

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

)

)

)

In the Matter of:) NPDES Permit Appeal No. 05-12

Town of Newmarket)

Wastewater Treatment Plant)

NPDES Permit No. NH 0100196)

)

**MOTION OF CONSERVATION LAW FOUNDATION, TOWN OF NEWINGTON, AND
NEW HAMPSHIRE AUDUBON FOR LEAVE TO INTERVENE**

Conservation Law Foundation, the Town of Newington, New Hampshire (“Town of Newington”), and New Hampshire Audubon, respectfully request leave to intervene in the above-captioned appeal, in which the Cities of Dover and Rochester, New Hampshire – under the name “Great Bay Municipal Coalition” – appeal a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Environmental Protection Agency (“EPA”) to the Town of Newmarket, New Hampshire (“Newmarket”) relative to Newmarket’s wastewater treatment facility (“WWTF”). The parties to this motion seek leave to intervene with full-party status, to file the attached response brief and any other briefs warranted by the Environmental Appeals Board’s (“Board”) briefing schedule, and to participate in any oral arguments scheduled in this matter. Alternatively, the parties to this motion request leave to participate in this appeal as non-party *amici* through the filing of the accompanying brief, and other *amici* briefs as warranted.

This appeal concerns a NPDES permit authorizing discharges from the Town of Newmarket’s WWTF into the tidal portion of the Lamprey River, which flows into Great Bay and which is part of the Great Bay estuary. The parties to this motion participated in the public comment process for the subject

permit, advocating that the permit include a total nitrogen effluent limit of 3 mg/L, as necessitated by the decline of the Lamprey River's and Great Bay estuary's ecological health. More particularly:

Conservation Law Foundation ("CLF") is a non-profit, member-supported environmental advocacy organization working to protect New England's environment for the benefit of all people. CLF has members who use and enjoy the Great Bay estuary and has been actively involved in efforts to protect the estuary's health, including efforts to reduce nitrogen pollution. CLF has established a Great Bay-Piscataqua Waterkeeper program dedicated solely to the estuary's health. CLF submitted comments on Draft NPDES Permit No. NH0100196, stating its strong support for stringent total nitrogen effluent limits to protect the estuary.

The Town of Newington is bordered on three sides by Great Bay, Little Bay and the Piscataqua River. It has a residential population of approximately 800 people and has more frontage on the Great Bay estuary than any other municipality. Consequently, the Town of Newington is greatly interested in the health of the Great Bay estuary for ecological, cultural and economic reasons. The Town of Newington submitted comments on Draft NPDES Permit No. NH0100196, stating its strong support for the stringent regulation of total nitrogen at the Newmarket wastewater treatment facility ("WWTF"), and at other WWTFs, including the Town of Newington's WWTF.

New Hampshire Audubon is a nonprofit, statewide membership organization dedicated to the conservation of wildlife and habitat throughout the state. New Hampshire Audubon has members residing in towns bordering the Lamprey River and Great Bay estuary and is greatly concerned about the health of the estuary, including the impacts of nutrients. New Hampshire Audubon commented on Draft NPDES Permit No. NH0100196, stating its strong support for stringent total nitrogen discharge limits to protect the estuary.

The parties to this motion have a long-standing interest in the health of the Great Bay estuary, and in the prompt resolution of regulatory decisions needed to protect this sensitive estuarine system. The

relief requested by the Petitioner in this appeal, including but not limited to the delays specifically sought in the Great Bay Municipal Coalition's Petition for Review, would adversely affect the interests of the Town of Newington's residents, and CLF's and New Hampshire Audubon's members, in restoring the health of the Great Bay estuary.

While the parties to this motion share a common interest with EPA in defending and upholding the Town of Newmarket's NPDES permit, they represent individual residents and members whose use and enjoyment of the waters is adversely affected by nitrogen discharges from the Town of Newmarket's aging and outdated wastewater treatment facility, and whose interests are not adequately represented by, and are not nearly identical to, government agencies whose interests encompass institutional interests not shared by the Town of Newington and its residents, or by CLF and New Hampshire Audubon and their respective members. Thus, to protect their interests adequately, CLF, the Town of Newington, and New Hampshire Audubon request full party status.

Granting this motion will not expand the issues raised in this appeal or delay the Board's decision; nor will it prejudice the existing parties to this appeal.

WHEREFORE, the parties to this motion respectfully request that the Board enter an order granting them leave:

- A. To participate in this appeal as parties respondent;
- B. To file the accompanying Brief of Conservation Law Foundation, Town of Newington, and New Hampshire Audubon in Response to the Great Bay Municipal Coalition's Petition for Review; and
- C. To participate in any further briefing and oral arguments scheduled in this case.

In the alternative, the parties to this motion request leave to file the above-referenced brief as non-party *amici*, and to participate in any further briefing as non-party *amici*.

Respectfully Submitted,

CONSERVATION LAW FOUNDATION

By its attorney,

/s Thomas F. Irwin
Thomas F. Irwin, Esq.
Vice President & CLF New Hampshire Director
Conservation Law Foundation
27 North Main Street
Concord, NH 03301
Tel: 603.225.3060
Fax: 603.225-3059
tirwin@clf.org

TOWN OF NEWINGTON, NH

and

NEW HAMPSHIRE AUDUBON

By their attorney,

/s Michael T. Racine
Michael T. Racine, Esq.
PO Box 644
Hillsborough, NH 03244
Tel: 603.748-4570

Dated: February 7, 2013

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion to intervene, in connection with NPDES Appeal No. 05-12, was sent this day to the following persons by First Class U.S. Mail, postage prepaid:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001

Mr. Samir Bukhari
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA 18-1
Boston, MA 02109-3912

Mr. John C. Hall
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006-4033

Dated: February 7, 2013

/s/ Thomas F. Irwin
Thomas F. Irwin, Esq.
Vice President & CLF New Hampshire Director
Conservation Law Foundation
27 North Main Street
Concord, NH 03301
Tel: 603.225.3060
Fax: 603.225.3059
tirwin@clf.org