

EXHIBIT 41 (AR H.74)



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



June 8, 2011

Tom Irwin, Vice President & CLF-NH Director
Conservation Law Foundation
27 North Main Street
Concord, NH 03301

Mitch Kalter, President
Great Bay Trout Unlimited
P.O. Box 1121
Dover, NH 03821

Derek Durbin, Esq., Chairman
David Anderson, Project Coordinator
New Hampshire Coastal Protection Partnership
162 Thornton Street
Portsmouth, NH 03801

Dear Messrs. Irwin, Kalter, Durbin and Anderson:

Thank you for your letter dated May 25, 2011 relative to concerns about the proposed Memorandum of Agreement (MOA) between DES and the Great Bay Municipal Coalition.

The primary concern voiced in your letter is that ratification of the MOA will lead to, in your words, "indefinite delay." In agreeing to the provisions of the MOA, DES is not asking for a change in the timeframe for the issuance of discharge permits in the Estuary. Governor Lynch, with the support of DES, is on record as asking EPA to hold *final* permit release until such time as the joint modeling exercise for the Squamscott River has been completed. The model should yield reportable results by the end of this calendar year. In a recent letter to Senators Shaheen and Ayotte, EPA Regional Administrator Curt Spalding wrote that final permit release would not occur prior to December 31, 2011. He further stated in his May 19, 2011 letter that, "... we do intend to consider new information at any time during this permitting process." As such, consideration of the model will not lead to delay. Similarly, research on eelgrass displacement by macroalgae and shading by epiphytes will help to verify the eelgrass criteria for Great Bay and can be completed by the end of this calendar year. We are convinced that the additional work on dissolved oxygen and eelgrass, completed in a timely manner, will serve to validate the findings of our proposed Nutrient Criteria and pave the way for all parties to make the difficult and expensive decisions needed to restore the health of the Estuary.

DES Web site: www.des.nh.gov

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The situation in Great Bay requires prompt attention, and nitrogen reductions will be needed from all sources, including municipal wastewater treatment facilities, in order to improve the overall ecological health of the estuary. DES has clearly articulated the problems of low dissolved oxygen and eelgrass loss in the proposed Nutrient Criteria for the estuary. DES stands by those criteria. At the same time, DES is interested in reducing the uncertainties in the data and analyses as they pertain to specific tidal river segments and algal dynamics in the estuary. Accordingly, DES will be a signatory to the Memorandum of Agreement.

Again, thank you for your letter. Should you have further comments or concerns, please contact either Ted Diers, Coastal Program Manager, at 271-7940 or ted.diers@des.nh.gov, or me at 271-2958 or thomas.burack@des.nh.gov.

Sincerely,

A handwritten signature in black ink that reads "Thomas S. Burack". The signature is written in a cursive style with a large, stylized initial "T".

Thomas S. Burack, Commissioner

cc: Ted Diers, NH Coastal Program