

MEMO

TO: Members of the Environment and Natural Resources (ENR) Committee
Representative Art Bell (*Sponsor*)
Representatives Dan Ankeles, William Bridgeo, Victoria Doudera, Lori Gramlich, Laurie Osher, Morgan Reilly, and Parnell Terry (*co-Sponsors*)

FROM: Aubrey Strause, PE (Stormwater Program Coordinator), South Portland Water Resource Protection Department

COPY Scott Morelli, South Portland City Manager
Fred Dillon (Director), South Portland Water Resource Protection Department

DATE: March 14, 2025

RE: Comments on LD 646 (*amd*), "*Resolve, Establishing the Commission to Study Unmanaged Storm Water Pollution*"; Neither For Nor Against

The City of South Portland is Neither For Nor Against proposed Legislative Document (LD) 646, as amended on 3/10/25, "*Resolve, Establishing the Commission to Study Unmanaged Storm Water Pollution*", but appreciates the opportunity to submit these comments on the proposal in advance of the ENR Committee work session scheduled for 3/19/24.

A. Stormwater Regulations Applicable to South Portland

City professionals have long maintained positive, effective relationships with Representative Bell, Friends of Casco Bay, and other water quality advocates, so we were somewhat surprised to see the original title of the proposed legislation suggesting that stormwater is "unregulated". The amended title, "unmanaged", is an improvement but still not accurate, since South Portland is one of many communities currently implementing programs to comply with many different stormwater regulations, laws, and policies to manage stormwater from municipal, private, industrial, and construction sources.

The sections below provide a summary of some of the stormwater regulatory programs that currently apply to South Portland.

State Stormwater Regulatory Programs

The City of South Portland is subject to coverage of the Maine Department of Environmental Protection's (Maine DEP's) General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems ("the MS4 permit"). We are an active member of the Interlocal Stormwater Working Group ("ISWG") which implements many programs to comply with this municipal stormwater permit. This stormwater regulation is focused on reducing pollutants in runoff through public

education and outreach, inspection and maintenance of public infrastructure, and treating stormwater runoff from public and private properties.

Construction projects are subject to Maine's Erosion Control Statute (MRSA Title 38 §420-C) as well as Maine DEP's Construction General Permit "(the CGP)". These stormwater regulations are focused on preventing erosion of soil from active construction projects, whether that erosion would enter natural resources, the municipal stormwater system, or adjacent properties.

The City works closely with Maine DEP to ensure that industrial facilities that are subject to Maine DEP's Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity ("the MSGP Permit") have received coverage through a Notice of Intent, or have a been issued a No Exposure Certification. This stormwater regulation is focused on preventing discharge of pollutants from industrial facilities to natural resources, the municipal stormwater system, or adjacent properties.

Local Stormwater Regulatory Programs

At a local level, the City implemented Stormwater Performance Standards in 2009 that require management (treatment and/or storage) of stormwater that would be generated from new development or redevelopment. The City's local standards are more stringent than State standards in *at least* two ways:

- They require stormwater treatment for projects that will disturb more than 15,000 square feet (SF) of area, which is *more stringent than the disturbed area trigger* of 43,560 SF in Maine DEP's Rule Chapter 500 ("Stormwater Management").
- They require *treatment of more stormwater* from new development or redevelopment - 0.5 inch of runoff from impervious area and 0.2 inch of runoff from disturbed/landscaped area - than would be required by Maine DEP.

South Portland is one of several Maine municipalities that has implemented local ordinances focused on non-point source pollution, including fertilizer and pesticide application. We also manage a comprehensive pet waste management outreach program aimed at reducing bacteria and nutrients in stormwater runoff.

Located within South Portland are several natural resources designated as impaired, including Long Creek (subject of the first watershed management district formed under the Clean Water Act's Residual Designation Authority) and Willard Beach (one of the first beaches with this designation). A presentation on the City's efforts to restore these natural resources - including monitoring, public education, inspection, and maintenance - would take hours!

Managing stormwater through these State and local Stormwater Regulatory programs requires close collaboration between the Water Resource Protection Department and many other departments, including Planning, Code Enforcement, Parks & Recreation,

Sustainability, and Public Works. As such, City efforts to comply with State and Local Stormwater Regulatory programs, and enforce them, are time- and resource-intensive.

We strongly encourage the Sponsors and members of the ENR Committee to reach out to municipal stormwater or planning staff in the communities they represent (or to the stormwater engineer in their regional Maine DEP office) to learn more about the effort involved in managing stormwater through programs that already exist, and how they could best support those efforts.

B. Additional Ways to Support or Improve Existing Stormwater Regulations

The City of South Portland appreciates that LD 646 as amended identifies chloride as a pollutant of concern and points out that not every nonpoint stormwater pollution source is fully addressed, and we acknowledge the value of many of the tasks proposed in LD 646, including identifying and developing "strategies to address knowledge gaps" and identifying "barriers, such as staffing and budget". We appreciate that representatives of the development industry and engineering community have been proposed to be added to the Commission membership in the amended bill.

We also agree that while the impacts of stormwater pollution on the environment, public health and safety, freshwater and marine species, and critical habitats are well-understood, additional research may provide guidance on the major sources of this pollution and how many of those sources could be managed better.

However, we do not agree that the State's ability to "craft law, policy and other responses to mitigate stormwater pollution" is threatened: there are already many stormwater regulations, laws, and policies, and the State facilitated and led development of revisions to Chapter 500. Unless mirrored by effective implementation and enforcement, additional stormwater regulations will not accomplish the Sponsor and co-Sponsors' goals.

We are also concerned that the timing of this LD 646 could delay the Rulemaking process for revisions to Chapter 500 - revisions that were developed through a robust and well-organized stakeholder process facilitated by Maine DEP. The revised Chapter 500 structure makes **many** advances in land development planning to address water quality (including low impact development concepts, which are challenging to define and quantify), and would apply these advances to communities across the state.

Below, we suggest ways to more effectively support Maine municipalities and provide resources to help them implement existing stormwater regulations, laws, and policies:

1. Support efforts to educate developers, property owners and managers, homeowner associations, and contractors about existing stormwater regulations, and why they are being asked to design, build, or manage properties to reduce stormwater pollution. Pushback from these groups is a persistent and substantial challenge to Maine municipalities, yet most of these groups are excluded from the membership of the Commission proposed in LD 646. Unless the Commission acknowledges the

voices most opposed to current stormwater regulations, the findings in its report will omit actions and efforts that will be required for successful implementation.

2. Support efforts to increase licensing staffing at Maine DEP, in both the Land Bureau and Water Bureau. This may require additional salary adjustments to hire and retain professionals who understand the interaction between existing stormwater regulation programs.
3. Support efforts to increase enforcement and technical assistance staffing at Maine DEP, in both the Land Bureau and Water Bureau. This may require additional salary adjustments to hire and retain professionals who are comfortable with the conflict inherent with non-compliance and who are willing to educate developers, property owners and managers, homeowner associations, and contractors about the regulations being enforced.
4. Support efforts to increase funding from Maine DEP and federal sources. Some municipalities have developed stormwater fee programs to support their compliance efforts, but in most of Maine, implementation costs still rest on the shoulders of taxpayers. The State has identified a funding need of at least \$275 million for stormwater infrastructure (including maintaining *existing* systems) and pollution prevention programs, yet no existing funding source can support that need.

C. Summary of City Comments on LD 646

With these comments, the City has tried to demonstrate that there are many regulations, permits, laws, and policies focused on managing stormwater and potential pollution to it; we do not agree with LD 646's premise that stormwater is "unmanaged".

We believe that additional support to implement and enforce existing stormwater regulations, including legislator focus on the Chapter 500 Rulemaking process, would have a more measurable effect on water quality than developing additional regulations.

We have identified several critical stakeholder categories that are currently omitted from membership of the Commission proposed by LD 646.

Finally, we have proposed a number of actions that the Sponsor and co-Sponsors could propose that would help Maine DEP and Maine municipalities better implement and enforce existing stormwater regulations.

The City is **Neither For Nor Against** LD 646, but we strongly encourage the Sponsor and co-Sponsors to take to heart the feedback we have provided, and modify the goals of the LD to support more effective implementation of existing stormwater regulations. We would be pleased to share more information on current programs - and challenges to implement them - with Representative Bell and LD 646's co-Sponsors.