Welcome Sign 151015539 11-04				
		Post/Base: BRICK MASONRY			Estimating: Date:		B-15-10-15539				
		ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.			Sales: Date:						
					Production: Date:						
					Installation: Date:						

SCALE: NTS

PROPOSED NOT TO SCALE

ELECTRONIC MESSAGE CENTER			
<input type="checkbox"/> Red	<input type="checkbox"/> Amber	<input checked="" type="checkbox"/> RGB	
Cabinet Size: 3'- 6 15/16" x 7'- 6 3/16"			
Viewing Area: 3'- 1 13/16" x 7'- 1 1/16"			
Matrix: 80 x 180		Pixel Size: 12 MM	
T & T	Weather Station		
Comm: Fiber DC (RF) PM Cell			
Master/Master	Master/Slave	Computer Provided:	Y N
ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.			



JOB#:		MONUMENT SIGN		GENERAL NOTES	REVISIONS		Job Name: MAIN ST. WELCOME SIGN		<div><div>BARLO SIGNS</div><div>158 Greeley St., Hudson, NH 03051 (603) 882-2638 Fax (603) 882-7680 For Service: 800-227-5674</div></div>		
SCOPE OF WORK		Cabinet: ALUM. CABINET TO HOUSE (2) EMC's Cabinet Depth: 18"		SITE SURVEY REQUIRED	Date	Comment	Location: ISLAND AT HANSON ST. & MAIN ST., ROCHESTER, NH				
ITEM A - MANUFACTURE & INSTALL D/F MONUMENT SIGN W/ MASONRY BASE & 12mm. EMC		Face/Background: 12mm. EMC			11-04-15	CHANGE SEAL/FCO LOC. ADD EMC DETAIL BOX ADD ARTWORK REQ. NOTE	Design Specifications Accepted By:				Drawn By: JOE N.
		Cap: .125" ALUM. CAP PAINTED BLACK Copy: <input type="checkbox"/> Vinyl <input type="checkbox"/> Digital <input type="checkbox"/> Painted <input checked="" type="checkbox"/> FCO <input type="checkbox"/> Push Through <input type="checkbox"/> WHITE Material: .5" ACRYLIC Spacers: TBD					Client:				Sales Rep: MALT
							Landlord:				PM:
									Date: 11/04/15		
Sign Area: 33.66 SQ. FT.		Seal: CAST PLAQUE MOUNTED W/ STUDS				PROJECT APPROVAL		© COPYRIGHT 2015 THE BARLO GROUP THIS DESIGN CONCEPT IS THE PROPERTY OF THE BARLO GROUP. ALL PRODUCTION AND DUPLICATION RIGHTS ARE RESERVED BY THE BARLO GROUP. THIS PRINT IS DESIGNED FOR YOUR PERSONAL USE AND IS NOT TO BE USED OUTSIDE YOUR ORGANIZATION OR EXHIBITED IN ANY FASHION.			
Artwork Req: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Photos Avail: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				Design: _____ Date: _____		<div><div>UL</div><div>Underwriters Laboratories Inc.®</div><div>UNITED SIGN COUNCIL</div><div>INTERNATIONAL SIGN ASSOCIATION</div><div>NSA</div><div>PROFESSIONAL</div></div>			
Sign Deposition: REMOVE EXISTING & DISPOSE		Corp Specs Avail: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Engineering: _____ Date: _____		File Name: Main Street Welcome Sign 151015539 11-04			
		ALL COLORS ARE FOR REPRESENTATION ONLY. SEE ACTUAL SAMPLES FOR COLOR MATCH.				Estimating: _____ Date: _____		B-15-10-15539			
						Sales: _____ Date: _____		SHEET: 2.1			
						Production: _____ Date: _____					
						Installation _____ Date: _____					

**▪Sign Advertising ▪Electronic Message Centers ▪PROPOSAL**

Code 00-CITYROC		SITE name City of Rochester	
Bill to City of Rochester Public Works Dept.		SITE address Island @ intersection of Hanson St & Main St	
45 Old Dover Road		Rochester, NH 03867	
Contact name John Storer		Contract Q-15539	S/F # 03220
Phone & Cell (603) 332-4096		© Drawing B-15-10-15539	
Fax		Job#	
Email john.storer@rochesternh.net		Sales Rep / PM Denis Maltais x315 /	

We are pleased to offer signage/services per the above-referenced drawing and as outlined below:

Scope of work is as follows:

Item A)**Manufacture and install one (1) new double-faced monument sign with EMC to include:**

A Barlo-built brick veneer masonry base with aluminum cap, 3' x 10' x 24".

The aluminum cap to be 6" with 4" FCO acrylic letters mounted on one side only reading: "WELCOME TO ROCHESTER"

The 28" town seal plaque to be a digital print applied to 3/4" acrylic

The EMC specifications are as follows:**EMC Option 1: 10mm RGB D/F**

Matrix: 112 x 224

Cab: 4'1 3/16" x 7' 9 5/16"

View: 3' 8 1/8" x 7' 4 3/16"

Comm: Cell Modem*

*Note: Price as a line item for the equipment only – customer will use their own carrier service.

Item A) Manufactured and installed with EMC Option 1, 10mm D/F EMC: \$ 62,338.00

EMC Option 2: 12mm RGB D/F

Matrix: 80 x 180

Cab: 3' 6 15/16" x 7' 6 3/16"

View: 3' 1 13/16" x 7' 1 1/16"

Comm: Cell Modem*

*Note: Price as a line item for the equipment only – customer will use their own carrier service.

Item A) Manufactured and installed with EMC Option 2, 12mm D/F EMC: \$ 57,281.00

Item B) Manufacture a second display at the same time. With the 10mm EMC: \$ 61,647.00

Item B) Manufacture a second display at the same time. With the 12mm EMC: \$ 56,590.00

Project notes: Sign permit and electrical permits are additional as described on page 2, The primary electrical feed is to be provided to the sign location(s) by the customer's electrician.

- **SALES TAX, PERMIT COSTS, & ENGINEER-STAMPED DRAWINGS** are extra and not included in this total amount. See page 2 for more details.
- **PRICES QUOTED INCLUDE REMOVAL OF EXISTING SIGNS.**

Removed signs are to be ☐ left at site ☒ disposed of ☐ stored at Barlo Signs @ \$150.00/1st month, \$50.00 each additional month storage fees.

TERMS: 50% deposit due at signing, balance due upon invoicing. Deposit: \$31,169.00. Any alternative terms must be approved by Barlo Management.

Delivery is 8 to 10 weeks from receipt of
☒ Signed Proposal ☒ Approved Drawing ☒ Deposit ☒ Permits

As an Authorized Buyer, I agree to the prices & specifications above and the terms & conditions on pages 2 & 3 of this proposal.

This contract is accepted at Barlo Signs' principal place of business, in Hudson, N.H., and shall be within the venue of Hillsborough County.

SIGNATURE

Printed Name / Title

Date Accepted

This proposal may be withdrawn if not accepted within ten days. All three pages must be signed & returned.

158 Greeley Street, Hudson, NH 03051-3422 ▪ 603-882-2638 or 800-227-5674 ▪ (F) 603-882-7680 ▪ www.barlosigns.com



Barlo installers
are OSHA-10
certified.



INTERNATIONAL
SIGN ASSOCIATION



UNITED STATES
SIGN
COUNCIL



WE
RECYCLE

**ADDITIONAL COSTS: PERMITS | ESD | POLICE/FIRE DETAILS | INSPECTIONS | VARIANCES | ART****(1) SIGN PERMIT(S) WILL BE OBTAINED BY (You must check ONE):**

☐ **BARLO SIGNS:** at a cost of \$150.00 for first sign permit, plus \$95.00 for each additional sign permit, plus city fees. Any permits requiring a Site Survey, and/or which cannot be secured via mail, will be subject to additional charges of \$135.00 per hour, including travel time, for staff to procure.

☐ **CLIENT:** Copy of permits must be provided to Barlo Signs prior to start of manufacturing.

☐ **PERMIT(S) WAIVED:** Waiver Agreement required.

(2) ELECTRICAL PERMIT(S), *if required*, will be obtained by BARLO SIGNS at a cost of \$125.00 per electrical permit, plus city fees.**(3) Engineer Stamped Drawing (ESD), *if required*, is an additional cost and can range from \$700 to \$1,500 for an average job. The design presented includes steel and concrete based on a 110-mph criteria; if there is a need beyond this, or engineered documentation is required, the cost for this work will be added to this contract. Code requires that an ESD be completed for this project; municipalities may use their discretion regarding enforcement. If an ESD is not required to obtain a permit, it is the Client's decision and assumed risk to have one or not. Barlo recommends that an ESD be completed for all pylon and specialty signage.**

☐ **I choose NOT to have an ESD, unless required for a permit.**

☐ **I choose to HAVE an ESD regardless of municipal/permit requirements.**

(4) Police Details, Fire Details, and Electrical Inspections, *if required*, are additional costs.**(5) Variance, Planning Board, Design Review, and Historical Board application procurement, *if required*, will be billed at \$150.00 per application, and an hourly rate of \$135.00 per hour for staff time, for all related costs necessary for procurement, which could include, but is not limited to: filing and representation of client at all hearings, creation of necessary drawings and plot plans, balloon tests, meetings, securing of abutters, advertising, gas, postage, color copies, photos; plus all city filing and application fees.****(6) Pricing assumes CLIENT-SUPPLIED PRODUCTION-READY ARTWORK. Any additional design time by Barlo may result in additional charges. Please request Barlo's Raster and Vector Artwork Spec sheets if you require further information.****THE COSTS & FEES LISTED ABOVE ARE ADDITIONAL AND WILL BE INVOICED SEPARATELY.****PROPERTY OWNER AUTHORIZATION ♦ MUST BE SIGNED BY REAL ESTATE OWNER**

*This verifies that you are authorizing BARLO SIGNS to submit an application for permits, variances, or hearings ON BEHALF OF THE OWNER OF THE PROPERTY. Barlo Signs cannot apply for permits or hearings until we receive PROPERTY OWNER'S authorization to do so.

> IF YOU ARE THE PROPERTY OWNER, please complete & sign.

> IF YOU ARE NOT THE OWNER: please provide your landlord's information to us, and we will contact & secure permission.

Sign location address: _____

☒ I hereby authorize Jenn Robichaud or an Authorized Representative of Barlo Signs of Hudson, N.H., to APPLY FOR SIGN PERMITS for this site.

☐ I hereby authorize Jenn Robichaud or Authorized Representative of Barlo Signs of Hudson, N.H., to APPEAR BEFORE THE PLANNING BOARD and/or SIGN REVIEW BOARD and/or the ZBA for this site.

Property Owner's Signature*: _____

Printed Name: _____

Address: _____

Phone number: _____

Please email this completed & signed form to @barlosigns.com and MAIL ORIGINAL to Barlo Signs, 158 Greeley Street, Hudson, NH 03051. If you have any questions, please call me at 1-800-227-5674 ext. _____.

THANK YOU! Date: November 9, 2015

Reference JOB NAME: _____ Job No: _____

Barlo Signs Contract - TERMS AND CONDITIONS OF SALE - Pg. 3 of 3

ACCESS BEHIND WALLS for mounting hardware & electrical wiring must be provided by BUYER.

ADDITIONAL WORK: Authorized by client while crew are on site will be invoiced on a Time & Materials basis and added to final invoice.

CANCELLATION: This order cannot be cancelled except with the seller's consent, and then only upon payment of the total cost of material received or commitments made, plus labor, overhead, and engineering charges applying to this order at date of cancellation.

CHANGES: Any deviation from specifications involving EXTRA COSTS will be executed upon change orders and will become an extra charge over and above this contract.

COLOR MATCHING cannot be guaranteed. Non-standard or non-compatible colors will be at additional cost.

CREDIT CARD PAYMENTS are accepted on MasterCard, Visa, and American Express. There is a 3% processing fee for amounts over \$10,000.

DELIVERY: Estimated delivery dates given herein are computed from receipt of all details pertaining to the order essential to its proper execution. Shipment dates are approximate and the seller is not responsible for delays or non-performance due to strikes or other abnormal manufacturing conditions, fires, embargoes, or other causes beyond seller's reasonable control.

ELECTRIC POWER: BUYER is responsible for bringing 120V dedicated circuit(s) to base of ground signs & within 10 feet of wall signs. The only electrical connection made by Barlo Signs shall be to the provided outside legal 120V outlets. Any other work must be outlined in the specifications of this contract or will incur additional charges.

ELECTRONIC MESSAGE CENTERS: Standard EMC price reflects (as it may apply) a one (1) day on-site visit for "turn on," including hookup and testing of phone modem (provided phone line has been run), or, pulling of fiber optic cable (through no more than 250 feet of existing conduit) and connection to unit, and connecting cable to CPU within 15 feet of building penetration. Price does not include any electrical work or any building penetrations. Buyer is responsible for providing the dedicated 120V circuits that EMC requires.

IRREGULAR PAYMENTS: The seller may accept late payments, partial payments, or any checks or money orders marked as being payment in full or as being a settlement of any dispute without losing any of their rights under this contract or under the law. If seller accepts such payments, this does not mean an agreement to change this contract in any way. A service charge of 1.5% per month will be added to delinquent accounts.

LANDLORD APPROVAL: Permission for use of any building facilities and/or land for the installation of proposed signage is the responsibility of the BUYER.

LEDGE/FROST CLAUSE: If unusual digging conditions, i.e. ledge, water, heavy frost, unmarked water and/or gas lines, etc. are encountered in ground installations, this contract is binding; however, an additional cost based on additional labor, plus 20% on subcontract labor and materials, will be added to the final price.

OVERAGES/SHORTAGES: We will follow the practice of the graphics industry in shipping (and invoicing) 10% overage or shortage whenever this takes place on printing press runs. EXACT amounts requested are subject to a 5% surcharge.

RELAMPING at time of install is charged on a Time & Materials basis; ballasts only as needed.

REMOVAL/DISPOSAL: Removed signs/letters will be disposed of, if not instructed otherwise. Electric will be capped, holes plugged with paintable silicone. This proposal DOES NOT include building repair, painting, or restoration unless outlined specifically. STORAGE of old signs is NOT part of this contract unless specifically stated.

ROOF PENETRATIONS: Rubber roof penetrations are the responsibility of the BUYER and must be executed by a Certified Roofing Contractor. Barlo's only responsibility is to coordinate with the roofer for the LOCATION of the penetrations.

SHIPPING PRICES are quoted on the estimated delivery dates. We reserve the right to recalculate the sale price if order is not completed within twelve months of date of order execution. Deliveries delayed by the BUYER will be invoiced at time display is ready for shipment, and payment made within ten days.

SIGNATURES: Electronic or facsimile copies of this Agreement signed by the parties shall be considered for all purposes as originals.

SITE DAMAGE: It is understood that heavy equipment is involved in sign installations and that tire ruts, outrigger indentations, and other incidental damage may occur. Landscaping repairs are not included unless specifically stated.

SITE LOCATION: It is the responsibility of the BUYER to determine the boundaries for proper location of ground signs.

SITE MEETINGS: Expenses incurred due to mandated site meetings will be added to contract value.

SITE READINESS: Your sign installation date will be confirmed with responsible site personnel 48 hours in advance of dispatching equipment. It is the BUYER's responsibility to ensure that the site is clear of obstructions and other subcontractors who would hinder Barlo's installation, and all preparation required by others is completed prior to Barlo's arrival. Should Barlo's personnel be turned away due to the site being unprepared, costs will be incurred for all lost time, including travel, at a minimum of four hours. If only a portion of the scheduled work can be completed, then charges for the return trip will be added to the final invoice. These charges are based on current hourly rates at time of sale.

SOIL CONDITIONS & TOXIC CLEANUP: The parties hereby agree that the contract price is based on the presence of normal soil conditions at the sign location. Buyer hereby warrants that he knows of no unusual soil conditions or underground obstructions at said site, and agrees that in the event that such conditions are encountered, the contract price will be adjusted based on the additional labor or materials required to complete installation.

SPECIAL EQUIPMENT REQUIREMENT: Any signs installed over a height of 70 feet or requiring special equipment, i.e. white tire or interior use lifts, will incur an added cost for "After Sale Servicing," including the time during Barlo's standard warranty period of one year. This cost will be billed separately and carry a 25% mark-up to cover servicing and procurement. Buyer may elect to have these charges billed directly to themselves, however Barlo reserves the right to approve the selection of the vendor and the equipment required.

TAXES: All taxes assessed for this sale are the responsibility of the BUYER; this includes, but is not limited to, Local, State, and Federal USE and SALES taxes. These amounts will be computed according to the regulations mandated by the governing bodies and applied to your final invoice.

TERMS: The terms of this contract shall be subject to and enforceable under the laws of the state of New Hampshire. The parties expressly waive their rights to enforce their rights hereunder in any jurisdiction other than New Hampshire and agree and consent that any dispute arising out of this contract shall be decided by a New Hampshire Court and that trial by jury is specifically waived by each party hereto for themselves or their assigns. In the event a lawsuit for collection of funds unpaid is filed, the debtor agrees that the contract interest rate of 18% shall prevail over any statutory interest rate. The debtor agrees to pay all costs of collection, including reasonable attorneys' fees.

TITLE: Ownership of Display shall at all times remain with Barlo Signs, and Buyer hereby grants Barlo Signs a security interest in Display until all of the payments are made and all of the conditions herein contained are fully satisfied, at which time Buyer shall be vested with full title to Display. Buyer shall bear all risk of loss of Display after delivery or installation has been completed (where installation is part of this Agreement). At the request of Barlo Signs, Buyer will execute and deliver to Barlo Signs for filing wherever it may be required a financing statement evidencing Barlo Signs' security interest in Display. In the event of such removal, BUYER shall be liable to seller for all labor costs and expenses for the removal of the signage. Removal of the signage shall not constitute a waiver of any rights and remedies existing at law for the breach of this agreement, and the seller expressly reserves all such rights. Upon breach of this agreement BUYER agrees to pay all costs of collection including reasonable attorneys' fees.

UNFORESEEN OBSTRUCTIONS/REINFORCEMENT: Buyer shall be responsible and pay for all necessary reinforcement to building or any other structures on which display is installed, for relocating power lines or other obstacles, and for any additional installation cost incurred by Barlo Signs due to unforeseen obstructions. Barlo Signs is not responsible for damage to underground utilities or other unforeseen objects. Every possible effort will be made to determine wall thickness and drilling requirements prior to installation cost estimation. However, Barlo Signs will not be held responsible for unknown wall obstructions such as beams, re-bar, extreme wall thickness and/or density. The additional labor and materials required to complete installations due to these obstructions will be added to the installation price at final invoicing.

UTILITY/DIG SAFE SERVICES: Any costs incurred for services provided to cover overhead lines or verify location of underground utility/sewer/water/phone/gas or other obstructions will be an additional charge at time of billing.

WARRANTY: Signage furnished by Barlo Signs is warranted to be free of manufacturing defects for 1 year, effective from date of substantial completion. EMCs: 5 years LEDs & power supplies, 1 year labor; excludes PC/radio/fiber, repairs due to damages caused by power failure, surges or lightning strikes. Warranty is VOID if account is delinquent.

The Seller will furnish all labor, materials, tools, equipment, workmen's compensation, and liability insurance necessary to complete in a thoroughly workmanlike manner all work described. THERE ARE NO UNDERSTANDINGS OR AGREEMENTS OUTSIDE OF THIS CONTRACT

I have read and agree to the terms and conditions:

INITIALED

Date Accepted




City of Rochester Dept of Public Works

45 Old Dover Road
Rochester, NH 03867
Phone: (603) 332-4096
Fax: (603) 335-4352

Memo

To: Dan Fitzpatrick, City Manager
From: John B. Storer, P.E. Director of City Services
CC: Mike Riley, Facilities Manager
Date: September 29, 2015
Re: Mail Box Options – lockable units for City Council



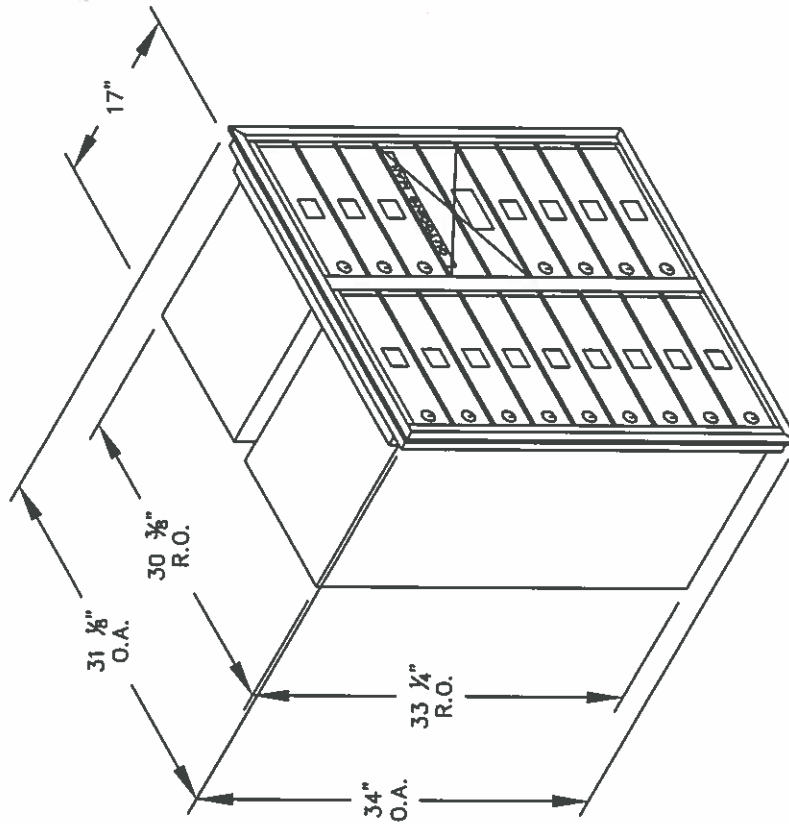
Lockable mailboxes could be installed at City Hall for about \$1,300 in material costs. Labor and installation would be performed by Buildings & Ground staff.

The recommended installation would be to remove the unused door in the storage hall at your office and frame in a wall insert. The mail box unit would be installed within the framed insert. Mail would be inserted securely from the back side of the boxes, with access only from your storage hall.

There are several vendors for prefabricated mailboxes. Some information is attached. We were looking for mail slots that were at least 12 inches wide and 3 inches high to accommodate standard folder sizes. Actual sizes can be adjusted slightly, but the attached sketches provide a basic overview. Figured we wanted at least 15 mail slots to accommodate all Councilors and the Mayor, leaving a few extra slots. The boxes could be monogrammed, but I recommend we get internal replaceable nametags such that new labels could be inserted as different people get elected to Council and Mayor.

Colors are rather limited to basic aluminum, gold & bronze. Some color examples are attached. Boxes would include locksets, allowing keyed access to specific mailboxes.

Mailbox unit would be right around \$1,000 or less, depending on options. Figured another \$300 in miscellaneous framing and sheetrock to construct the insert partition. Buildings & Grounds staff has some miscellaneous wood trim that matches the stain color at City Hall. Think they could construct something that reasonably matched the existing color & theme of the area.



- (1) 3709D-16 - REAR LOADING
- (16) 'MB1' DOORS
- (1) 'OM2' OUTGOING MAIL COMPARTMENT

MODEL #3709D-16

4C HORIZONTAL MAILBOXES-REAR LOADING

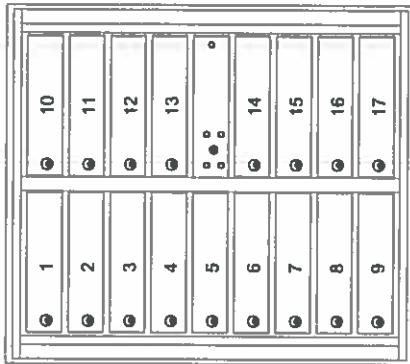
AVAILABLE COLORS:
ALUMINUM, BRONZE, GOLD OR SANDSTONE

AVAILABLE FOR:
USPS ACCESS OR PRIVATE ACCESS

Established in 1936, Salsbury Industries is the industry leader in manufacturing and distributing quality mailboxes.

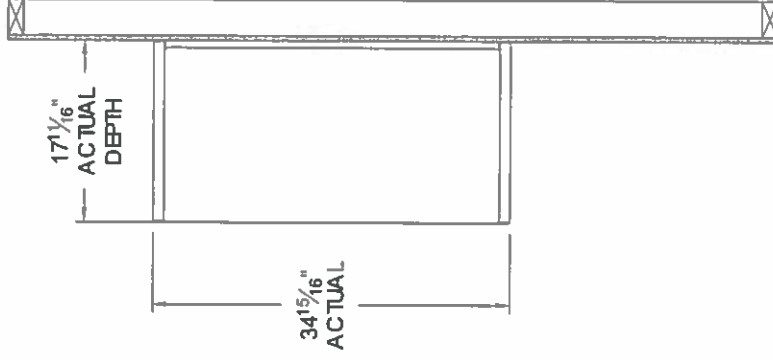
Elevation 1 Dimensions

Overall Width: 2' 8-3/8"



SP-4C09D-16-S

Side View



1. Models Used: (1)SP-4C09D-16-S

2. Installation: surface

3. 4C Finish: tbd

4. Locks: tbd

5. Door Id: tbd

6. Matching Standard Attached Trim

Florence versatile™ 4C Mailbox Suites

This configuration may not meet USPS regulations. Please refer to versatile 4C brochure for information regarding USPS Requirements.

DO NOT SCALE OFF DRAWING

4C DOOR SIZES

- 1 High tenant: 3' H x 12" W
- 1 High outgoing: 6-1/2' H x 12" W

ELEVATION: Elevation 1 | MAILBOXES: 17 | PARCELS: 0

PROJECT NAME: nname

AF FLORENCE
manufacturing company
5935 Corporate Drive • Manhattan, KS 66503
www.florencemailboxes.com • 800.275.1747
A CREATIVE INDUSTRIES COMPANY

DRAWN BY:

DATE: 09-11-2015

P.O. NO:

SCALE: NONE

QUOTE NO:

DRAWING NO. WEB-18363

SHEET 1 OF 1

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Have a Large Volume Job? We have you covered![Home](#) > [Private Delivery Mailboxes](#) > [Aluminum Style Mailboxes](#) > [Private Delivery Horizontal Mailboxes](#) > [Private Delivery 4C Horizontal Mailboxes](#) > [Rear Loading](#) > 16 Doors

16 Doors



All Aluminum Construction

16 Tenant Doors Rear Loading 4C Horizontal Mailboxes - Private Access**FREE SHIPPING!****\$1,052.97****Volume Discounts Available**

All Aluminum Construction

16 Tenant Doors Rear Loading 4C Horizontal Mailboxes - Private Access**FREE SHIPPING!****\$1,052.97****Volume Discounts Available**

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All Aluminum Construction

16 Tenant Doors Rear Loading 4C Horizontal Mailboxes - Private Access**FREE SHIPPING!****\$1,052.97****Volume Discounts Available**

Description

Budget Mailboxes offers weatherproof rear loading 4C Horizontal Mailboxes in 16-door configurations. In stock and ready to ship in 24-48 hours.

Have a question about this product?**16 Doors****CLICK HERE FOR INSTANT HELP!**

Rochester City Hall

* 17 tenant doors (5' h x 12 3/4' w x 15 1/2" d.)

* 1 tenant door (5' h x 6 3/8' w)

* 5 pin cam lock w 2 keys

* Private use access door

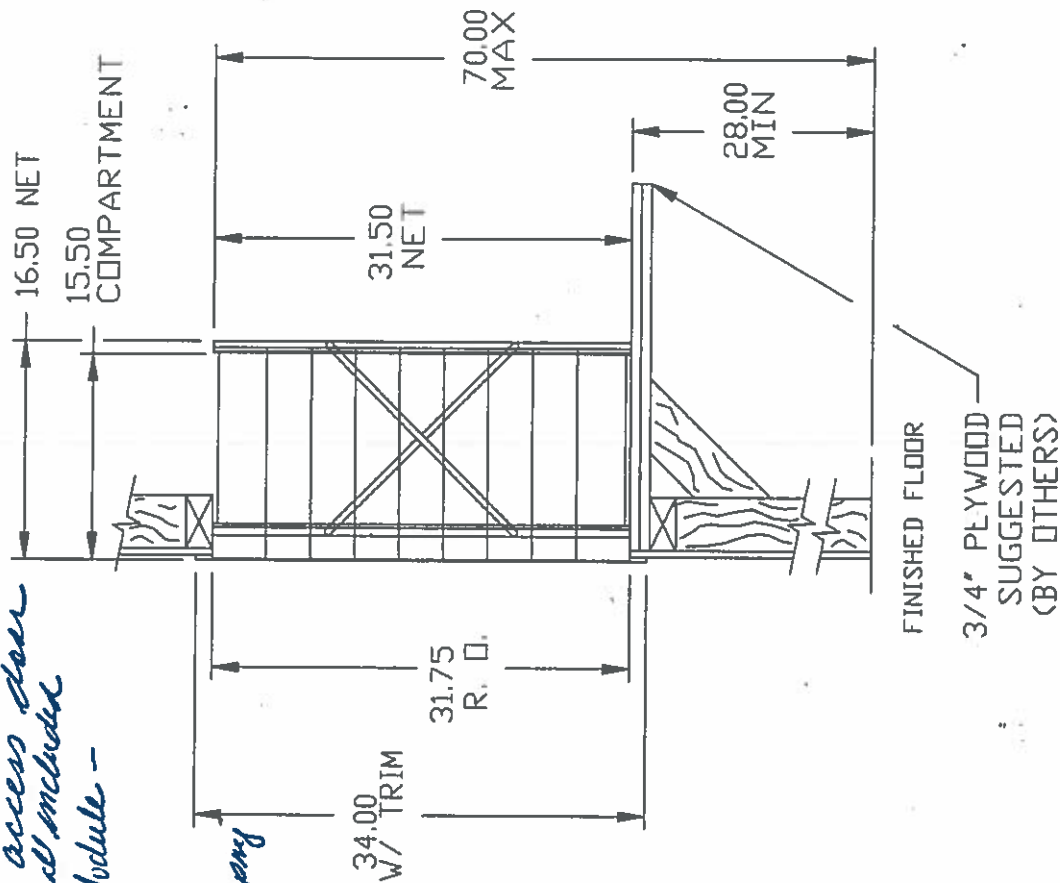
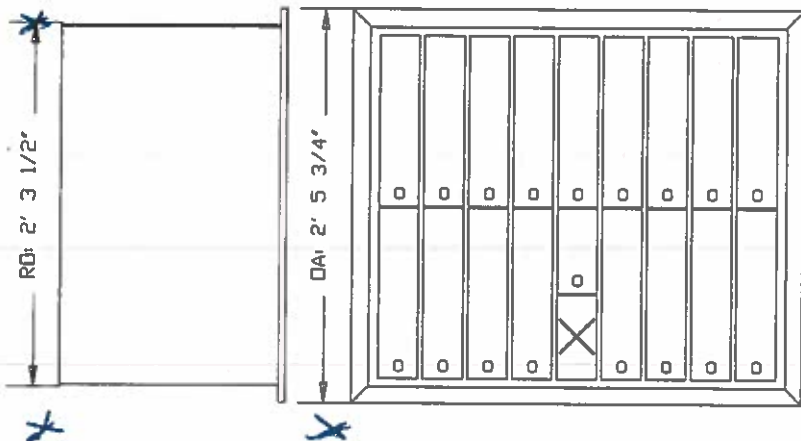
* engraved/etched included

- 1450-94 Module -

\$833.00

60.00 shipping

\$893.00



Recv. from School Department 11/12/15

Past Snow/Winter Items discussed:

- City does pre-treat all schools and treats afterwards if there is a snow or ice buildup
- Sidewalks: RMS-McC-Cham
- Remove snow along playground fence @ Maple for parent drop-off
- Salt usage(can get some for the walkway between HS and Community Center)
- Davyanne Lane-Try to not plow snow against doors
- Keep track of sand - ~~Bruce~~ knows and will do
Dave McKenney
- Snow fences at High School-do every year without asking
- What is the priority order for street and sidewalk cleanup around the small schools?
Parking lots; dead ends; Granite St; Davyanne; Maple St.

New Winter Items 2015/16:

- Possible School Department purchase of a compact loader
- Level of DPW help in snow removal beyond past agreements?
- ERS loop road
- McC/Middle loop road
- Sidewalk plowing: ERS; William Allen
- Remove snow from SSS front for Bus/Parent drop off.
- Remove snow from front of McClelland so exiting vehicles can see.
- Push back snow banks at Voc/HS so School buses can pass through

Other:

- Catch basins- Get a list (in April) for DPW
- DPW Lift truck-available with an operator
- Beacon programming by School
- Generator fuel and gauge by DPW - Middle School
- Sewer line plugs-what is the ownership and procedure? City only owns a broken pipe.

Figure 1 – Project Location Map

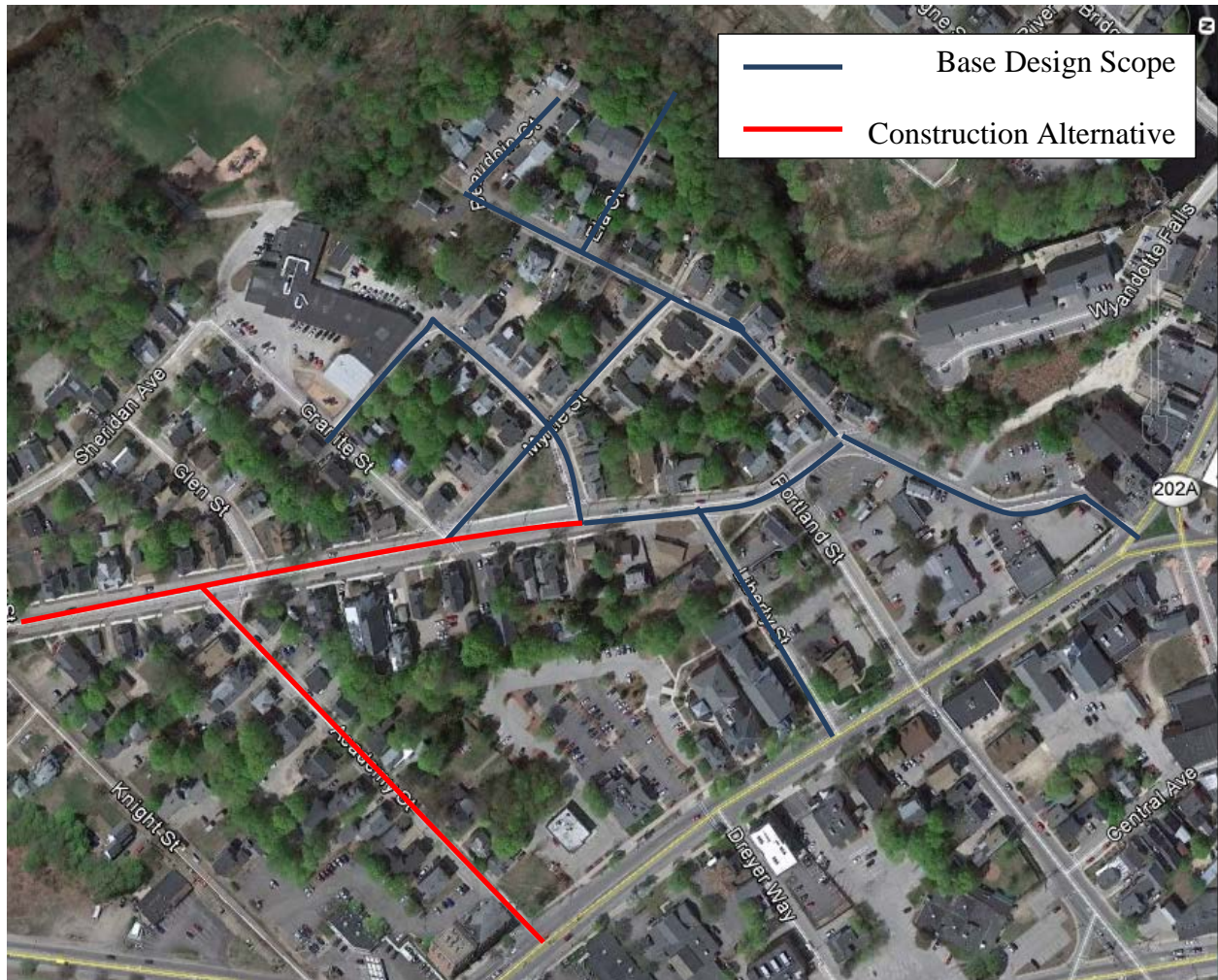


Table 1 – Project Area by Street

Street	Length, ft	Utilities Replaced
Beaudoin Ct	250	Water, Sewer, Storm, Surface
Ela Ct	200	Water, Sewer, Storm, Outfall, Surface
Congress St	850	Water, Sewer, Storm, Surface
Myrtle St	550	Water, Sewer, Storm, Surface
Woodman Ave	450	Water, Sewer, Storm, Surface
DavyAnne Locke Ln	250	Water, Sewer, Storm, Surface
Liberty St	450	Water, Sewer, Storm, Surface
Charles St	500	Water and Surface
Woodman Park	--	Surface Restoration
Total Street Length	3,500	
Construction Alternate		
Charles St	950	Water and Surface
Academy St	800	Water, Sewer, Storm, Surface
Alternate Street Length	1,750	