ATTACHMENT 4

Conservation Law Foundation's Comments on the Revised Draft Permit, submitted January 30, 2025

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For a thriving New England

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"Regardless of the management practice to use or dispose of sewage sludge, exposure and risk reduction is possible through pretreatment at industrial facilities discharging to a WWTP. By monitoring sewage sludge for PFOA and PFOS, WWTPs can identify likely discharges of PFOA and PFOS from industrial contributors, require pretreatment, and achieve significant reductions in PFOA and PFOS concentrations in their sewage sludge. **In some state programs, WWTPs with industrial sources have achieved a 98 percent reduction in PFOS sewage sludge concentrations through industrial pretreatment initiatives. *The EPA recommends that states, Tribes, and WWTPs monitor sewage sludge for PFAS contamination, identify likely industrial discharges of PFAS, and implement industrial pretreatment requirements, where appropriate. Doing so will help reduce downstream PFAS contamination and lower the concentration of PFOA and PFOS in sewage sludge*[.]**"

– U.S. Environmental Protection Agency, January 25, 2025
(90 Fed. Reg. 3863-64) (emphases added).

"EPA-issued NPDES permits should include the permit conditions described below, as appropriate, for facilities where PFAS is expected or likely to be present in their discharge. . . Require [best management practices] and pollution prevention to address PFAS discharges to POTWs."

– U.S. Environmental Protection Agency, April 28, 2022
Memo from Radhika Fox to Water Division Directors.

January 30, 2025

Meridith Finegan
EPA New England, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Re: Comments on Revised Draft NPDES Permit Nos. NH0100447(Manchester Wastewater Treatment Facility and 15 CSOs) and NHC010447 (Town of Bedford), NHC020447 (Town of Goffstown), and NHC030447 (Town of Londonderry).

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Dear Ms. Finegan:

Conservation Law Foundation (CLF) appreciates the opportunity to comment on EPA's Revised Draft National Pollutant Discharge Elimination System (NPDES) permit for the City of Manchester, New Hampshire's wastewater treatment facility (WWTF). As EPA is well aware, PFAS pollution represents a significant threat to human health and the environment that EPA and other regulators are still catching up to address.[1] Having explicitly acknowledged the importance

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[1] Hiroko Tabuchi, *The EPA Promotes Toxic Fertilizer. 3M Told It of Risks Years Ago*. New York Times, (Dec. 27, 2024), *accessible at* https://www.nytimes.com/2024/12/27/climate/epa-pfas-fertilizer-3m-forever-chemicals.html ("The data suggested that the toxic chemicals, made by 3M, were fast becoming ubiquitous in the environment. The company's research had already linked exposure to birth defects, cancer and more. That sewage was being used as fertilizer on farmland nationwide, a practice encouraged by the Environmental Protection Agency.")

Hiroko Tabuchi, *Their Fertilizer Poisons Farmland. Now, They Want Protection from Lawsuits.* New York Times, (Dec. 6, 2024), *accessible at* https://www.nytimes.com/2024/12/06/climate/sludge-fertilizer-synagro-lobbying.html ("The E.P.A. continues to promote sludge as fertilizer. It regulates harmful pathogens and some heavy metals in biosolids, but not PFAS.")

Hiroko Tabuchi, *Her Children Were Sick. Was It "Forever Chemicals" on the Family Farm?* New York Times, (Sept. 21, 2024), *accessible at* https://www.nytimes.com/2024/09/21/climate/farm-pfas-meat-poison-sewage-sludge.html ("The E.P.A. has more recently said that no level of certain kinds of PFAS is safe. 'We're starting to find out that agricultural soil is a big source of PFAS,' said Samuel Ma, an associate professor of civil and environmental engineering at Texas A&M University who studies emerging contaminants. But regulators 'seem to only be focusing on drinking water.'")

Hiroko Tabuchi, *5 Takeaways from Our Reporting on Toxic Sludge Fertilizer.* New York Times, (Aug. 31, 2024), *accessible at* https://www.nytimes.com/2024/08/31/climate/takeaways-pfas-sludge-fertilizer.html ("For decades, the government has encouraged farmers across the United States to spread sewage sludge on their cropland and pastures. But now there's a growing awareness that sludge fertilizer can contain heavy concentrations of "forever chemicals" linked to cancer, birth defects and other health risks.")

Hiroko Tabuchi, *Something's Poisoning America's Land. Farmers Fear "Forever Chemicals."* New York Times, (Aug. 31, 2024), *accessible at* https://www.nytimes.com/2024/08/31/climate/pfas-fertilizer-sludge-farm.html ("E.P.A.'s own researchers have found elevated levels in sewage sludge. And in the agency's most recent survey of biosolids, PFAS were almost universal. A 2018 report by the E.P.A. inspector accused the agency of failing to properly regulate biosolids, saying it had 'reduced staff and resources in the biosolids program over time.'")

of monitoring for PFAS and *reducing* per- and polyfluoroalkyl substances (PFAS) contributions to WWTFs (*see, e.g.,* above), EPA has an important opportunity to establish permit requirements consistent with its own recommendations and to proactively protect the Merrimack River and local communities from PFAS pollution.

As set forth below, CLF urges EPA to follow its own recommendations by including not only PFAS monitoring provisions in the final NPDES permit, but also PFAS prevention and reduction requirements. We also urge EPA to reinstate the narrative limits in Part I.A.3–8 of the Original Draft Permit and retain the Adaptation Planning measures in Part I.C of both Draft Permits. CLF incorporates by reference our comments on the Original Draft Permit[2] and submits the following comments on the Revised Draft Permit.

I. EPA Should Expand PFAS Monitoring and Must Include PFAS Reduction Requirements in the Final Permit.

The bedrock purpose of the Clean Water Act is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). EPA has recognized that PFAS jeopardize the integrity of the Nation's waters and pose serious hazards to human health and the environment.[3] WWTFs like Manchester's do not remove or destroy PFAS, resulting in PFAS releases to the environment through WWTF effluent and sewage sludge disposal.[4]

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[2] Conservation Law Foundation, Comments on Draft NPDES Permit No. NH0100447 (June 10, 2024), *accessible at* https://www.clf.org/wp-content/uploads/2024/07/2024-6-10-CLF-Comments-on-Manchester-NH-Draft-NPDES-Permit.pdf [hereinafter CLF June 10, 2024 Comments].

[3] EPA, PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024 at 5, 7 (October 2021), *accessible at* https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.

[4] 90 Fed. Reg. 3859, 3861, 3863 (Jan. 25, 2025) ("Traditional wastewater treatment technology does not remove or destroy PFOA or PFOS, and these chemicals typically accumulate in the sewage sludge."); *see also* Ruyle et al., 122 PNAS 3, *High organofluorine concentrations in municipal wastewater affect downstream drinking water supplies for millions of Americans* (Jan. 6, 2025), *accessible at* https://doi.org/10.1073/pnas.2417156122 ("Data presented here suggest that US POTWs do not effectively remove most EOF prior to effluent discharge, regardless of whether they have secondary or tertiary treatment (Fig. 1*C* and Dataset S5). Aquatic discharges from POTWs contain elevated levels of PFAS, including PFAA, PFAA precursors, and polyfluorinated pharmaceuticals."

As described in our June 10, 2024 comments, ample data shows that the Manchester WWTF receives PFAS-contaminated influent, discharges PFAS into the Merrimack River, and through its onsite incinerator emits PFAS into the air.[5] EPA also recently recognized that PFAS in sludge incinerator ash could potentially result in PFAS discharges through stormwater – and in doing so, the agency specifically cited the PFAS study conducted at the Manchester WWTF and its onsite incinerator.[6]

To mitigate hazards from PFAS in wastewater effluent discharges and air emissions, EPA should make the following changes to the Draft Permit.

A. EPA Should Include and Strengthen PFAS Monitoring Provisions in the Final Permit.

CLF supports EPA including PFAS monitoring in the permit. Monitoring and reporting for PFAS – both at the wastewater treatment plant and at individual Industrial Users – will benefit both EPA and the City by characterizing the sources of PFAS into the WWTF and better informing strategies to reduce PFAS in the WWTF's effluent and sludge. Monitoring information is essential because PFAS are a class of persistent and health-harming pollutants and their confirmed presence in the WWTF's effluent and sludge poses risks for both the Merrimack River and health in surrounding and downstream communities. The Merrimack River is designated under the Clean Water Act for aquatic life protection, recreation, fish consumption, and potential drinking water supply; the Manchester facility's PFAS contributions are harmful to these important designated uses.[7]

The Clean Water Act and its regulations provide EPA with authority to include monitoring requirements for PFAS and Adsorbable Organic Fluorine (AOF, a nontargeted measurement for the large class of PFAS chemicals) in the WWTF's influent, effluent, and sludge. The statute provides that EPA may issue permits that include conditions that the Agency "determines are necessary to carry out the provisions of" the Clean Water Act, "including conditions on data and

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[5] CLF June 10, 2024 Comments at 2–11 & Attached Exhibits.
[6] EPA, National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity Fact Sheet at 3, 80–81, 89–90 (2024), *accessible at* https://www.epa.gov/system/files/documents/2024-12/proposed-2026-msgp-fact-sheet.pdf (citing Seay, 2023).
[7] CLF June 10, 2024 Comments at 18–21.

information collection, reporting, and such other requirements as [EPA] deems appropriate." 33 U.S.C. § 1342(a). EPA regulations provide that the agency "shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of" the Clean Water Act and its implementing rules. 40 C.F.R. § 122.4(a).

Additional EPA regulations not only authorize, but also require, every NPDES permit to contain conditions, including monitoring requirements, "when applicable." 40 C.F.R. § 122.44(i). Monitoring requirements for PFAS and AOF are applicable at the Manchester WWTF, as they will allow EPA and the City to "assess treatment efficiency, characterize effluents and characterize receiving water."[8] The statutory and regulatory authority to impose conditions and data-gathering requirements directly contradicts the City of Manchester's unsupported claim that EPA lacks authority to require PFAS monitoring without "clearly established water quality criteria."[9]

Even if water quality criteria were a prerequisite to PFAS monitoring, narrative criteria and recent numeric criteria developments satisfy that prerequisite. New Hampshire statutory and regulatory narrative water quality criteria state that "all surface waters shall be free from toxic substances or chemical constituents in concentrations or combination that injure or are inimical to plants, animals, humans, or aquatic life[,]" and PFAS fall within that narrative language. RSA 485-A:8, VI; N.H. Code Admin. 1703.21(a)(1).[10] Moreover, on October 7, 2024, EPA finalized numeric aquatic life water quality criteria for PFOA and PFOS and benchmarks for eight other PFAS compounds.[11] On December 26, 2024, EPA also proposed numeric human health water quality criteria for PFOA, PFOS, and PFBS.[12] The State of New Hampshire also has taken recent action related to water quality criteria, proposing, on October 29, 2024, numeric surface water quality criteria for PFAS.[13] Thus, not only do 33 U.S.C. § 1342(a) and 40 C.F.R. § 122.44(i)

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[8] EPA. Off. Of Wastewater Mgmt., NPDES Permit Writers' Manual, Chapter 8, at 8-2 (2010), https://www3.epa.gov/npdes/pubs/pwm_chapt_08.pdf.

[9]City of Manchester, Comments on U.S. EPA Draft NPDES Permit, Wastewater Treatment Facility, NH0100447 (June 10, 2024) at 3.

[10] *See also* CLF June 10, 2024 Comments at 19–22.

[11] 89 Fed. Reg. 81077 (Oct. 7, 2024).

[12] 89 Fed. Reg. 105041 (Dec. 26, 2024).

[13] N.H. Dep't Env't Servs., *Rulemaking Notice for Env-Wq 1700* (October 2024), *accessible at* https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/env-wq-1700-rmn.pdf.

provide EPA authority to require PFAS monitoring, but final and proposed criteria also provide EPA with an additional basis and need for requiring monitoring.

Clean Water Act regulations authorize EPA to require monitoring for PFAS and AOF using methods 1633 and 1621. Regulations specify that "[i]n the case of pollutants or pollutant parameters for which there are no approved methods under" federal regulations, "monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters." 40 C.F.R. § 122.44(i)(1)(iv)(B)). Because PFAS and AOF do not yet have monitoring methods approved in federal regulations, EPA has authority to specify methods 1633 and 1621 in the permit.

Both federal rules and state law also authorize EPA to include PFAS monitoring requirements for Industrial Users. Federal regulations authorize the Approval Authority in an Industrial Pretreatment Program – which, in the case of Manchester's program, is EPA – to require a WWTF to include "any other relevant information requested by the Approval Authority" in its annual pretreatment program report. 40 CFR § 403.12(i). Data on targeted and nontargeted PFAS in industrial wastewater will help identify sources of PFAS into the WWTF and will inform reduction measures to control discharges of toxic pollutants that the WWTF cannot remove.

New Hampshire law also explicitly authorizes WWTFs to monitor PFAS from industrial sources. RSA 485-A:5-e, I allows WWTFs to "require any industrial or commercial facilities . . . contributing discharge to its plant to test such discharge to determine the level of PFAS in the discharge." The law allows the WWTF to impose PFAS testing requirements such as:

(a) Identification of potential sources of PFAS using safety data sheets or other specification sheets.
(b) Sample test result of the discharge measuring levels of PFAS in the discharge provided to the wastewater treatment plant.
(c) Submission of an annual report to the municipality in which the wastewater treatment plant containing [sic] a list of the test results.

RSA 485-A:5-e, I.

Recent scientific literature confirms that EPA should require Industrial User monitoring using both method 1633 and method 1621. A study of PFAS and organofluorine in WWTF influent and effluent determined that most PFAS monitoring in wastewater considers only "a few intensively

studied PFAS," but nontargeted testing reveals that wastewater treatment plant effluent contains "large quantities of unknown organofluorine."[14] The authors state empirical data from "major organofluorine sources" is "critically needed."[15] Further analysis on "unknown organofluorine," according to the authors, is essential to determine "accumulation of any replacement PFAS used by industry following the phase out of legacy compounds[,]" demonstrating the basis for requiring nontargeted organofluorine monitoring through 1621 for Industrial Users.[16]

Including method 1621 monitoring requirements also corresponds with EPA's own recommendations in its April 2022 memorandum, "Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority."[17] That memo states that EPA can require AOF monitoring in addition to method 1633, "if appropriate."[18] Here, it is appropriate to require both methods 1633 and 1621 for Industrial User sampling, given that recent literature emphasized the significant presence of "unknown organofluorine" in wastewater and emphasized that "[e]xperts have called for a class-based approach for regulating organofluorine, focusing on PFAS, due in part to the extreme persistence of these compounds and their transformation products[.]"[19]

B. EPA Has Authority and Sufficient Basis to Include Industrial Source Control Measures and Must Do So in the Final Permit.

EPA should not only strengthen monitoring for PFAS in wastewater from Industrial Users as described above, but it must also include control requirements to reduce contributions of industrial PFAS to the WWTF.

Both the federal Industrial Pretreatment Program and New Hampshire state law authorize EPA to include PFAS reduction requirements. Federal Industrial Pretreatment Program regulations

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[14] Ruyle et al., *supra* note 3.
[15] Ruyle et al., *supra* note 3.
[16] *Id.*
[17] Memo from Radhika Fox to Water Division Directors, EPA Region 1–10, *Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority* (April 28, 2022), https://www.epa.gov/system/files/documents/2022-04/npdes_pfas-memo.pdf.
[18] *Id.* at 2, 3.
[19] Ruyle et al., *supra* note 6.

authorize the Approval Authority (here EPA) to "modify . . . a POTW's Permit" to include "a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment[.]"40 C.F.R. § 403.8(e)(1). As described in our June 10 comments, the addition of PFAS to the Manchester WWTF from Industrial Users most likely presents a substantial hazard to the quality of receiving waters (i.e., impacts to designated uses), and to human health and the environment through both effluent discharges and incinerator emissions.[20] And under New Hampshire law, 485-A:5-e, "A wastewater treatment plant may refuse discharge from an industrial or commercial facility . . . that has reported a level of PFAS in its discharge above the level the wastewater treatment plant determines to be acceptable." RSA 485-A:5-e, III.

Not only is EPA authorized to require source reduction measures in the City's permit, but it is required to do so under federal pretreatment program regulations, as detailed in our June 10, 2024 comments.[21]

EPA itself has repeatedly underscored the need for not only PFAS monitoring, but also PFAS reduction, from industrial users. Most recently, in its January 2025 Draft Health Risk Assessment for PFOA and PFOS in Sewage Sludge, EPA highlighted that needed, stating:

> Regardless of the management practice to use or dispose of sewage sludge, exposure and risk reduction is possible through pretreatment at industrial facilities discharging to a WWTP. By monitoring sewage sludge for PFOA and PFOS, WWTPs can identify likely discharges of PFOA and PFOS from industrial contributors, require pretreatment, and achieve significant reductions in PFOA and PFOS concentrations in their sewage sludge. In some state programs,

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[20] CLF June 10, 2024 Comments, at 3–10, 13-46.

[21] *See id.* at 31 (citing § 403.8(f)(1)(vi)(B)) (EPA must establish PFAS source reduction requirements in the City's permit to ensure that the City "fully" implements its authority to . . . "[I]mmediately and effectively . . . halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons" and . . . "[H]alt or prevent any discharge to the POTW which presents or may present an endangerment to the environment[.]")

> WWTPs with industrial sources have achieved a 98 percent reduction in PFOS sewage sludge concentrations through industrial pretreatment initiatives. The EPA recommends that states, Tribes, and WWTPs monitor sewage sludge for PFAS contamination, identify likely industrial discharges of PFAS, **and implement industrial pretreatment requirements, where appropriate.**[22]

According to EPA, industrial pretreatment requirements "will help reduce downstream PFAS contamination and lower the concentration of PFOA and PFOS in sewage sludge."[23] EPA similarly recommended in its April 2022 memorandum that EPA require best management practices "and pollution prevention to address PFAS discharges to" municipal WWTFs.[24] Those best management practices include product elimination or substitution, accidental discharge minimization, and equipment decontamination or replacement.[25] The Agency similarly stated in its PFAS Strategic Roadmap that "EPA will seek to proactively use existing NPDES authorities to reduce discharges of PFAS at the source[.]"[26] And in July 2024, EPA Region 1's Water Permits Branch Chief stated: "I do think eventually we will get to the point of including requirements in the permits themselves[,]" and "I think the initial focus will be on the pretreatment part . . . Find out where your biggest contributors are and restrict them first and foremost."[27]

Industrial pretreatment requirements are appropriate and necessary for Manchester's WWTF, given that EPA has access to data showing the plant has consistently received PFAS in influent and released PFAS through its effluent and sludge incineration since at least 2019.[28] EPA must

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[22] 90 Fed. Reg. 3859, 3863–64 (Jan. 25, 2025) (emphasis added).
[23] *Id.* at 3864.
[24] Memo from Radhika Fox to Water Division Directors, *Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority* at 3 (April 28, 2022), https://www.epa.gov/system/files/documents/2022-04/npdes_pfas-memo.pdf.
[25] *Id.* at 2–4.
[26] EPA, PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024 at 14 (October 2021), *accessible at* https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.
[27] Mara Hoplamazian, *PFAS in, PFAS out: How wastewater in Manchester is a pathway for contamination* NHPR, (July 26, 2024), *accessible at* https://www.nhpr.org/nh-news/2024-07-26/pfas-in-pfas-out-how-wastewater-in-manchester-is-a-pathway-for-contamination.
[28] CLF June 10, 2024 Comments, at 3–8.

therefore follow *its own recommendations* and include PFAS reduction requirements for Industrial Users in Manchester WWTF's NPDES permit.

C. EPA Must Use Recently Finalized and Proposed Water Quality Criteria to Analyze and Determine PFAS Effluent Limitations and Include Such Effluent Limitations in the Final Permit.

As described in our June 10 comments, EPA must analyze the need for technology-based and water quality-based effluent limitations (WQBELs) for PFAS. When analyzing the need for WQBELs, EPA must conduct a reasonable potential analysis for PFAS.[29] Recently finalized and proposed numeric water quality criteria for PFAS serve as indicators for whether the City's discharges "may . . . have the reasonable potential to cause, or contribute to" violations of New Hampshire's narrative standards for toxics, and its standards protecting designated uses for both human health and aquatic life. *See* 40 C.F.R. § 122.44(d)(1)(i).[30] Therefore, those recently finalized and proposed criteria must inform EPA's reasonable potential analysis and subsequent WQBEL calculations. Specifically, in analyzing and establishing WQBELs, EPA must consider: (1) EPA's final aquatic life criteria and benchmarks for PFAS,[31] (2) EPA's proposed human health criteria for PFAS,[32] and (3) New Hampshire's proposed surface water quality criteria for PFAS.[33]

II. EPA Must Reinstate Narrative Permit Limitations

EPA revised its original Draft Permit to remove narrative provisions from the Original Draft Permit, Part I.A.3-8, and the current permit, Part I.A 2-7. These changes indicate a preemptive response to *San Francisco v. EPA*, a case that the Supreme Court of the United States has heard but not decided. *San Francisco v. EPA*, 75 F.4th 1074, 1093 (9th Cir. 2023), *cert. granted,* S. Ct. No. 23-753 (May 28, 2024). EPA must reinstate the narrative provisions in the final permit, as they are not only authorized under Clean Water Act section 301(b)(1)(C), 33 U.S.C. §

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[29] *Id.* at 17–23.
[30] *See also* CLF June 10, 2024 Comments, at 17–21.
[31] 89 Fed. Reg. 81077 (Oct. 7, 2024).
[32] 89 Fed. Reg. 105041 (Dec. 26, 2024).
[33] N.H. Dep't Env't Servs., *Rulemaking Notice for Env-Wq 1700* (October 2024), *accessible at* https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/env-wq-1700-rmn.pdf.

1311(b)(1)(C) but they also provide an essential backstop for protecting water quality and ensuring that permitted discharges do not violate water quality standards.

The Clean Water Act prohibits the discharge of a pollutant from a point source into waters of the United States unless in accordance with a NPDES permit or another specified provision. 33 U.S.C. § 1311(a). Federal regulations promulgated under the Clean Water Act prohibit EPA from issuing a NPDES permit that "cannot ensure compliance with the applicable water quality requirements of all affected States," 40 CFR § 122.4(d), and that cannot achieve water quality standards, including narrative water quality criteria. 40 CFR § 122.44(d). By removing the narrative permit provisions in Part I.A.3-8 of the Original Draft Permit, EPA removed provisions that "ensure compliance" with New Hampshire's water quality standards, including narrative standards. Finalizing the permit without reinstating those narrative permit provisions would thus violate the Clean Water Act and its implementing rules.

The Revised Permit's additional monitoring and reporting requirements do not "ensure compliance with applicable narrative water quality standards," as EPA claims in its Statement of Basis for the Revised Draft Permit.[34] Those additional provisions cover a limited range of pollutants as compared to state narrative water quality criteria, and removing the narrative provisions removes an enforcement mechanism to address violative discharges.

For example, the Revised Draft removes a narrative provision that stated: "The discharge shall not cause a violation of the water quality standards of the receiving water,"[35] narrowing EPA's ability to ensure compliance with New Hampshire's water quality standards and criteria through the permit.

The Revised Draft also removes a provision that incorporated the language of New Hampshire's narrative criteria for toxic pollutants.[36] In its place, the Revised Draft includes enhanced Whole Effluent Toxicity requirements and a Pollutant Scan for specified pollutants to "ensure that the Facility does not discharge combinations of pollutants into the receiving water in amounts that would be toxic to aquatic life or human health" in violation of state narrative criteria.[37] However, EPA implicitly recognized that the new monitoring provisions do not cover all pollutants

[34] EPA, 2024 Statement of Basis for 2024 Revised Draft Permit NPDES Permit No. NH0100447 at 4 (December 2024).
[35] EPA, NPDES Permit No. NH0100447 Revised Draft Permit, Part I.A.6 (deleted) (December 2024).
[36] *Id*.
[37] *Id.* at 7.

encapsulated by the state narrative water quality standards. EPA's Statement of Basis for the revisions acknowledges that Whole Effluent Toxicity requirements may not capture "other sources of toxic effects (including to human health)" and that the Pollutant Scan includes "many" but not all "common toxic pollutants."[38]

The Pollutant Scan covers only pollutants listed in Attachment G, which is the same list of pollutants specified on permit application forms.[39] Attachment G does not include PFAS or AOF – toxic pollutants with the potential to violate New Hampshire's narrative water quality criteria.[40] The prior narrative permit provisions, on the other hand, cover pollutants that the permittee did not list on its application but that nonetheless may violate water quality standards. *See Ohio Valley Env't Coal., Inc. v. Marfork Coal Co.*, 966 F. Supp. 2d 667, 685 (S.D.W. Va. 2013) (permit provisions incorporating state water quality standards function "[a]s a backstop" that "protects water quality standards that [the permitting authority] did not anticipate would be threatened based on the discharge levels reported in a permit application.").

The agency should include the new provisions in the Revised Draft Permit in addition to, not in lieu of, narrative limitations. It should also add PFAS and AOF to Attachment G, as the City has consistently documented PFAS in its influent and effluent and those pollutants have the potential to violate New Hampshire's narrative water quality standard for toxics.

III. EPA Should Retain Adaptation Planning Measures in the Final Permit.

CLF supports the Adaptation Planning Measures in the Original and Revised Draft Permit. There is widespread consensus that climate change has already caused dramatic changes in the frequency and severity of precipitation and major storms, has caused and contributed to sea level rise, and has dramatically shifted air, water, and surface temperatures. Increased impacts in the near and long-term are already assured as a result of emissions to-date and will be severely exacerbated by continued emissions of greenhouse gases. It is beyond any reasonable dispute that climate disruption poses severe risks to riverine infrastructure, water quality, and human health.

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[38] *Id.* at 7–8.
[39] *Id.* at 8.
[40] CLF June 10, 2024 Comments, at 19–22.

EPA has recognized that in the Northeast specifically, climate change places strains on "aging infrastructure" and creates risks for surface waters and human health.[41] The agency specifically acknowledged that "[m]illions of Northeastern residents" living in coastal and river floodplain areas "are potentially more vulnerable" to climate change-induced "[s]ea level rise, heavy precipitation, and storm surge" and resulting impacts on infrastructure, surface waters, and human health.[42]

The Clean Water Act and federal regulations authorize EPA to require the Adaptation Planning measures in Draft Permit Part I.C. Section 402 of the Clean Water Act authorizes EPA to include permit conditions that the Agency "determines are necessary to carry out the provisions of" the statute. 33 U.S.C. § 1342(a). Federal regulations state that the EPA Regional Administrator "shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of" the Clean Water Act and its implementing rules. 40 C.F.R. § 122.4(a). [43] EPA highlighted several additional statutory and regulatory authorities for Adaptation Planning requirements in the Fact Sheet to its Original Draft Permit, including CWA §§ 301(b)(1)(C), 401(a)(1)-(2) and 40 C.F.R. §§ 122.4(d), 122.41(d), (e), (n).

Wastewater treatment plants like Manchester's are particularly susceptible to non-speculative climate change impacts within the purview of the Clean Water Act, including combined sewer overflow events due to increased precipitation causing discharges of raw sewage from point source outfalls into surface waters that serve as recreation sites or drinking water sources.[44]

Moreover, the City's claims that Adaptation Planning requirements pose environmental justice concerns ignores the environmental injustices and disparate impacts of pollution that will likely result if the City is *not* required to engage in adaptation planning.[45]

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[41] EPA, *Climate Impacts in the Northeast* (last updated January 19, 2017), *accessible at* https://19january2017snapshot.epa.gov/climateimpacts/climate-impacts-northeast_.html#Reference%201.
[42] *Id.*
[43] *See also* Off. of Wastewater Mgmt., Memo from Christopher Kloss to Regional Water Division Directors, Regions 1-10, *Incorporating Resiliency Considerations in NPDES Permitting* (Dec. 13. 2024), *accessible at* https://www.epa.gov/system/files/documents/2024-12/resilience-npdes-permitting.pdf.
[44] EPA, *Climate Impacts in the Northeast* (last updated January 19, 2017), *accessible at* https://19january2017snapshot.epa.gov/climateimpacts/climate-impacts-northeast_.html#Reference%201.
[45] *See generally* Union of Concerned Scientists, Looming Deadlines for Coastal Resilience at 6 (June 2024), *accessible at* https://www.ucsusa.org/resources/looming-deadlines-coastal-resilience ("During this decade, our results show a 10 percent increase in public and affordable housing exposed to disruptive

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IV. Conclusion

EPA has an important opportunity to proactively address PFAS pollution at the City of Manchester's WWTF and, in doing so, to ensure compliance with the Clean Water Act and protect the health of the community and the Merrimack River. We urge EPA to seize this opportunity by issuing a final permit consistent with our June 10, 2024 comments and, as set forth herein, by strengthening PFAS monitoring provisions, developing and including PFAS control requirements, reinstating the narrative limits contained in the Original Draft Permit, and retaining the Adaptation Planning measures contained in both Draft Permits.

Sincerely,

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flooding twice per year in nondisadvantaged communities but a 40 percent increase in disadvantaged communities. . . . During the same period and with the same inundation frequency, the numbers of brownfields and K–12 schools exposed to flooding also increase more rapidly in disadvantaged communities than in those that are nondisadvantaged."); *see also EJScreen Community Report: Manchester, NH* (last visited January 28, 2025), *accessible* at https://ejscreen.epa.gov/mapper/ (listing the City's flood risk at the 74th national percentile).