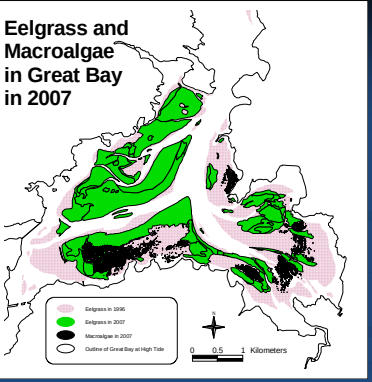
EXHIBIT– 25

Overview of Municipal Strategy on Great Bay Restoration

Great Bay Impairments

- Decline in Eelgrass
- Decline in Oyster Population
- Increase in Macroalgae
- Low DO in Tidal Rivers

Eelgrass and Macroalgae in Great Bay in 2007



In 2007, 137 acres of macroalgae covered 5.7% of former eelgrass habitat in Great Bay.

Eelgrass cover decline (since 1996) and macroalgae proliferation (shown here in 2007) are consistent with current nitrogen concentrations exceeding sustainable levels.

DES applied a 10-20% margin of safety to the median TN concentration in GB (0.42 mg N/L in 2003-2008) to set an upper bound threshold for negative effects of 0.34-0.38 mg N/L.

Figure 18 from NH DES (2009).

Macroalgae Proliferation

Macroalgae mats (*Ulva* and *Gracilaria*) in Great Bay near Lubberland Creek. Photo credit: Jeremy Neddleton (2008).

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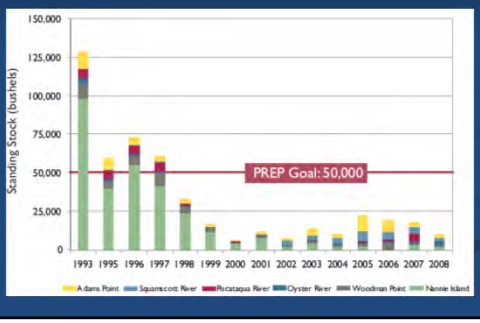
Standing Stock of Adult Oysters (>80 mm) in the Great Bay Estuary

(Piscataqua Region – Estuaries Partnership, 2009)



The Great Bay Municipal Coalition Agrees:

- That restoration and protection of the Great Bay is of critical importance
- Great Bay is impaired
- Treatment plants are part of the solution
- Common goal is a healthy Great Bay

June 2011 MOA Key Findings

- There is uncertainty about extent to which nitrogen is causing low DO and eelgrass impacts (basis of draft numeric criteria)
- Additional analysis of causative factors influencing eelgrass decline macroalgae, transparency and epiphytes needed
- Calibrated hydrodynamic model would account for key fate/transport factors and reduce uncertainty
- Adaptive management is required to reduce impairments
- Don't rely on draft numeric criteria until additional work is completed
- Stay action on draft Exeter Permit until re-analyses of Squamscott River is complete

Proposed Coalition Adaptive Management Plan

- Key Facilities Meet 8 mg/l TN within 5 Years (Ex/Nm/Du – mandatory; Dv/Rc –voluntary; Pm-no)
- Fund Oyster Restoration
- Fund Macroalgea and System Response Monitoring
- Adopt Ordinances to Reduce Nitrogen Runoff
- Identify DIN Load Reduction Watershed Target

Will address key ecological concerns faster and more comprehensively than EPA approach

Scientific Concerns with Proposed 3 mg/l TN Limitations

Proposed Numeric Nitrogen Criteria for Great Bay Estuary

Use	Parameter	Threshold	Statistics
Primary Contact	chl-a	20 ug/L	90th percentile
Aquatic Life - DO	TN	0.45 mg/L	median
	chl-a	10 ug/L	90th percentile
Aquatic Life - Eelgrass	TN	0.30 mg/L (1)	median
		0.27 mg/L (2)	median
		0.25 mg/L (3)	median
	Kd	0.75 /m (1)	median
		0.60 /m (2)	median
		0.50 /m (3)	median

Notes:
(1) Eelgrass restoration depth = 2.0 m
(2) Eelgrass restoration depth = 2.5 m
(3) Eelgrass restoration depth = 3.0 m

Scientific Assumptions Underlying DES/EPA Actions

- Nutrient increases caused excessive plant growth in the Bay and Tidal Rivers causing much lower transparency
- Eelgrass needs more light reaching the bottom
- Controlling TN will allow eelgrass restoration greatly improving transparency
- Controlling TN will Improve River DO

Problem: The Data and Analyses Don't Support This Position

Results of Data Review for Proposed Numeric Criteria – FOIA Requests

- No data showing:
  - Transparency decrease anywhere in system
  - Significant algal increase in Bay or tidal rivers
  - Excessive Epiphyte growth in GB, PR, PH
  - Low DO caused by high algal levels
  - Organic form of TN converts rapidly to DIN
  - Eelgrass losses correlated to high nutrient levels
  - Macroalgae "problem" existed prior to 2000

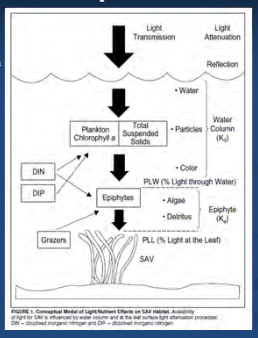
Missing Analyses

- Confirm TN concentrations control phytoplankton growth
- Demonstrate that a reduction in median phytoplankton concentration will occur and dramatically improver light penetration
- Assessment of other factors that may explain or control the available light for submerged aquatic vegetation
- Confirm that eel grass losses are tied to TN increases
- Show that the Chl 'a' levels in the estuary arms is cause of low DO
- Confirm that sediment oxygen demand was not the cause of DO depletion occurring in the estuary arms.

Conceptual Model

The minimum light requirement for eelgrass to survive in an area is 22% of incident light. For a 2 meter restoration depth, the water must have a light attenuation coefficient (Kd) of 0.75 m^{-1} or lower.

Incident light is blocked by:
(1) particles in the water
-organic particles from phytoplankton, other living or dead plants, other plankton
-inorganic particles from silt, clay, or sand
(2) water color*
(3) water itself*
(4) epiphytes on the eelgrass leaves
(5)macroalgae growing over the eelgrass
*a constant over time



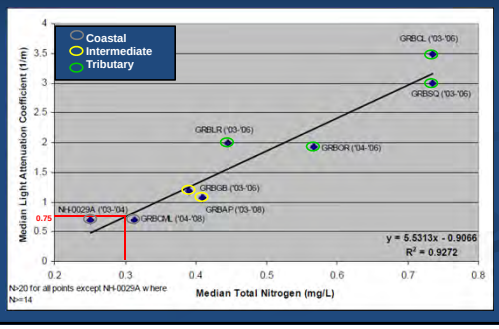
Chesapeake Bay Submerged Aquatic Vegetation Water Quality and Habitat-Based Requirements and Restoration Targets (2000)

Trend Monitoring Stations for Water Quality in the Great Bay Estuary

(New Hampshire DES, 2009)

Fundamental Error in DES Evaluation: Combining Different Habitats

(New Hampshire DES, 2009)



Major Physical Differences in Sample Locations

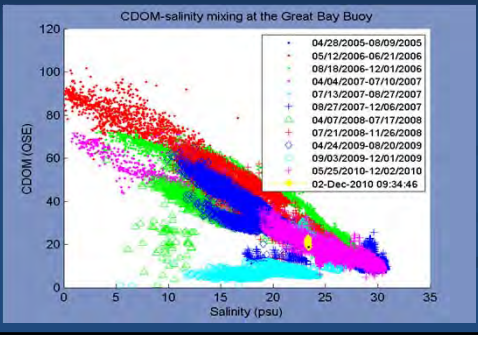
- **Estuary Mouth** – High dilution, deeper, greater currents, low solids, low color, minimal detention time
- **Bay -** Moderate dilution, highest detention time, wind resuspension, eelgrass dominated
- **Tidal Rivers –** Lowest dilution, turbulent mixing, stratification, high color, high turbidity

These major physical differences dramatically impact ambient transparency and DO, completely unrelated to nutrient inputs

Consideration of Factors Influencing Nutrient Dynamics/Impairment Metric, SAB Report

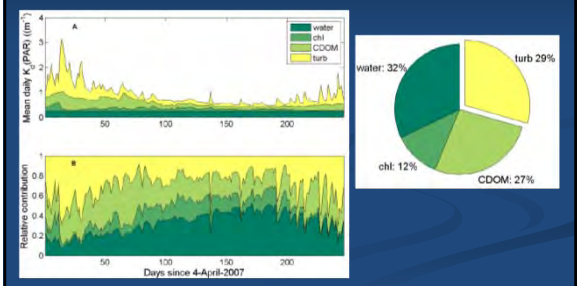
- For criteria that meet EPA's stated goal of "protecting against environmental degradation by nutrients," the underlying causal models must be correct. ***Habitat condition is a crucial consideration in this regard (e.g., light [for example, canopy cover], hydrology, grazer abundance, velocity, sediment type) that is not adequately addressed in the Guidance***. Thus, a major uncertainty inherent in the Guidance is accounting for factors that influence biological responses to nutrient inputs. ***Addressing this uncertainty requires adequately accounting for these factors in different types of water bodies***. (at 36,37)
- **Numeric nutrient criteria developed and implemented without consideration of site specific conditions can lead to management actions that may have negative social and economic and unintended environmental consequences without additional environmental protection**. (at 37)

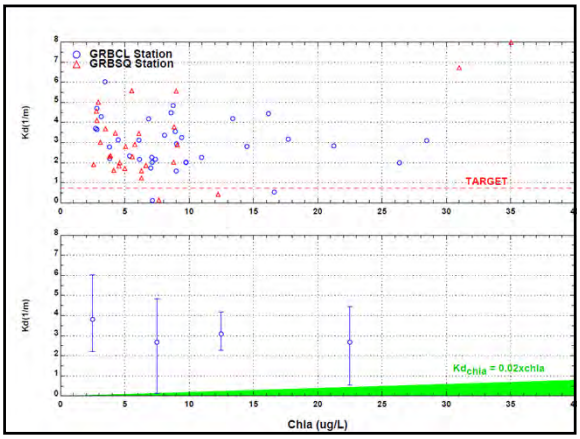
Color – Salinity/Dilution Covary in GB System –Tidal River Source



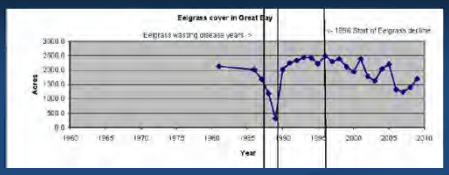
Contributions to Kd (PAR) Measured at the Great Bay Buoy

(From Morriston et al, 2008)



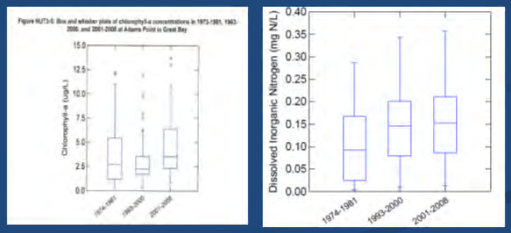


Trends Analysis Questions

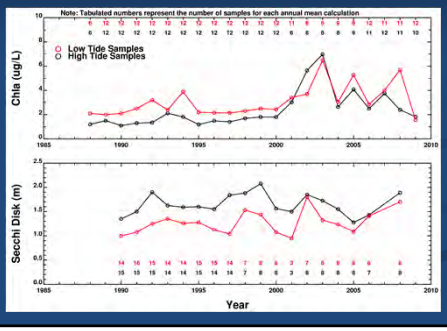


- Does change in nitrogen:chlorophyll ‘a’ correlate with eelgrass losses?

GB Algal Growth Response to Increased DIN Minimal



Measured Chl-a and Secchi Disk at Adams Point (1988-2009) Show Transparency Unchanged



NHPA Eelgrass Monitoring Sites within the Piscataqua River and Little Bay

(Nora T. Beem & Frederick T. Short, 2009)

NHPA Eelgrass Monitoring Shows Loss Not Related to TN, Kd, Chl a

(Nora T. Beem & Frederick T. Short, 2009)

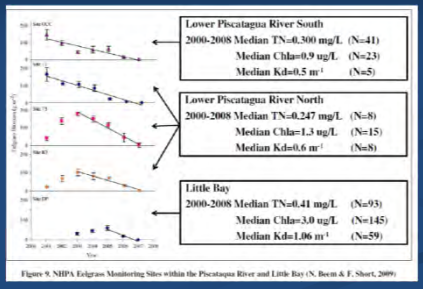


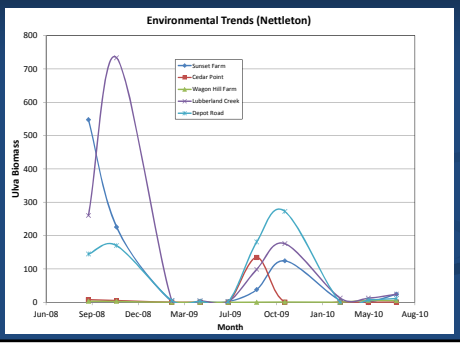
Figure 9. NHPA Eelgrass Monitoring Sites within the Piscataqua River and Little Bay (N. Beem & F. Short, 2009)

Conclusions of Transparency Assessment

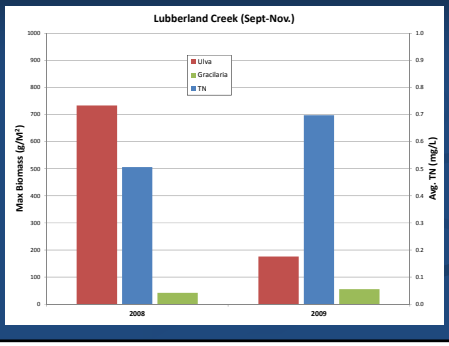
- Eelgrass decline not related to transparency
- Eelgrass decline started *before* minor change in chlorophyll a
- Eelgrass declined even in areas with very low nitrogen/chl a levels and good transparency
- Improbable that this factor triggered eelgrass losses
- Low Tidal River transparency is natural

Macroalgae Sampling Locations

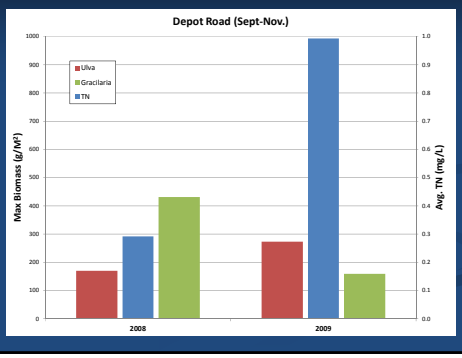
Macroalgae Growth Pattern



Site Near Lamprey River

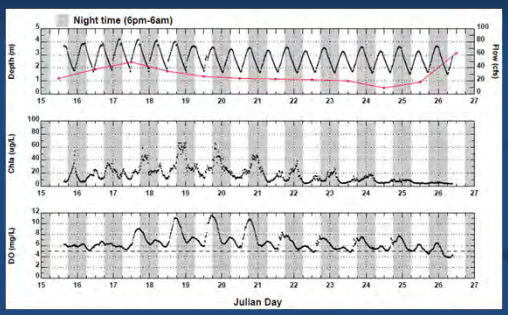


Site Near Squamscott River



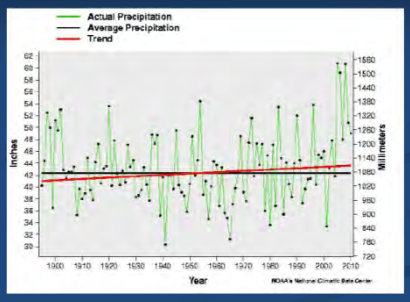
Squamscott River Sampling Locations

August 2011 Datasonde Measurements Newfields

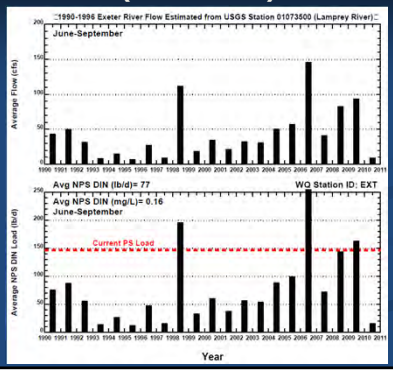


Projecting DIN Improvements under Adaptive Management

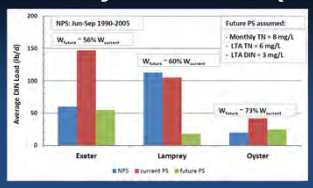
Rainfall Increased Nutrient Runoff



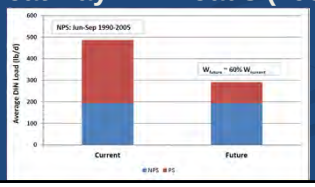
Estimated Exeter River DIN Loads (1990-2010)



Major Great Bay DIN Loads (1990-2005)



Total Great Bay DIN Loads (1990-2005)



Adaptive Management Plan Meets Eelgrass Protection Objectives

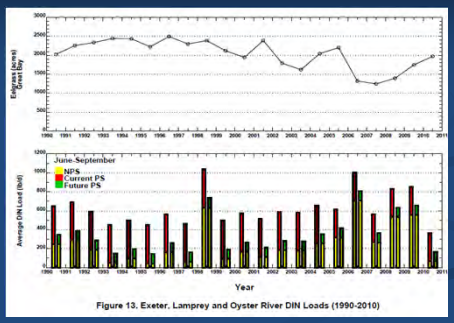


Figure 13. Exeter, Lamprey and Oyster River DIN Loads (1990-2010)

Summary of New Analyses Coalition Position

- Reduce TN to 8 mg/l at key facilities impacting Great Bay/Little Bay – achieves DIN load below mid-1990 levels; monitor changes
- Reduce Exeter algal load to Squamscott (should improve DO); monitor effect
- Complete hydrodynamic model to better understand fate/transport
- Fund oyster restoration (transparency benefit)
- Implement local ordinances for shoreline protection

Regulatory Issues

- Applying unadopted WQS in violation of CWA and implementing regulations
- Approved impairment listing modifications based on unadopted WQS
- Imposing "limits of technology" when basic modeling tools are not available to support decision making
- Imposing limits far more restrictive than those selected by EPA in similar situations

These actions, plainly violating due process and statutory mandates, will force communities to challenge EPA in all available forums

The only question to resolve

Will EPA defer imposition of a 3 mg/l TN limitation that was based on an unadopted state WQS to allow adaptive management given the documented errors/uncertainties or are we going to be litigating for the next 5-10 years?

EXHIBIT– 26

MEMO: *"EPA Overreach and the Impact on New Hampshire Communities"*

Committee on Oversight and Government Reform
Monday, June 4, 2012, at 9:00 A.M.

1. **The Environmental Protection Agency (EPA) recently issued controversial draft permits under the National Pollutant Discharge Elimination System (NPDES) program to regulate the level of nitrogen discharged into the Great Bay Estuary. *The draft permits are extremely restrictive and costly, were imposed in a manner inconsistent with usual process, and may be based on questionable science*.**

    a. The Clean Water Act (CWA) was enacted "*to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.*"[1] To this end, the CWA prohibits the discharge of any pollutant into the waters of the United States from any point source, except as authorized by CWA's specified permitting provisions.[2]

        i. One such provision is § 402, which establishes the National Pollutant Discharge Elimination System (NPDES) program and authorizes the EPA or a delegated authority, such as a state, to issue permits regulating the discharge of pollutants into the waters of the United States, subject to certain conditions.[3]

            1. Each permit is effective for 5 years, at which point it must be renewed.[4]

    b. To date, the EPA has issued draft renewal NPDES permits for three New Hampshire communities to limit nitrogen discharge purported to be significantly reducing eelgrass and oyster populations in the Great Bay Estuary. [5]

        i. *The permits propose limiting the amount of nitrogen released from the communities' wastewater treatment plants to* ***three milligrams per liter***, down from the current amount of about 20 to 30 milligrams per liter.[6]

    c. To implement the discharge of nitrogen to three milligrams per liter will be extremely costly for the communities.

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[1] Clean Water Act, 33 U.S.C. §1251.
[2] *Id.*
[3] Clean Water Act: National Pollutant Discharge Elimination System, 33 U.S.C. §1342.
[4] 33 U.S.C. §1251.
[5] Thus far, the cities of Exeter, New Market, and Dover have been issued these draft permits. There are a total of five New Hampshire communities, however, involved in the dispute: Exeter, Newmarket, Dover, Portsmouth, and Rochester. These communities, which lie in EPA Region 1, have come together to form the Great Bay Municipal Coalition in hopes of overturning this permit.
[6] *See* EPA Region 1 Draft NPDES Permit to Discharge to Waters of the United States, Permit No. NH0101311, Public Notice No. NH-005-12; Dover City Council, "Dover NPDES Draft Permit" Presentation, *available at* http://www.dover.nh.gov/notices_out.htm?id=534; Aaron Davis, "Differences aired over nitrogen in Great Bay," Seacoast Online (December 2, 2011), *available at* http://www.seacoastonline.com/articles/20111202-NEWS-112020321?cid=sitesearch.

i. Collectively, it is estimated that to implement the proposed limits the communities could incur up to $164 million in initial compliance costs and annual costs of up to $25 million.[7]
ii. The annual cost represents an average of approximately $675 per household served by the combined systems—nearly a 100% increase in current annual costs per household.

2. **New Hampshire's state legislature has historically determined the applicable water quality standards (WQS) for the state**. However, because ***the EPA has not delegated to New Hampshire the authority to administer the NPDES program,*** parties seeking to discharge from a pipe or other point source must obtain a NPDES permit issued by the EPA and comply with the particular standards it sets forth.

    a. The state of New Hampshire has, by statute, adopted a "narrative" standard for nutrient levels in the state's waters, stating that "***waters shall contain no phosphorous or nitrogen in such concentrations that would impair any existing or designated uses.***"[8] By adopting this narrative standard, the state legislature elected **not** to place a specific numeric threshold on nutrient levels.

        i. Therefore, the recent numeric levels of nitrogen actually discharged in to the Great Bay estuary have traditionally varied between 20 and 30 milligrams per liter, depending on the community.[9]

    b. Federal regulations state that each state shall review, modify, and adopt appropriate water quality standards, which are then approved by the EPA before becoming effective.[10] ***By including a numeric requirement in its draft NPDES permits for a state that has statutorily adopted a narrative standard, EPA has bypassed the state legislature and imposed its own requirement.***

3. EPA has **circumvented the state legislature and violated a number of standard processes** in its issuance of the Great Bay communities' draft NPDES permits. **EPA has elected to use its authority to override New Hampshire's statutory water quality standard and insert its own judgment for that of the state legislature**.

    a. Federal regulations provide that when a state has not established a numeric water quality criterion for a nutrient in a concentration that "has a reasonable potential to cause a violation of narrative water quality standards," EPA may then establish its own limitations.[11] *Although it is the role of the state to establish its own water quality standards, EPA utilized this authority to step in and impose its own stringent standards based on this loose and obscure regulatory language*. There is no concrete

[7] Applied Economic Research, The Economics of Seacoast Nutrient Removal: Dover, Durham, Exeter, Newmarket, Portsmouth and Rochester NH (June 2011).
[8] NH CODE OF ADMIN. R.: "Nutrients," Env-Wq 1703.14(b).
[9] *See* Dover City Council, "Dover NPDES Draft Permit" Presentation; *see also* Davis, "Differences aired over nitrogen in Great Bay."
[10] Procedures for Review and Revision of Water Quality Standards, 40 C.F.R. §131.20
[11] Establishing Limitations, Standards, and Other Permit Conditions, 40 C.F.R. § 122.44(d)(1)(vi)(A-C).

threshold beyond which nutrient levels begin to violate the state's narrative standard; therefore, EPA should not step in and impose one.

b. **The public was largely shut out of the permitting process** as EPA advanced its desired result in the face of criticism, opposition, counter-evidence, and repeated attempts to provide input.[12]

   i. ***EPA ignored repeated requests for public involvement and a more open process***, and neglected to hold hearings or engage in a peer review process promulgated by EPA's own policy.[13] In the face of mounting criticism, EPA did initiate an "internal review," but repeated requests to have public involvement in this process were ignored.[14]

   ii. The New Hampshire Department of Environmental Services (DES) and EPA also ignored a Memorandum of Agreement they signed with the Great Bay Municipal Coalition communities to resolve many of the technical and scientific issues of concern.[15]

   iii. When Coalition representatives met personally with EPA Region I officials to discuss concerns with the new standards, EPA disregarded the concerns, expressed a disinterest in scientific integrity and standard procedure, and moved forward with the permitting process.[16] This conversation was recounted by a Coalition representative during a phone call with Committee staff.[17]

c. The proposed nitrogen discharge limits are based on questionable science, as it is believed that less stringent nitrogen levels will solve any problems caused by nitrogen discharge.
   i. The draft NPDES permits are based on a study conducted by DES. The communities assert that the science was not peer reviewed, and was in no way endorsed by the state legislature.[18]

      1. ***Moreover, the Great Bay Municipal Coalition submitted numerous studies and pieces of evidence contradicting the science underlying the new standard, and the EPA ignored the information, without comment or response, and proceeded to draft the NPDES permits***.[19]

[12] John C. Hall on behalf of Great Bay Municipal Coalition, "Great Bay Nutrient Criteria and Permit Development – Documentation of Apparent Scientific Misconduct and Agency Bias; Request for Transfer of Matter to Independent Panel of Experts for Review" (May 4, 2012).
[13] *Id*.
[14] *Id*. at 4.
[15] *Id*.
[16] Phone Call with Peter Rice, City Engineer, City of Portsmouth (May 23, 2012).
[17] *Id*.
[18] Hall, "Great Bay Nutrient Criteria and Permit Development – Documentation of Apparent Scientific Misconduct and Agency Bias; Request for Transfer of Matter to Independent Panel of Experts for Review."
[19] *Id*. at 7.

d. **Internal communications and correspondence reveal that EPA was aware the science underlying the draft permit was suspect, but proceeded with the same stringent standards anyway**.

i. EPA e-mails indicate knowledge that there was no cause and effect relationship present to warrant the nitrogen limits proposed in the draft permits.[20]

ii. An internal review document points out numerous scientific deficiencies underlying the studies that were used to determine the discharge limits. Yet, EPA still claims their findings are scientifically defensible.[21]

4. **The Great Bay Municipal Coalition has proposed a workable alternative to the proposed nitrogen limits that would limit the cost and reduce nitrogen in the estuary, but the EPA has not embraced this alternative.**

a. The Great Bay Municipal Coalition has offered an alternative Adaptive Management Plan (AMP), which embodies an aggressive but more incremental approach. Under the AMP, ***the Coalition proposes an eight milligrams per liter standard which would remove 73% of nitrogen from area waters bringing nitrogen down to their 1980 levels.***[22] ***However, if the eight milligram per liter standard does not improve the estuary over time, the communities are willing to consider EPA's more stringent approach.***[23]

b. Under the AMP the collective initial compliance cost for the communities would be cut in half from $164 million to $74 million.[24]

To demonstrate the cost difference for one community, the initial cost to Dover would be reduced from $25 million to $10-$12 million plus $400,000 in operation costs.[25]

c. The City Councils of Dover and Portsmouth have voted to support the less expensive AMP.[26]

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[20] *Id*. at 3.
[21] *Id*. at 5.
[22] Aaron Sandborn, "Battle brewing over Great Bay nitrogen level," Dec. 27, 2011.
[23] Id.
[24] Applied Economic Research, The Economics of Seacoast Nutrient Removal: Dover, Durham, Exeter, Newmarket, Portsmouth and Rochester NH (June 2011).
[25] City of Dover featuring Dean Peschel, Video: "New EPA permit could raise sewer rates significantly," City of Dover Website (accessed May 30, 2012), *available at* http://www.dover.nh.gov/notices_out.htm?id=534; Davis, "Differences aired over nitrogen in Great Bay."
[26] Aaron Sandborn, "Battle brewing over Great Bay nitrogen level," Dec. 27, 2011; City of Dover featuring Dean Peschel, Video: "New EPA permit could raise sewer rates significantly," City of Dover Website (accessed May 30, 2012).

5. **The draft NPDES permit process for the Great Bay communities have been met with bipartisan concern and sparked litigation.**

    a. A bipartisan group of New Hampshire representatives in Washington – Senator Jeanne Shaheen (D-NH), Senator Kelly Ayotte (R-NH), and Representative Frank Guinta (R-NH) – recently sent a joint letter to EPA Administrator Lisa Jackson urging them to grant the communities' request to meet with Administrator Jackson regarding their allegations of scientific misconduct by Region I in drafting the permits and their request to transfer the matter to an independent board of experts for review.[27]

    The Great Bay Municipal Coalition has initiated litigation against the state and the state DES alleging that it violated the state rulemaking process by neglecting to conduct a formal and inclusive public rule-making process.[28]

[27] Aaron Sandborn, "U.S. delegates put pressure on the EPA," Seacoast Online (May 29, 2012), *available at* http://www.seacoastonline.com/articles/20120529-NEWS-205290318.

[28] Aaron Sandborn, "Great Bay Coalition files suit against state over nitrogen limits," Seacoast Online (Mar. 24, 2012), *available at* http://www.seacoastonline.com/articles/20120324-NEWS-203240314.

EXHIBIT– 27

From:	Keisha Sedlacek
To:	"r1foia@epa.gov"
Cc:	"Arsenault.dan@Epa.gov"
Subject:	FOIA Request for Records Associated with EPA Region I"s Draft NPDES permits in the Great Bay Estuary
Date:	Wednesday, September 26, 2012 10:15:35 AM
Attachments:	FOIA Request 1.pdf

To Whom This May Concern:

Please find attached a Freedom for Information Act (FOIA) request for records associated with EPA Region I's draft NPDES Permits for Exeter NH, NPDES Permit No. NH0100871; Newmarket, NH, NPDES Permit No. NH0100196; and Dover, NPDES Permit No. NH0101311. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Keisha Sedlacek

Hall & Associates
1620 I Street, NW
Suite 701
Washington, DC 20006
Ph.: 202.463.1166
Fax: 202.463.4207
E-Mail: ksedlacek@hall-associates.com

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

September 26, 2012

VIA E-MAIL

Regional Freedom of Information Officer
U.S. EPA, Region I (OARMO 1-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
E-mail: r1foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA Region I's Draft NPDES Permits for Exeter, NH, NPDES Permit No. NH0100871; Newmarket, NH, NPDES Permit No. NH0100196; and Dover, NH, NPDES Permit No. NH0101311

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Request

Generally, this request seeks EPA Region I's records associated with its proposed NPDES permits for Exeter, NH, NPDES Permit No. NH0100871; Newmarket, NH, NPDES Permit No. NH0100196; and Dover, NH, NPDES Permit No. NH0101311 regarding the need to achieve a transparency-based 0.3 mg/l TN instream requirement to allow recovery of eelgrass in the tidal rivers and Great Bay. Specifically, during the deposition of Dr. Fred Short the following acknowledgement was made:

Dr. Fred Short has not conducted research in the Great Bay Estuary that was designed to demonstrate what factors are causing changes in eelgrass populations.

Please provide us with all analyses of information from the Great Bay Estuary that shows this statement is incorrect. Please note we are only seeking analyses of data collected from the Great Bay Estuary; not analyses from other estuaries that EPA may have relied upon.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. If EPA asserts that it is relying on documents developed by the State of New Hampshire for any of these issues, simply identify the state report which is claimed to contain the relevant information. If the Agency lacks records responsible to a particular item, please not that in the response. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*
JOHN C. HALL

Cc: Dan Arsenault, EPA Region 1

EXHIBIT - 28

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 4, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

In response to the Coalition's detailed allegations of misconduct, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition on September 27, 2012, stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation into the facts relied upon EPA's Office of Water and the Interim Science Integrity Official to determine any of the Coalition's allegations were, in fact, unsupported. EPA simply reaches a conclusory, final agency decision that science misconduct has not occurred. Since EPA reached a final agency decision, there should be an administrative record demonstrating that the factual statements and conclusions present in the Coalition's various correspondences on this matter were incorrect.

Request:

Please provide us with the records relied upon by the EPA's Office of Water and the Interim Science Integrity Official to determine that scientific misconduct, as alleged in the May 4, 2012, letter to the agency has not occurred. More specifically, please provide:

1. Emails or correspondence between EPA Headquarters and any outside party including, but not limited to, EPA Region I, New Hampshire Department of Environmental Services, Conservation Law Foundation, or Dr. Fred Short regarding the Coalition's allegations.

2. The administrative record, excluding emails from the Coalition or the Coalition's counsel, relied upon by EPA Headquarters in rendering the decision that no scientific misconduct has occurred in this case.

3. Any documents, developed by EPA Headquarters or its contractors, including fact sheets, internal assessments, briefing memorandums, meeting minutes, which evaluated and/or discussed whether or not EPA Region I engaged in scientific misconduct.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

cc: Great Bay Municipal Coalition

EXHIBIT - 29

From: John Hall
To: Keisha Sedlacek; Tonja Scott
Subject: FW: FOIA Request EPA-HQ-2013-000197 Submitted
Date: Friday, October 05, 2012 10:40:44 AM

Pls log in.

John

John C. Hall
Hall & Associates – **Note new address:**
1620 I Street, NW, Suite 701
Washington, DC 20006
Phone: 202-463-1166
Fax: 202-463-4207
E-Mail: jhall@hall-associates.com

From: foia@erulemaking.net [mailto:foia@erulemaking.net]
Sent: Friday, October 05, 2012 9:38 AM
To: John Hall
Subject: FOIA Request EPA-HQ-2013-000197 Submitted

This message is to confirm your request submission to the FOIAonline application https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d280009ca1. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000197
- Requester Name: John C. Hall
- Date Submitted: Fri Oct 05 00:00:00 EDT 2012
- Request Status: Submitted
- Description: Requesting records associated with EPA?s Response to the Great Bay Coalition?s Scientific Misconduct Letter

EXHIBIT - 30

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000711 Submitted
Date: Monday, October 22, 2012 3:41:16 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d0c8. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000711
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 15:41:12 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request #1 for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

> *EPA was under contract to assist the State of New Hampshire on nutrient criteria development and was fully aware of the studies showing nitrogen increases in the estuary had not caused adverse impacts on water quality parameters such as algal levels or transparency. EPA asserted nutrient criteria had to be developed in any event and promoted a transparency approach to regulate TN. (See attached emails between EPA and DES sent between August 7, 2009 and September 28, 2009 verifying this point.).*

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000712 Submitted
Date: Monday, October 22, 2012 3:43:03 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d0fa. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000712
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 15:43:00 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request #2 for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

> *Although available data in 2008 did not show the Great Bay Estuary was nutrient impaired, EPA asked DES to change the impairment listing to "nitrogen impaired" to avoid a potential lawsuit with Conservation Law Foundation. (See attached the internal DES emails sent November 25, 2008, verifying this point, as well as, an email sent from EPA to DES sent on November 25, 2008.).*

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000713 Submitted
Date: Monday, October 22, 2012 3:45:17 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d107. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000713
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 15:45:14 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request #3 for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

> *EPA first informed the state it must formally adopt the new numeric criteria and then, after Conservation Law Foundation threated to sue EPA if Great Bay wasn't listed as nutrient impaired, EPA told the state criteria adoption wasn't needed. (See attached excerpts from Matthew Liebman (EPA) September 30, 2005 PowerPoint presentation entitled "Estuarine Nutrient Criteria" verifying this point, as well as, an internal EPA email sent on August 18, 2009.).*

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000714 Submitted
Date: Monday, October 22, 2012 3:46:12 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d10a. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000714
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 15:46:09 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request #4 for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

> *The documentation provided to the peer reviewers excluded the numerous prior analyses and data evaluations (most of which were developed by DES and presented to EPA) that confirmed (1) nitrogen had not caused excessive plant growth in the system; (2) system transparency had never changed during the period of apparent eelgrass decline; (3) color and turbidity, not nutrients, controlled system transparency; (4) the causes of changing of eelgrass populations were unknown; and (5) Great Bay was not a "transparency-limited" system. (See Mr. Trowbridge's PowerPoint presentations from June 15, 2006; February 14, 2007; November 8, 2007; and March 25, 2008, previously submitted to EPA Headquarters.).*

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000715 Submitted
Date: Monday, October 22, 2012 3:47:18 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d10d. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000715
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 15:47:14 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request #5 for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement was provided:

> *This peer review occurred without considerations of EPA's 2009 Science Advisory Board peer review, which concluded the type of "stressor-response" analysis used to generate the stringent TN criteria was not "scientifically defensible," did not demonstrate "cause and effect," and could misallocate local resources.*

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000716 Submitted
Date: Monday, October 22, 2012 3:48:19 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d115. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000716
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 15:48:15 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request #6 for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: http://www.hall-associates.com Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

> *The numeric criteria document developed by DES, with EPA's assistance, did not include the prior information and findings of studies confirming that TN criteria for eelgrass and DO were not based on a demonstrated "cause and effect" relationship therefore, both the State of New Hampshire and EPA knew that these numeric criteria were based on confounded correlations that did not show TN caused the claimed changes in either transparency or DO. (See attached deposition excerpt of Mr. Trowbridge from July 11, 2012 verifying this point, as well as, an email from DES to EPA sent on November 19, 2008, and an internal EPA email sent on November 21, 2008.).*

Please provide us with all records that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000717 Submitted
Date: Monday, October 22, 2012 3:49:31 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d117. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000717
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 15:49:27 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request #7 for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

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Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

> *EPA insisted transparency-based TN criteria must be applied to the tidal rivers (Squamscott, Lamprey, and Upper Piscataqua) and continued to issue permits knowing: Transparency in the major tidal rivers is poor, but the available data shows that (1) the effect of algal growth on transparency is negligible (2) CDOM and turbidity are the key factors controlling transparency in the system and (3) regulating TN in the tidal rivers will not result in any demonstrable improvement in transparency. (See attached deposition excerpt of Mr. Trowbridge from July 11, 2012 verifying this point, as well as, a letter from EPA to DES dated December 9, 2009.).*

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

From: foia@erulemaking.net
To: Keisha Sedlacek
Subject: FOIA Request EPA-HQ-2013-000723 Submitted
Date: Monday, October 22, 2012 4:34:43 PM

This message is to confirm your request submission to the FOIAonline application: https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d28000d1a5. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000723
- Requester Name: Keisha Sedlacek
- Date Submitted: Mon Oct 22 16:34:40 EDT 2012
- Request Status: Submitted
- Description: To Whom This May Concern: Please find attached a Freedom of Information Act (FOIA) request for records associated with EPA?s response to the Great Bay Municipal Coalition?s scientific misconduct letter. If you have any questions, please do not hesitate to contact this office. Sincerely, Keisha Sedlacek

HALL & ASSOCIATES

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October 22, 2012

VIA FOIA WEBSITE

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I in order for a new peer review to be conducted by an independent panel of experts who can assess the scientific basis of the Region's position. The letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter also states EPA "has not made a final decision on [the Coalition's] request for additional peer review."

Request:

The following statements were made by Nancy Stoner in the September 27, 2012 letter:

> *The [peer] reviewers had access to all comments provided to NH DES during the public comment period described above, including those of the affected municipalities.*

Please provide us with (1) a copy of all materials (other than the 2009 Criteria document) provided to the peer reviewers and (2) any records indicating whether the peer reviewers were allowed to review comments developed by the Coalition, or its representatives, after the "public comment period" for the 2009 Criteria document, when it was learned that a peer review was ongoing.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ *John C. Hall*

JOHN C. HALL

Cc: Great Bay Municipal Coalition

EXHIBIT - 31

From:	John Hall
To:	Perkins.Stephen@epamail.epa.gov; Arsenault.Dan@epamail.epa.gov
Cc:	"Peter H. Rice"; dean_peschel@yahoo.com; Sean Greig (sgreig@newmarketnh.gov); "Jennifer Perry"; "David Green (david.green@rochesternh.net)"; jpeltonen@sheehan.com; Robert R. Lucic; Dana Bisbee; E Tupper Kinder (ekinder@NKMLawyers.com); smwoodland@cityofportsmouth.com; Keisha Sedlacek
Subject:	FW: Great Bay Municipal Coalition Peer Review - supplemental comments
Date:	Monday, November 05, 2012 10:24:30 AM
Attachments:	Photograph Showing Naturally Occuring CDOM in Salmon Falls River.pdf SWA - UNH Peer Review response Ltr 10 16 2012.pdf UNH Peer Review Ltr 9 07 2012.pdf stoner ltr 11-2-12.pdf burack response to questions.pdf

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Dear Stephen

Please include the Coalition's updated request for a new peer in the permit comment record as supplemental comment. The letter to Ms. Stoner contains information directly relevant to the Region's proposed permit decisions for Great Bay communities. We will be further supplementing our more detailed permit comments in light of Commissioner Burack's recent response letter and the recent DES/EPA information indicating that the basis for imposing stringent nitrogen limits has now switched from the need to improve water column transparency to macroalgae control. Presently, Great Bay is not listed as impaired for excessive macroalgae growth. Previously, we submitted updated pictorial information showing that macroalgae growth in Lubberland Creek was greatly reduced from the level found in 2008 that both DES and EPA have been highlighting. This letter to Ms. Stoner also discusses prior DES deposition statements acknowledging great uncertainty regarding whether current macroalgae growth was causing ecological impairment and if so, the appropriate control mechanisms for limiting such growth. Such statements, more recent macroalgae growth information and the major decrease in DIN levels occurring in the past three years verify that imposition of stringent nitrogen reduction requirements to control macroalgae growth is not justified and is based on speculation rather than demonstrable need.

The Coalition continues to be interested in a reasonable approach to managing nutrient inputs to this system given the uncertainties and we are available to discuss such measures if it will lead to an appropriate adaptive management approach.

Thank you for considering this information in your permit deliberations.

John

John C. Hall
Hall & Associates – **Note new address:**
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Washington, DC 20006
Phone: 202-463-1166
Fax: 202-463-4207
E-Mail: jhall@hall-associates.com

original e-mail and any attachments thereto.

From: Dean Peschel [mailto:dean_peschel@yahoo.com]
Sent: Friday, November 02, 2012 4:10 PM
To: stoner.nancy@epamail.epa.gov
Cc: Gilinsky.Ellen@epamail.epa.gov
Subject: Great Bay Municipal Coalition Peer Review

Dear Ms. Stoner:

Please find the attached letter and supporting information regarding the Great Bay Municipal Coalition's request for an open independent peer review to assess the need for stringent nitrogen criteria to protect the Great Bay estuary.We hope this additional information helps your decision to support the requested peer review. We look forward to receiving EPA's response.

Best Regards,

Dean Peschel

Peschel Consulting LLC
84 Silver Street Apt A
Dover, NH 03820
Ph: 603-781-5931