



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

May 21, 2014

Curt Spalding, Regional Administrator
Environmental Protection Agency
Region 1
Mail Code OEP06-5
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Great Bay Settlement Agreement

Dear Administrator Spalding:

I look forward to meeting with you and the Great Bay communities of Dover, Rochester and Portsmouth (the Cities) next Thursday at your office.


In preparation for that meeting, I have enclosed a copy of the April 9, 2014 Settlement Agreement between DES and the Cities. You will note that the agreement states that in light of the "Joint Report of Peer Review Panel" dated February 13, 2014, the NHDES will no longer use the .45, .30, .27 or .25 mg/ L TN (total nitrogen) numeric nutrient thresholds as derived and developed in the report released by NHDES in June 2009 entitled "Numeric Nutrient Criteria for the Great Bay Estuary" in its Section 305(b) and 303(d) water quality assessments for the Great Bay Estuary, including the Cocheco and Piscataqua Rivers, and Portsmouth Harbor.

In addition to addressing any questions that you may have about the agreement, we hope to discuss the following subjects with you next week:

- The process for updating scientific information on nutrient targets and control options;
- The differences in nutrient and flow dynamics between the Piscataqua and lower Cocheco rivers relative to elsewhere in the Great Bay Estuary;
- Possible partnerships between EPA, DES and the Cities to further develop the hydrodynamic model and additional water quality components to be used as important tools in future permitting requirements for the Great Bay municipalities; and
- The timing of permit issuance.

If you have any questions, please contact me at 603-271-2958 or Assistant Commissioner, Vicki Quiram, at 603-271-8806.

Sincerely,


for Thomas S. Burack
Commissioner

cc: Harry Stewart, DES
Dan Arsenault, EPA
Stephen Silva, EPA

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is made and entered into by the Cities of Dover, Portsmouth and Rochester, New Hampshire (“the Municipalities”) and the State of New Hampshire and the New Hampshire Department of Environmental Services (“NHDES” and, together, the “State”) (all collectively “the Parties”) for the purpose of settling the claims, controversies and disputes among the Parties as more fully described herein.

WHEREAS, the Municipalities and the State desire to enter into an Agreement to discharge all claims, controversies and disputes among them related to the subject matter of the lawsuit currently pending among the Parties in the State of New Hampshire Supreme Court, No. 2013-0119, Petition for Appeal Pursuant to Rule 7 from a judgment of the Merrimack County Superior Court under the docket number 217-2012-cv-00212.

NOW THEREFORE, the Parties hereby agree as follows:

1. In light of the “Joint Report of Peer Review Panel” dated February 13, 2014 (attached hereto as Exhibit A), and issued as a result of the Parties’ Peer Review Agreement, effective April 20, 2013, (attached hereto as Exhibit B), the NHDES will no longer use the .45, .30, .27 or .25 mg/ L TN (total nitrogen) numeric nutrient thresholds as derived and developed in the report released by NHDES in June 2009 entitled “Numeric Nutrient Criteria for the Great Bay Estuary” in its Section 305(b) and 303(d) water quality assessments for the Great Bay Estuary, including the Cocheco and Piscataqua Rivers, and Portsmouth Harbor.

2. The NHDES will modify its State of New Hampshire Section 305(b) and 303(d) Consolidated Assessment and Listing Methodology dated January 2014 in a manner consistent with Paragraph 1, above.

3. The Municipalities will withdraw their appeal of the above-referenced lawsuit, docketed as Case No. 2013-0119 in the New Hampshire Supreme Court.

Dated: 4-1-14

CITY OF PORTSMOUTH
By: [Signature]
Name: John P. Bohenko
City Manager
Title, duly authorized

Dated: _____

CITY OF DOVER
By: _____
Name: _____

Title, duly authorized

Dated: _____

CITY OF ROCHESTER
By: _____
Name: _____

Title, duly authorized

2. The NHDES will modify its State of New Hampshire Section 305(b) and 303(d) Consolidated Assessment and Listing Methodology dated January 2014 in a manner consistent with Paragraph 1, above.

3. The Municipalities will withdraw their appeal of the above-referenced lawsuit, docketed as Case No. 2013-0119 in the New Hampshire Supreme Court.

CITY OF PORTSMOUTH

Dated: _____

By: _____
Name: _____

Title, duly authorized

CITY OF DOVER

Dated: _____

By: _____
Name: _____

Title, duly authorized

CITY OF ROCHESTER

Dated: 4/1/2014

By: 
Name: THOMAS J. JEAN

MAYOR
Title, duly authorized

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

Dated: 3/28/2014

By: 

Name: EVAN MULHOLLAND

ASSISTANT ATTORNEY GENERAL
Title, duly authorized

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Dated: _____

By: _____
Name: _____

Title, duly authorized

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

Dated: _____

By: _____
Name:

Title, duly authorized

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES**

Dated: 4/2/14

By: *Vicki D. Quirion, Assistant Commissioner*
for Thomas S. Burack, Commissioner