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Dover, NH 03820
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July 8, 2020

VIA EMAIL (Cobb.Michael@epa.gov)

Michael Cobb
US EPA, Region 1
5 Post Office Square, Suite-100 (06-1)
Boston, MA 02109-3912

Re: Additional Comment on the Draft National Pollutant Discharge Elimination System (NPDES) Great Bay Total Nitrogen General Permit for Wastewater Treatment Facilities in New Hampshire (NPDES General Permit: NHG58A000)

Dear Mr. Cobb:

We write on behalf of the Cities of Rochester and Dover, New Hampshire to submit this additional comment to the draft NPDES Great Bay Total Nitrogen General Permit for Wastewater Treatment Facilities in New Hampshire (NPDES General Permit: NHG58A000). We realize that this is being submitted after the close of the public comment period, but hope that you will consider it nonetheless because it addresses significant new information that was not ascertainable during the comment period and also as a courtesy to undersigned local governmental entities that directly represent and serve tens of thousands of citizens in the watershed.

We submit this letter after receiving correspondence from New Hampshire DES Commissioner Robert Scott dated June 15, 2020 (copy attached as Exhibit 1 for reference), in which DES addressed, among other things, the Draft Permit's flexibility and continuing uncertainty over whether the particular 100 kg N ha^{-1} yr^{-1} loading target is actually necessary to protect water quality and eelgrass. Despite the concerns with the Draft Permit expressed by the communities in their public comments, which comments the communities fully stand by and do not waive, we wish to state and emphasize our support for true adaptive management and the flexibility that a truly integrated permit could provide, which would allow for nonpoint source (NPS) nitrogen reductions to offset point source nitrogen reductions that EPA has indicated it might otherwise impose.

To be clear, as we have stated from our earliest discussions regarding this Draft Permit, we appreciate the general structure of the Permit, and agree it is a welcome attempt at a potentially workable framework for adaptive management, <u>but only if</u> the total nitrogen reduction goal is

modified to be concentration-based[1] and reflect a more typical nitrogen concentration management target in line with those EPA has considered protective throughout other areas in New England.[2] To be specific, we strongly believe that a nitrogen target for the Great Bay Estuary in the range of 0.32 to 0.35 mg/l TN is a more appropriate goal and would guide the development of WWTF effluent limitations to be fully protective of eelgrass and consistent with the spirit and intent of adaptive management. We note that 0.32 mg/l TN is the criteria currently adopted by Maine for all of its waters where eelgrass is present. The Maine communities on the Great Bay Estuary contribute roughly one-third of the volume of surface waters flowing into the Estuary, so adopting Maine's TN present criteria as a management goal for the health of the GBE makes sense regionally as well as in terms of regulatory consistency.

Also, such a modification to the Draft Permit and the changes in waste load allocation resulting therefrom would make the current permit structure much more workable and acceptable to the communities. The currently proposed waste load allocation among each of the communities and water/sewer districts, as drafted, will impose harmful growth and economic development constraints on the communities and will require costly treatment upgrades at many WWTFs long before design flow rates are approached. Coupling EPA's permit structure with an appropriate concentration target, however, could establish a productive path forward for the five-year permit term that meets our mutual interests in near-term nutrient control without other delays.

In addition, such a modification to the TN reduction goal would encourage the communities to invest more in TN NPS reduction initiatives. Indeed, most if not all of communities would likely commit additional resources beyond those required by the MS4 permit to reduce their NPS discharges, which as you know, will provide water quality benefits beyond nitrogen reduction. NPS discharges can contain excess fertilizers, herbicides and insecticides, oil, grease, toxic chemicals, sediment, salt, bacteria and nutrients.

To conclude, we support the overall concept of flexibility that is associated with reasonably balancing NPS TN reductions and point source TN reductions. That framework would encourage communities to invest in greater NPS reduction initiatives if coupled with a more appropriate TN reduction goal for the Great Bay Estuary consistent with the opportunity to do so as evident in the June 15, 2020 DES letter.

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[1] *See N.H. Code of Admin. Rules*, Env-Wq 1703.14(b) ("Class B waters shall contain no phosphorus or nitrogen in such *concentrations* that would impair any existing or designated uses, unless naturally occurring.") (emphasis added).

[2] Wild Harbor Estuarine System (.35 mg/L); Parkers River Embayment System (.42 mg/L); Fiddlers Cover and Rands Harbor Embayment Systems (.50 mg/L); Quissett Harbor Embayment System (.34 mg/L); Bass River Estuarine System (.42 mg/L); Lagoon Pond (.35 mg/L); Nantucket Harbor (.35 to .36 mg/L);; Great, Green, and Bournes Pond Embayment Systems (.40. 42, and .45 mg/L respectively); Tisbury Great Pond Black Point Pond Estuarine System (.46 mg/L); Three Bays System (.38 to .50 mg/L); Swan Pond River Estuarine System (.40 mg/L); West Falmouth Harbor Embayment System (.35 mg/L); Pleasant Bay System (.52 mg/L); Waquoit Bay System—Jehu Pond/Great River (.446 mg/L); Waquoit Bay—Hamblin Pond/Little River (.38 mg/L).

Respectfully submitted,

CITY OF DOVER, NH

Joshua M. Wyatt, Esq.
City Attorney

CITY OF ROCHESTER, NH

Terence O'Rourke, Esq.
City Attorney

cc: Commissioner Robert Scott, NHDES

The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

June 15, 2020

Exhibit 1

SENT VIA ELECTRONIC MAIL

Dear Great Bay Community Officials:

Re. Response to Correspondence of June 2, 2020 regarding NHDES Letters to EPA

This letter is in response to your letter date June 2, 2020. Through that letter you voiced your disagreement with two letters that the New Hampshire Department of Environmental Services (NHDES) sent to Region 1 of the Environmental Protection Agency (EPA). By way of background, these letters relate to a possible approach to management of nitrogen in the Great Bay Estuary by EPA that provides some flexibility to regulated communities with respect to federal National Pollutant Discharge Elimination System (NPDES) requirements. This flexibility was requested by Great Bay communities. After NHDES supported this approach, EPA agreed to consider implementation in the manner requested.

The first letter you referenced was dated October 23, 2019, relative to an Adaptive Nutrient Management Strategy for the Great Bay Estuary. In that letter, NHDES advocated for a flexible approach for setting nutrient effluent as described above. For many months and at many public sessions, attended by a number of you, EPA presented a loading-based approach to setting nutrient effluent limits. EPA, using a number of peer-reviewed papers, determined that the target loading should be (100 kg N ha^{-1} yr^{-1}). The October 23rd letter communicated to EPA that NHDES would likely be able to certify that the target suggested by EPA (100 kg N ha^{-1} yr^{-1}) would not violate water quality standards. NHDES, in accordance with Section 401 of the United States Clean Water Act (33 U.S.C. 1341) and RSA 485-A:12, III, is required to ensure that there is reasonable potential that any NPDES permitted activity will not violate State water quality standards. The statement in the letter is simply a preliminary determination that it appears the loading target does not need to be lower; i.e., less than 100 kg N ha^{-1} yr^{-1} to be appropriate to meet water quality standards. As your letter points out, this is not a State water quality standard and NHDES has not gone through the procedures to make it one. Nor are we planning to use that number as a translator for assessment purposes. There are many approaches that could be used to set nutrient effluent limits. Given the nature of the Section 401 certification process, and the need to design this new flexible approach, it was important for EPA to have some idea early in the process whether NHDES believed that EPA's loading numbers would violate narrative criteria for nutrients or other State water quality standards. The October 23rd letter provided EPA with preliminary information on this topic. It should be noted that the general permit itself is still in the process of being finalized and NHDES has not yet certified the final permit under Section 401.

The other letter you referenced pertains to Section 305(b) submissions to EPA. Sections 303(d) and 305(b) of the Clean Water Act require states to transmit an assessment of State surface waters on even numbered years. Once NHDES submits the list to EPA, it is up to EPA to approve the list. On March 27, 2017, NHDES asked EPA to remove a number of assessment units in water bodies from the impairment list, including several in the Great Bay estuary. However, EPA chose to defer a decision on certain assessment units in the Great Bay for multiple assessment periods. Communication with EPA revealed that it felt those assessment units needed additional information. In recognition of EPA's concerns, NHDES separated those water bodies for which EPA needed additional information from the list submitted to EPA. This allowed other assessment units in other surface waters to proceed to delisting. This also gave NHDES an opportunity to provide EPA with better information in support of delisting Great Bay assessment units. In other words, NHDES did not determine that the water bodies described in its January 17, 2020 letter should no longer qualify for delisting; NHDES simply engaged in a process that it felt had a better chance of success. NHDES is attempting to give EPA the most complete picture possible in order to get a favorable decision. Given the recent significant reductions in nutrient pollution entering the estuary, we hope that this will result in a stronger case for delisting Great Bay assessment units.

Sincerely,

Robert R. Scott
Commissioner

NH Senator David H. Watters
NH Senator James Gray
Kenneth Moraff, Director, Ecosystem Protection, EPA Region 1
Robert Carrier, Mayor; J. Michael Joyal, Jr., City Manager; John Storer, Dir/Community Services, City of Dover
Caroline McCarley, Mayor, and Blaine M. Cox, City Manager, City of Rochester
Steve Fournier, Town Manager, Town of Newmarket
Russell Dean, Town Manager, Town of Exeter
Clement Michaud, Commissioner, Town of Rollinsford Water and Sewer District
Caroline Kendall, Town Administrator, Town of Rollinsford
Adam Munguia, Chairman, Town of Epping
Earnest M. Cartier Creveling, Town Administrator, Town of Milton
Robert M. Belmore, City Manager, and Michael J. Bobinsky, Director of Public Works, City of Somersworth