

CENTER FOR REGULATORY REASONABLENESS

1629 K STREET, N.W.
SUITE 220
WASHINGTON, DC 20006
TELEPHONE: 202-463-1166

www.centerforregulatoryreasonableness.org

February 18, 2020

VIA FOIA ONLINE

Regional Freedom of Information Officer
U.S. EPA, Region 1 (OARM01-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Facsimile: (617) 918-1102
Email: r1.foia@epa.gov

RE: Freedom of Information Act Request for Records Related to EPA Region 1's Peer Review Request Response

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2.

Background

This request is submitted by the Center for Regulatory Reasonableness for records related to the Draft Great Bay General Permit, published in the Federal Register on January 7, 2020. By way of background, the Great Bay General Permit concludes that a 100 kg TN/ha-yr watershed load limitation is required to ensure compliance with the New Hampshire narrative criteria for nutrients. This is a "new" regulatory mandate, not presently identified in the MS4 General Permit for New Hampshire, that imposes significantly greater TN load reduction requirements for all MS4 communities located in the Great Bay system. This recently announced watershed load reduction requirement will adversely affect New Hampshire MS4 communities by altering compliance responsibilities presently established within the New Hampshire MS4 General Permit.

On September 30, 2019 and October 7, 2019, communities in Great Bay (*i.e.*, City of Dover and City of Rochester) submitted letters to EPA Region 1 and the EPA Assistant Administrator for Water David Ross, requesting a peer review of EPA Region 1's method for

deriving the water quality-based effluent limitations for wastewater treatment plant discharges in the Great Bay Watershed that was ultimately utilized in the Great Bay General Permit. EPA Region 1 did not grant the two peer review requests of the Regions water quality-based effluent limitation derivation method on December 19, 2019 because EPA had yet to issue a draft permit and fact sheet at that time (attachment).

Request

This request seeks any records concerning EPA Region 1's basis for not granting the September 30, 2019 and October 7, 2019 peer review requests (excluding any records submitted by the communities to EPA through the peer review requests).

Request for Expedited Processing

As this request is “urgently needed to inform the public [affected communities] concerning some actual...government activity [draft Great Bay General Permit]” it qualifies for expedited processing and we request that EPA expedite this FOIA request and process it within 10 calendar days of this request.

This request is seeking information that is directly related to a regulatory action currently in a comment period that closes on March 9, 2020. *See* Draft Great Bay Total Nitrogen General Permit. The inability to review a response to these requests within the comment period adversely affects the due process rights of the communities, impacted by this General Permit, to provide full and complete comments on the Agency's regulatory action. If this request is not fully processed prior to the close of the comment period on March 9, 2020, with sufficient time to review the responsive documents and the comment period is not extended, the communities will be adversely impacted as EPA is not required to respond to such “late filed” comments.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$100.00. If the requested documents are withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary documents are duplicated.

Respectfully,

//s// Erin Thomas
Erin Thomas

Attachment –
December 19, 2019 Letter from EPA Region 1 to the City of Dover and the City of Rochester



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

CITY OF
Received
DEC 24 2019
City Manager
ROCHESTER

December 19, 2019

OFFICE OF THE
REGIONAL ADMINISTRATOR

Karen Weston, Mayor
City of Dover
288 Central Avenue
Dover, NH 03820

Michael Joyal, City Manager
City of Dover
288 Central Avenue
Dover, NH 03820

Caroline McCarley, Mayor
City of Rochester
31 Wakefield Street
Rochester, NH 03867

Blain Cox, City Manager
City of Rochester
31 Wakefield Street
Rochester, NH 03867

Dear Sir/Madam,

I am writing in response to your September 30, 2019 and October 7, 2019 letters to me and the EPA Assistant Administrator for Water David Ross, requesting peer review of EPA Region 1's method for deriving water quality-based effluent limitations for wastewater treatment plant discharges in the Great Bay watershed.

EPA appreciates the strong interest in your communities regarding EPA's permitting approach in Great Bay. As you are aware, EPA and the New Hampshire Department of Environmental Services (NHDES) have made extraordinary efforts to engage the communities in the permit development process. The agencies held numerous meetings starting in October of 2018 with Great Bay municipalities, including representatives from Rochester and Dover, in which EPA's approach was discussed in detail and the communities were provided opportunities to engage directly with the permitting and water quality teams at the EPA and NHDES. Outside of these meetings, the Agency (and NHDES) made sure to afford the municipalities and other stakeholders ample opportunity to provide feedback and input regarding this permitting approach, including on the underlying science.

The EPA and NHDES have carefully considered – and in some cases incorporated – this early feedback as we considered pathways to meeting water quality standards in Great Bay. Although EPA has shared the approach that we intend to use to set load-based limits with stakeholders, we have yet to issue a draft permit and fact sheet for public notice and comment. When we do, as with all proposed permits, the permittees and any other members of the public will have the opportunity to review and comment.

At this time, EPA does not have plans to subject the permitting approach to a separate peer review, unless a scientific or technical issue is identified during the public comment period that merits the Agency undertaking this task.

EPA will carefully consider and respond to any timely comments received during the public comment period from permittees and other members of the public before making a final permitting decision.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dennis Deziel", with a long, sweeping flourish extending to the right.

Dennis Deziel
Regional Administrator