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September 9, 2013

Via Electronic Filing

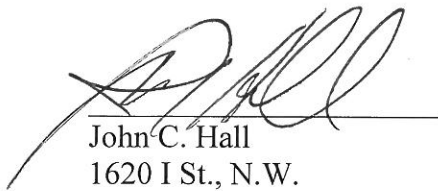
U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board 1103M
1200 Pennsylvania Avenue, N.W.
East Building
Washington, D.C. 20460-0001

Re: Town of Newmarket Wastewater Treatment Plant
Permit Number: NH0100196
Appeal Number: NPDES 12-05

Dear Ms. Durr,

Please find attached the Petitioner's Reply to Region 1's Response to Petitioner's Motion to Dismiss and Conservation Law Foundation's Motion for Leave to Submit a Non-Party Amicus Filing, and accompanying Certificate of Service regarding NPDES Appeal No. 12-05.

Sincerely,



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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
Town of Newmarket)	
)	
NPDES Permit No. NH0100196)	NPDES APPEAL No. 12-05
_____)	

**PETITIONER’S REPLY TO REGION 1’S RESPONSE TO PETITIONER’S
MOTION TO DISMISS AND CONSERVATION LAW FOUNDATION’S MOTION FOR
LEAVE TO SUBMIT A NON-PARTY AMICUS FILING**

In accordance with 40 C.F.R. § 124.19(f)(4), the Great Bay Municipal Coalition (the “Coalition” or “Petitioners”) respectfully submits this Reply to EPA Region 1’s Response to Petitioner’s Motion to Dismiss filed on August 28, 2013, and Conservation Law Foundation’s Motion for Leave to Submit a Non-Party Amicus Filing to the Environmental Appeals Board (“EAB” or the “Board”).

The Region’s Response objects to the Coalition’s Motion to Dismiss “*insofar as*” we have “suggested” that “EPA has agreed to delay NPDES permit issuance for other Great Bay communities, including Dover, ... or has otherwise predicated the outcome of any subsequent permit proceeding ...” Resp. at 2 (emphasis added). Our Motion to Dismiss does not make either of those assertions. Regional Administrator Spalding did tell the Coalition that EPA would consider the outcome of the peer review in any further permitting actions. We acknowledge that Administrator Spalding did not agree to delay the Dover permitting process. However, the Coalition was informed that the Dover permit was not likely to be finalized until after the end of 2013. Thus, EPA’s primary concern is misplaced.

With regard to EPA's assertion that the peer review is in the "very early stages" (Resp. at 2), we are actually much further along than EPA may realize. The Coalition and the New Hampshire Department of Environmental Services ("DES") have finalized the charge questions for the peer review, identified the potential peer reviewers, and developed a list of documents to submit to the peer reviewers. The updated peer review is on schedule to be completed before the end of 2013 or early January 2014 at the latest.

EPA's uncertainty regarding the utility of the peer review or the peer review not mooted this appeal (Resp. at 2, 3) is misplaced if not premature. One possible outcome is a DES supported, peer review conclusion that (1) nutrients are not the likely cause of periodic low dissolved oxygen and eelgrass population decline within the Great Bay system and/or (2) the 2009 Numeric Nutrient Criteria are not based on reliable scientific analysis. Such a result should significantly impact a decision on whether it is necessary to impose stringent total nitrogen limitations under 40 C.F.R. § 122.44(d), and we would hope and expect that EPA would seriously consider such updated scientific conclusions. Moreover, a decision in this case which is based on "Lamprey River impacts" and is issued pre-peer review would be of limited precedential value given the fact-based nature of permitting decisions and the location of the Dover discharge (the Piscataqua River).

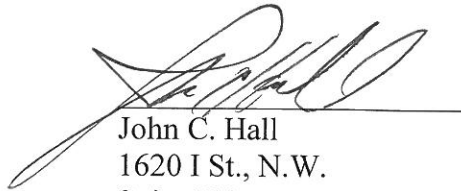
Finally, it is not apparent why EPA (and CLF) has an interest in forcing a Board decision that could be adverse to either party.¹ An adverse decision for Petitioners would cause the Coalition to file an appeal to the First Circuit resulting in "further delay" of the implementation

¹ In recent filings submitted by the EPA in two Freedom of Information Act appeals, the Agency has admitted it has no records or analyses which refute the central factual and legal points raised in this permit appeal. These same facts are at issue in the Coalition's science misconduct allegations. As EPA admits it has no records showing Petitioner's scientific observations are in error, the EAB should find in favor of the Petitioners. In the unlikely scenario that the Board refuses to grant the Motion to Dismiss, the Coalition is submitting a concurrent letter documenting the admissions contained in the Agency's recent Federal district court filings.

of the Newmarket permit. As EPA points out there are “scarce administrative and judicial resources” (Resp. at 2). By dismissing the Newmarket permit appeal it would (1) allow the Newmarket permit to become final, (2) allow the peer review determination to be available as additional scientific and technical information, and (3) these resources would be conserved.²

Therefore, for the reasons explained above, the Coalition moves to have the Board dismiss the above-captioned appeal.

Respectfully submitted,



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² The Coalition objects to CLF’s motion for leave to submit a non-party *amicus* filing as CLF has no standing to object to this motion to dismiss. Furthermore, there is no reason why granting the motion to dismiss could in anyway be contrary to the *amicus*, when this is precisely the relief CLF sought to begin with (a final permit with a 3 mg/l TN limitation).

CERTIFICATION OF SERVICE

I hereby certify the copies of the foregoing Petitioner's Reply to Region 1's Response to Petitioner's Motion to Dismiss and Conservation Law Foundation's Motion for Leave to Submit a Non-Party Amicus Filing, in connection with NPDES Appeal No. 12-05, were sent to the following persons in the manner indicated:

By Electronic Filing:

Clerk of the Board
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9/9/13



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