

EXHIBIT– 3

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Congress of the United States House of Representatives

Washington, DC 20515

OVERSIGHT AND GOVERNMENT REFORM

- SUBCOMMITTEES:
- VICE CHAIR
 - TARP, FINANCIAL SERVICES AND BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS
 - GOVERNMENT ORGANIZATION, EFFICIENCY AND FINANCIAL MANAGEMENT
 - REGULATORY AFFAIRS, STIMULUS OVERSIGHT AND GOVERNMENT SPENDING
 - TRANSPORTATION AND INFRASTRUCTURE
- SUBCOMMITTEES:
- AVIATION
 - COAST GUARD AND MARITIME TRANSPORTATION HIGHWAY AND TRANSIT
 - BUDGET COMMITTEE

Date: June 26, 2012

To: Annita Hennon / EPA

From: Austen Jensen

Honorable Frank Guinta__

Ethan Zorfas__

Austen Jensen

Kayla Priehs__

Emma Tautkus__

__Kory Wood

__Mark Powell

__Jay Ruais

__Derek Dufresne

Number of Sheets to Follow: 2

Notes:

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HIGHWAY AND TRANSIT
BUDGET COMMITTEE

Administrator Lisa Jackson
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

I am thankful for your participation in an upcoming discussion between the Environmental Protection Agency (EPA) and representatives of the coalition of concerned New Hampshire Municipalities. Your willingness to meet with these parties indicates a constructive step in the process to protect the Great Bay Estuary, and I hope as you consider the arguments made by representatives of the affected communities, you will recognize not only the legitimacy of their arguments but also their earnest concern for the environmental future of Great Bay.

Since the beginning of 2011, my office has met with concerned community leaders and participated in numerous meetings regarding this critical issue. Wastewater Treatment Plant (WWTP) permit hearings have been held in the communities of Exeter, Newmarket and Dover with a great deal of dialogue, but with little progress or direct responses to the concerns raised by community leaders and local citizens. The communities I represent are frustrated with the process and have raised scientific doubt about the conclusions currently being reached by your agency.

At a recent field hearing of the House Oversight & Government Reform Committee, testimony was entered in to the record that indicated your agency's Great Bay policy is being driven by an aversion to a legal challenge by the Conservation Law Foundation (CLF), rather than by the practices of good governance. This testimony was very harmful to the reputation of your agency and no response has been given to either the Committee, or the people of New Hampshire, who have a vested interest in this matter. Since that hearing, I have also become aware of further evidence that indicates the EPA's policy is being determined by an effort to satisfy the concerns of CLF. Additionally, many of the scientific claims currently made by the EPA are directly at odds with prior federally funded research efforts and, thus, do not stand up to strict scrutiny. Moreover, EPA's decision to exclude the public from the scientific peer review process regarding appropriate nutrient criteria for Great Bay, only further erodes public confidence in the objectivity of EPA's decision making process.

In light of these many concerns and in order to provide for the restoration of public faith with this process, I strongly urge the Environmental Protection Agency to: (1) temporarily suspend the process of issuing WWTP permits to the affected communities in the Great Bay Estuary and (2) submit all scientific data concerning the health of the Great Bay Estuary for a detailed, open, and independent peer review.

This proposal is submitted to your attention after many months of careful consideration. As a policy maker, I rely upon well documented and reliable information provided by accredited scientists in order to make sound public policy decisions on behalf of the constituents I have the honor of representing. The concerns raised by the communities severely contradict the findings of the EPA and do not give me great confidence in the current process. I therefore respectfully request you consider this recommendation and fully be prepared to discuss this issue at the June 28th meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank Guinta", with a long horizontal flourish extending to the right.

Frank Guinta
Member of Congress

EXHIBIT– 4

Great Bay Municipal Coalition Meeting with EPA Administrator

June 28, 2012

Background

EPA Region I has proposed imposition of over \$1 billion in nutrient (TN) reduction measures (limits of technology - LOT) for communities tributary to Great Bay. This action is being taken with (1) no adopted nutrient criteria; (2) no water quality model showing how TN impacts water quality; and (3) despite numerous studies confirming that changes in TN levels have had a negligible impact on algal growth in this system.

Communities repeatedly attempted to engage the Region in an open scientific assessment of the available information only to have issues and concerns ignored – all with no analysis of the information presented. The Region committed a series of egregious regulatory and scientific assessment violations, all designed to force the imposition of stringent TN limitations as follows:

- In September 2008, due to a “threatened” CLF suit, Region I asked DES to declare the estuary TN impaired and use the unadopted nutrient criteria in 303(d) listing. ***Previously EPA directed DES to formally develop the criteria prior to its use.***
- In 2010, Region I cut the public out of the technical peer review process (contrary to state requests). ***The Region did not present the numerous studies confirming nitrogen was not adversely impacting the system to the reviewers.***
- Through 2011-12, Region I repeatedly ignored municipal comments confirming misapplication of criteria in tidal rivers and Great Bay and contrary to EPA’s Science Advisory Board recommendations. ***The Region’s claim that stringent TN reductions would greatly improve transparency is a complete fabrication that is directly refuted by federally funded research and available DES analyses.***
- Region I proposed LOT to satisfy demands by CFL ***which is a gross violation of federal NPDES rules***. The LOT rationale (*if impaired but no TMDL and 80% non-point source load, then LOT is required*) is ***not in the law or regulations (as confirmed by Region I FOIA response) and will lead to LOT requirements for all Mississippi River point sources.***

Recent Regulatory Actions Demand EPAHQ Reconsideration/Investigation

May 4, 2012 - Great Bay Municipal Coalition submitted a letter to EPA documenting Region I scientific misconduct and requesting transfer of matter to independent panel of experts for review.

June 4, 2012 - The Committee on Oversight and Government Reform held a field hearing to investigate the matter. State and federal procedural violations (peer review/no numeric criteria adoption) and undue influence of CLF were highlighted (*see attached CLF emails*).

May - July 2012 – Depositions of key DES officials/scientists confirms there is no objective scientific basis to conclude that reduced transparency due to nitrogen load increases caused eelgrass declines. (Attachment) Algal growth in system has not changed appreciably in 30 years. DES confirmed any claim of narrative criteria violation must demonstrate “cause and effect” impairment from nutrients – *admitted 2009 Numeric Criteria does not make this demonstration.* (Attachment)

Conclusion

Extensive technical record confirms that TN has not caused eelgrass impairments in this system or any material change in transparency. Eelgrass thrived at the nutrient levels EPA now declares excessive. Algal levels in this system are extremely low and are not TN controlled. System hydrodynamics apparently controls the degree of algal growth and transparency in this system.

EPA’s decision to claim that the opposite condition was occurring based on “weight of evidence,” contrary to the federally funded research and SAB recommendations on how to properly conduct such analyses *was science misconduct*- there is no objective supporting evidence for claiming that nutrients caused eelgrass declines anywhere in the Great Bay system.

The Region’s insistence that DES adopt a stringent TN criteria and list the estuary as TN/transparency impaired was a policy mandate implemented to satisfy CLF and avoid the need to defend a federal suit – *that is a plainly illegal basis for use impairment designation and permit decision making.*

Region I promoted the violation of federal regulations and statutory mandates by telling DES to call the numeric criteria “narrative standards” and to implement them without first formally adopting the rules and receiving EPA approval.

Region I violated municipal due process rights and federal law by cutting the municipal entities out of the peer review and controlling the information to the peer reviewers.

These documented action confirm the *Region I is incapable of objective decision making* in this instance and must be removed from further participation or review of Great Bay nutrient issues.

Suggested Resolution

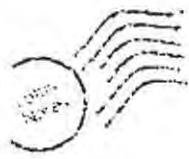
The following specific actions are requested by the Great Bay communities:

- Withdraw draft permits due to major legal and technical flaws.
- Revise approved 303(d) list based on “applicable standard,” deleting all references to TN induced eelgrass losses, transparency changes or reduced DO - until state acts to adopt technically defensible criteria and EPA approves those criteria.
- Fund an independent scientific peer review of draft state criteria with full public participation and local selection of qualified experts.

Attachments to Fact Sheet:

- CLF-related E-mails
 - o Feb. 11, 2010, S. Silva E-mail to C. Deloi
 - o Nov. 26, 2008, G. Comstock E-mail to P. Currier, et al.
- Deposition Summary
- Charts
 - o Transparency-Phytoplankton Relationship Chart for the Squamscott River
 - o Transparency-Phytoplankton Relationship Chart for the Upper Piscataqua River (2003-2008)
 - o Relationship Between Light Attenuation Coefficient and TN at Trend Stations (NH DES, 2009)
 - o Algal Levels in Great Bay and other Estuaries

ATTORNEY / CLIENT



Stephen Silva/R1/USEPA/US
02/11/2010 03:59 PM

To Carl Deloi/R1/USEPA/US@EPA
cc Brian Pitt/R1/USEPA/US@EPA, David
Pincumbe/R1/USEPA/US@EPA, Ken
Moraff/R1/USEPA/US@EPA, Lynne
bcc
Subject Re: Great Bay SWA legislation_3

Hi Carl,

Thanks, this is very interesting.

A few initial thoughts based on the meeting this morning. For Great Bay we need the following one way or the other:

- 1) TN WQBELs for the WWTPs, - either 5 mg/l (with CLFs agreement not to appeal) or 3 mg/l (likely with a longer implementation schedule)
- 2) A detailed phased and quantified Watershed Management Plan covering how necessary N reductions will occur:
 - septic system N load reduction
 - regulated and unregulated urban stormwater runoff N load reduction¹
 - agriculture N load reduction
- 3) A reliable N load reduction implementation funding source for each N source component:
 - WWTPs, schedule for projected user charge increases and SRF support
 - regulated and nonregulated urban runoff and septic systems, a utility district of sorts with an annual charge based on estimated annual N load of each municipal and private property owner (to provide a steady income base to support urban stormwater BMPs and septic system N load abatement)
 - agriculture, 319 and EQUIP funding or equivalent, possibly include ag in any utility district and assess a charge based on estimate N load
- 4) Items 1 through 3 could be incorporated in a baywide TMDL with loading capacity estimates based on the state's current salinity model, if desired. We could also do mini segment specific impervious cover TMDLs for urban stormwater or segment specific agricultural TMDLs for more local coverage, if desired.

¹For urban stormwater we need about 1 year's monitoring on SW N BMP effectiveness and optimization from the UNH Stormwater Center or another source to calibrate our BMP performance analysis model.
<http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/BMP-Performance-Analysis-Report.pdf>

Steve

Carl Deloi I recommend reading this, it's short. Keep in min... 02/11/2010 10:32:59 AM



Carl Deloi/R1/USEPA/US
02/11/2010 10:32 AM

To Stephen Silva/R1/USEPA/US@EPA, Ken
Moraff/R1/USEPA/US@EPA, Mel
Cote/R1/USEPA/US@EPA, Lynne
Hamjian/R1/USEPA/US@EPA, Brian
Pitt/R1/USEPA/US@EPA, David
Pincumbe/R1/USEPA/US@EPA
cc
Subject Great Bay SWA legislation

I recommend reading this, it's short. Keep in mind that, despite what the legislation says, a majority of the municipal energy is still focused on fighting EPA permit limits.



CHAPTER 22C SWA.doc

Carl R. DeLoi, Chief
Wetlands & Information Branch
EPA-New England
5 Post Office Square
Suite 100 (OEP05)
Boston, MA 02109-3912
617-918-1581

Great Bay Estuary - DRAFT

The Great Bay Estuary has a watershed area of 1023 square miles and includes the waters of Great Bay, Little Bay, the Piscataqua River and several other tidal rivers feeding these water bodies. All or portions of approximately 42 New Hampshire and 10 Maine communities are located in the Great Bay Estuary watershed

Great Bay and Little Bay are fed by five tidal rivers (the Bellamy, Oyster, Lamprey, Exeter/Squamscott, and Winnicut) and drain to the Piscataqua River at Dover Point. The Upper Piscataqua (above Dover Point) is formed by the confluence of three other tidal rivers, the Salmon Falls, the Cocheco and the Great Works. The Lower Piscataqua is defined as the section of the river below the confluence of the Upper Piscataqua and Great Bay/Little Bay (see attached map).

Great Bay, Little Bay, the Upper and Lower Piscataqua, and all of the tidal rivers draining to Great Bay and Little Bay are impaired due to excessive nitrogen loadings. Eelgrass loss in the tidal rivers to Great Bay and Little Bay ranges from 97 percent – 100 percent in all except the Winnicut River (5 percent loss). Great Bay has lost only 5 percent of its eelgrass, but there are clear signs of deteriorating health. Little Bay has lost 97 percent of its eelgrass. Eelgrass loss in the Upper Piscataqua is 97 percent and in the Lower Piscataqua is 82 percent.

In June, 2009, the New Hampshire Department of Environmental Services (DES) proposed numeric criteria for nitrogen in the Great Bay Estuary for the protection of eelgrass habitat and for the prevention of low dissolved oxygen. The criteria for the prevention of eelgrass loss is 0.3 mg N/L and the criteria for prevention of the dissolved oxygen standard is 0.45 mg/l. DES used these criteria to determine that most of the Great Bay Estuary was impaired for nitrogen and to add these impairments to New Hampshire's 2008 303(d) list.

Nitrogen is delivered to the Great Bay Estuary system via point sources and non-point sources (NPS) originating in both New Hampshire and Maine. DES estimates that during normal conditions (2003-2004) approximately 1025 tons of nitrogen per year are discharged to the estuary by POTWs (250 tons), nonpoint sources (760 tons), groundwater (9 tons), and atmospheric deposition to tidal waters (5 tons)¹. While NPSs are the dominant load (about 75 percent overall ~~with~~ 78 percent for Great Bay/Little Bay and 59 percent for the Upper Piscataqua), point source loadings are significant. There are 14 municipal wastewater discharges in New Hampshire (EPA issued permits) and 4 municipal wastewater discharges in Maine (delegated permits program) contributing approximately 19 MGD of wastewater to the Great Bay Estuary. The combined design flow of these facilities is 31 MGD (see Table 1).

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NHDES has recently completed a nitrogen allocation analysis², which EPA ~~intends~~ to use in reissuing overdue permits. The analysis provides estimates of wastewater treatment plant loads and non point source loads, but does not have the ability to discriminate nonpoint source loads into specific components (e.g. storm water, septic systems, agricultural runoff). The analysis utilizes a simple steady state mixing model based on salinity and identifies reductions in current nitrogen loadings that are necessary to meet appropriate nitrogen concentration targets in all parts of the Estuary (with the exception of the Lower Piscataqua, which was not able to be modeled due to salinities being nearly equal to ocean water salinity). The analysis evaluated

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¹ See Table 19 of Draft Preliminary Watershed Nitrogen Loading Thresholds for Watersheds Draining to Great Bay Estuary, October 30, 2009

² Draft Preliminary Watershed Nitrogen Loading Thresholds for Watersheds Draining to Great Bay Estuary, October 30, 2009 ("the October 30, 2009 Nitrogen Thresholds Report")

nitrogen loading reductions necessary to restore eelgrass everywhere it historically occurred and, alternatively, only in Great Bay, Little Bay and the Upper Piscataqua River (while meeting the less stringent dissolved oxygen based nitrogen target in the tidal rivers). The analysis and New Hampshire DES's recommendations for permit limits were released publicly in draft form at the end of October without consultation with EPA.

Three different conditions were modeled (dry year, normal year, and wet year) and seven different WWTP source treatment levels ranging from no treatment to 3.0 mg/l at current discharge flows. The analysis showed that to achieve nitrogen concentrations consistent with the restoration of eelgrass to all of its historic range under normal condition would require nitrogen reductions ranging from 51 percent in the Bellamy River to 74 percent in the Cocheco River³. Table 2 below shows ranges of POTW and non point source reduction that would achieve water quality goals. For example, if POTW were required to achieve effluent total nitrogen (TN) concentrations of 8 mg/l, the necessary non point source reductions would be 68 percent in Great Bay and Little Bay, and 78 percent in the Upper Piscataqua. If the POTWs were required to achieve effluent limitations of 3 mg/l, the corresponding non point source reduction would be 58 percent and 60 percent.

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NHDES is recommending that eelgrass only be restored to Great Bay, Little Bay, and the Upper Piscataqua, and that the percent reduction in point sources and NPSs should be approximately the same. This translates to 8.0 mg/l limits for all treatment facilities at current discharge flows (assuming a normal year). This scenario would require a 45 percent reduction in the NPS loadings to Great Bay and Little Bay and a 61 percent reduction in the NPS loadings to the Upper Piscataqua. With limits of 3.0 mg/l at current flows, the required NPS reduction to Great Bay and Little Bay would be 35 percent and the required NPS reduction to the Upper Piscataqua would be 44 percent.

Issues:

- * Water quality standards require restoring eelgrass to all of its historic range. Even if all facilities were at 3.0 mg/l at current flows, this would require a 58 percent reduction in the NPS loadings to Great Bay and Little Bay and a 60 percent reduction in the NPS loadings to the Upper Piscataqua (see Table 2 below comparing eelgrass restoration alternatives).
- * Even if a comprehensive NPS program with regulatory authority and enforcement capability was developed and implemented, the NPS reduction required is very large under all scenarios and is greatest in scenarios that do not include high levels of control for POTWs. There is no track record of successfully reducing NPS loadings of nitrogen. Reductions of nitrogen in storm water are particularly difficult to achieve because, unlike phosphorus, nitrogen is not typically attenuated in soils, meaning that reductions in impervious area would not necessarily result in significant reductions in nitrogen discharged to receiving waters.
- * Limits of 8.0 mg/l would be difficult to defend if challenged, since they do not ensure attainment of eelgrass criteria unless an unprecedented level of control of NPS loads is assumed. **The Conservation Law Foundation, which has been heavily involved in Great Bay issues, would be expected to appeal limits of 8.0 mg/l and might appeal limits of 5.0 mg/l.**

³ See Table 28 from October 30, 2009 Nitrogen Thresholds Report

Table 1

State	POTW	Discharge Location	Average Flow (MGD) ⁴	Design flow (MGD)
New Hampshire	Exeter	Squamscott River (tidal)	1.792	3
	Newfields	Squamscott River (tidal)	0.049	0.117
	Epping	Lamprey River	0.235	0.5
	Newmarket	Lamprey River (tidal)	0.67	0.85
	Durham	Oyster River (tidal)	0.952	2.5
	Farmington	Cochecho River	0.218	0.35
	Rochester	Cochecho River	3.462	5.03
	Milton	Salmon Falls River	0.069	0.1
	Somersworth	Salmon Falls River	1.201	2.4
	Rollinsford	Salmon Falls River	0.099	0.15
	Dover	Upper Piscataqua River (tidal)	2.837	4.7
	Newington	Lower Piscataqua River (tidal)	0.128	0.29
	Pease ITP	Lower Piscataqua River (tidal)	0.529	1.2
	Portsmouth	Lower Piscataqua River (tidal)	4.886	4.8
Maine	Berwick	Salmon Falls River	0.387	1.1
	South Berwick	Salmon Falls River (tidal)	0.327	0.567
	North Berwick	Great Works River	0.143	1
	Kittery	Lower Piscataqua (tidal)	1.023	2.5
	Total		19.007	31.154

⁴ Average flow for 2003-2004

Table 2

Restoration Level	Eelgrass in all areas except tidal rivers			Eelgrass in all areas		
	8.0 mg/l	5.0 mg/l	3.0 mg/l	8.0 mg/l	5.0 mg/l	3.0 mg/l
Great Bay and Little Bay (NPS Reduction Required)	45%	39%	35%	68%	62%	58%
Upper Piscataqua River (NPS Reduction Required)	61%	51%	44%	78%	67%	60%

Mulholland, Evan

From: Trowbridge, Philip [Philip.Trowbridge@des.nh.gov]
Sent: Wednesday, November 26, 2008 3:46 PM
To: Comstock, Gregg; Currier, Paul M.; Edwardson, Ken
Cc: Diers, Ted
Subject: RE: 303d-EPA wants us to list Gt Bay for N

We would most certainly list GB as impaired in 2010 so this is really a timing issue.

I have always felt uncomfortable when discussing the chloride impairments on I-93 because EPA, not DES, put them on the list. If the listing is inevitable, I think DES should be the one to add the waterbodies to the list, not EPA.

If we are going to add GB, we should take advantage of the opportunity to resolve some other inconsistencies. For example, the TN concentrations are highest in the Cocheco but this AU was not listed because we have not seen high chlorophyll-a there. With the draft criteria, we have a justification for adding the Cocheco River, Upper Piscataqua River, Bellamy River, Great Bay, and Little Bay based on the median TN concentrations in these waterbodies. These waterbodies plus the four already on the list cover all of the GBE down to Dover Point. The only portion of the estuary that would not be impaired for nitrogen would be the Lower Piscataqua and Portsmouth Harbor. At least there would be an even playing field for all watershed municipalities – except for those discharging to the lower Piscataqua (Portsmouth, Newington, Kittery).

-----Original Message-----

From: Comstock, Gregg
Sent: Wednesday, November 26, 2008 10:26 AM
To: Currier, Paul M.; Trowbridge, Philip; Edwardson, Ken
Subject: 303d-EPA wants us to list Gt Bay for N

Hi all,

Al Basile just called.

To avoid a potential lawsuit with CLF, EPA has decided that Gt Bay should be listed for N. The basis for this is Phil's recent nutrient analysis and bar graph showing Gt Bay concentrations exceed the preliminary 0.32 mg/L N threshold for eelgrass. He said that prior to this, Phil Coluruso and Matt Liebman had done some statistical analyses of our data and concluded that Gt Bay should be listed.

I said the reason why we didn't list it is because Phil's analysis was conducted after we submitted the 303d list. It's a timing issue. If after advise from the workgroup, DES decides to use 0.32 mg/L and develops protocols for determining where this value should be applied (ie, where would eelgrass grow), DES will list any additional waters for N in 2010. Al will contact Tom Irwin to see if they would wait until 2010.

If CLF wants Gt Bay listed in 2008 (or they file a lawsuit), Al asked if we would be amenable to amending our 303d list which I presume would mean another public notice. If we don't, EPA would issue a partial approval and take steps to add Gt Bay to our 303d list (through the federal register)

1. Are we at a point where we feel comfortable listing Gt Bay for N?
2. If so, should we wait until 2010 or should we help EPA out and file an amendment to our 303d list (assuming CLF does not agree to wait until 2010).

Please let me know Dec 3

Thanks

Sworn Testimony Confirms No Objective Basis to Impose Stringent TN Reduction on Great Bay Municipalities

In May and June, depositions were taken of Dr. Fred Short (eelgrass expert), Mr. Paul Currier (DES official responsible for Great Bay regulatory issues) and Philip Trowbridge (lead technical analyst for Great Bay). The *sworn* testimony from these individuals confirms the following:

Cause of Eelgrass Population Changes is Unknown

1. Dr. Short never determined the cause of the changing eelgrass population levels in Great Bay or any of the tidal rivers, and DES lacks studies demonstrating such cause. (Short)
2. On Piscataqua River, eelgrass were first declining (2003-2007) where water quality was the best (Harbor mouth) and then moved to upstream areas. Why this occurred is unknown. (Short)
3. Water quality and nutrient loading conditions occurring prior to 2000 were sufficient to protect eelgrass resources. (Short)

Great Bay Does Not and Never Has Had a Transparency Problem

4. Great Bay is not a transparency-controlled system with regard to eelgrass; eelgrasses receive sufficient light due to the tidal variation in the system. (Short, Trowbridge)

Nitrogen Increases Have Not Caused Excessive Plant Growth or Any Change in Transparency Adversely Impacting Eelgrass

5. A major increase (59%) in nitrogen concentration occurring since 1980 *did not* cause any significant change in algal growth in the Bay or tidal rivers. (Short, Trowbridge, Currier)
6. Eelgrass populations thrived from 1990 through 2001 under the elevated TN conditions and existing transparency conditions in Great Bay and Piscataqua River.
7. Transparency in Great Bay and Piscataqua River was documented to be unchanged by Philip Trowbridge from 2000 through 2007 when eelgrass populations apparently declined. This analysis was presented at a March 2008 eelgrass conference hosted by EPA Region I. (Currier, Trowbridge)
8. Algal growth is not demonstrated to be a significant factor affecting transparency anywhere in the system. (Short)

Colored dissolved organic matter, a naturally occurring condition, has the greatest influence on light transmission throughout the system. Color originates from the watersheds of the tidal rivers. (Trowbridge)

9. Federally funded research (2008- Morrison) on Great Bay confirmed that (1) existing light conditions were sufficient for eelgrass growth (2) changes in eelgrass populations are not related to transparency and (3) other causes require investigation. (Currier, Trowbridge)

Narrative Criteria Violations Not Demonstrated

10. Narrative criteria violations require a cause and effect relationship to be documented showing nutrients have caused excessive plant growth adversely impacting designed uses. (Currier)
11. The June 2009 Numeric Nutrient Criteria are not based on a demonstrated “cause and effect” relationship and do not constitute a demonstration that narrative criteria violations have occurred. (Short, Currier and Trowbridge)

Application of 2009 Numeric Criteria in Tidal Rivers Unsupported

12. Previous studies from Dr. Short confirmed that the Squamscott/Lamprey Rivers are not suitable for eelgrass restoration, he never advised on the ability to achieve better water clarity in these rivers and he never recommended applying a 0.3 mg/l TN standard in these rivers to ensure eelgrass restoration. (Short)

Cause of Macroalgae Growth Unknown

13. Increased macroalgae growth occurred only recently (after 2005) in Great Bay and is not demonstrated to be caused by changing nutrient levels. State estimated less restrictive TN reductions could possibly reduce macroalgae growth (~8 mg/l TN limit) (Short, Trowbridge)
14. Existing macroalgae growth is not demonstrated to be preventing eelgrass restoration in Great Bay (most growth occurs on tidal flats that don't support eelgrass). (Short, Trowbridge)

Eelgrass Restoration Occurring Under Existing Conditions

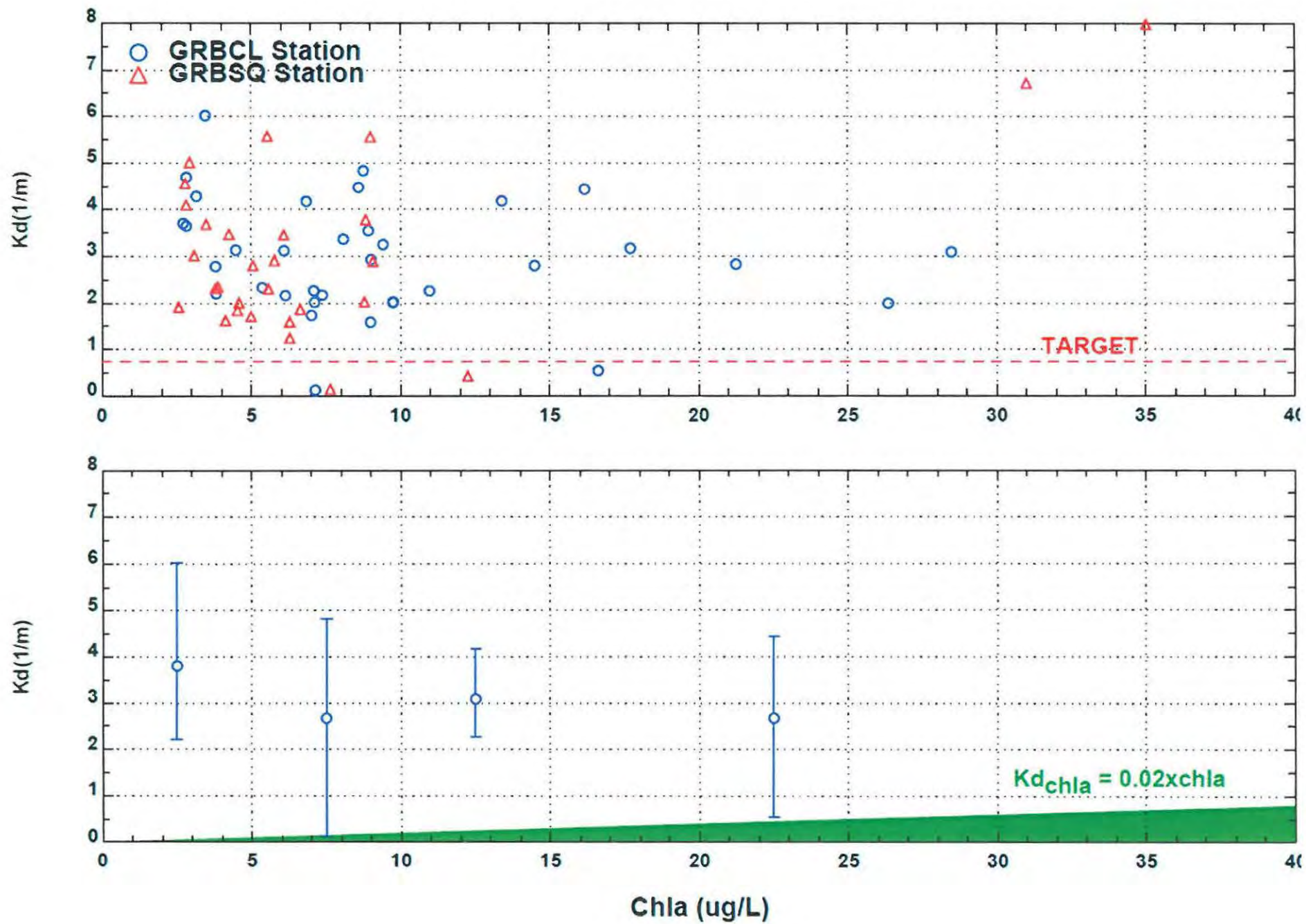
15. Little Bay has recently experienced significant eelgrass regrowth (> levels present in 1996) even though transparency and nutrient levels are worse than those recommended in the June 2009 Numeric Criteria document. (Trowbridge, Short)
16. Continued survival and regrowth of eelgrass in Little Bay means compliance with 2009 Numeric Nutrient Criteria is not justified. (Trowbridge, Currier)

EPA Said Apply the Unadopted 2009 Criteria in the Regulatory Process

17. DES planned to formally adopt the 2009 Criteria in 2010 after conducting an external peer review. Following a threatened suit by CLF, EPA called DES, indicated that numeric criteria could be used immediately and that the criteria be called a “narrative implementation method.” (Currier)

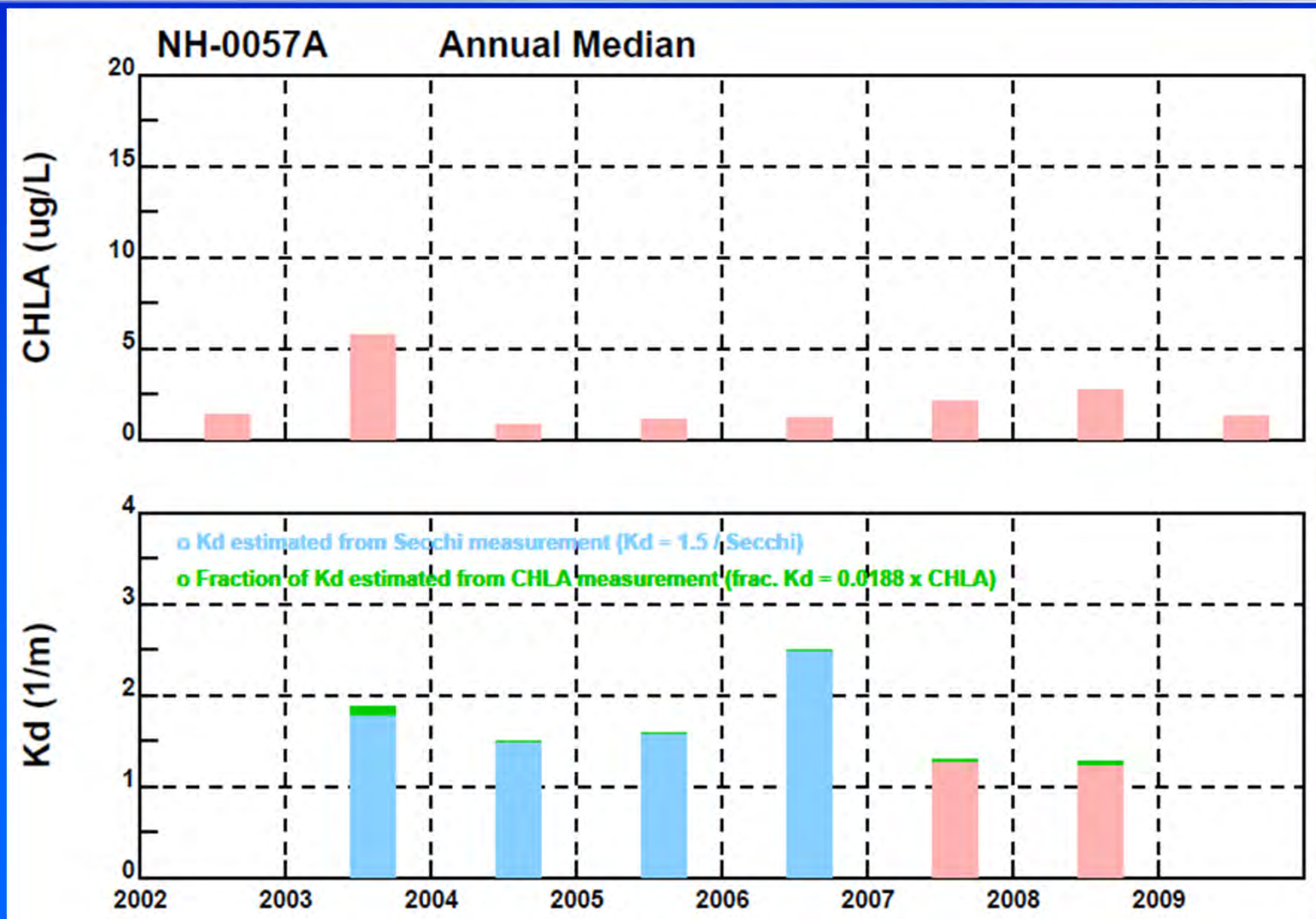
Conclusions

EPA insistence that municipal entities achieve “limits of technology” TN controls to ensure eelgrass restoration has no rational scientific basis. Studies have repeatedly demonstrated changing eelgrass population are not caused by or related to (1) nitrogen loadings or (2) changes in transparency related to excessive plant growth. In fact, the level of phytoplankton growth in this system is extremely minor compared to other systems and has never shown any significant response to system nutrient loadings.



SOURCE: DES Database for Estuary

Upper Piscataqua River Measured Chla and Kd (2003-2008)



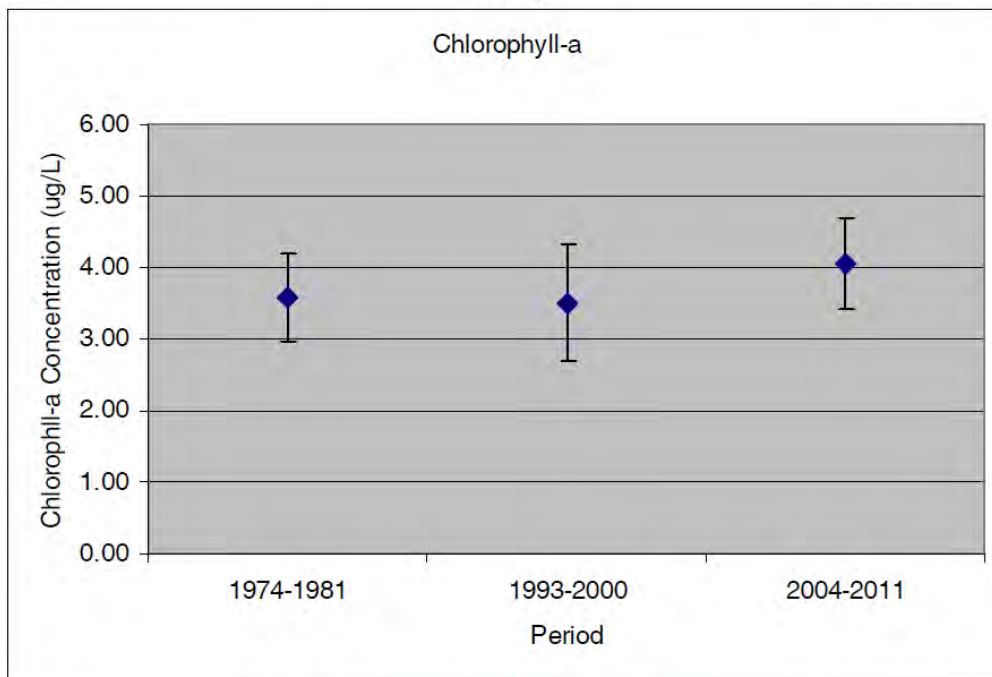
SOURCE: DES Database for Estuary

Northeast Coast Estuary Algal Levels

Chl-a (ug/L)		
Estuary	Annual Mean	Source
Chesapeake Bay 1985-1994 - Mid-bay	9.03	EPA Region III
Narragansett Bay 1985-1990 - Station 7	38.3	Y. Li and T. J. Smayda
Delaware Estuary 1988-1990	9.75	Delaware Estuary Program
Long Island Sound 1995-2010 - Station A4	10.26	UConn - The Long Island Sound Integrated Coastal Observing System
Great Bay	2-4	PREP Reports

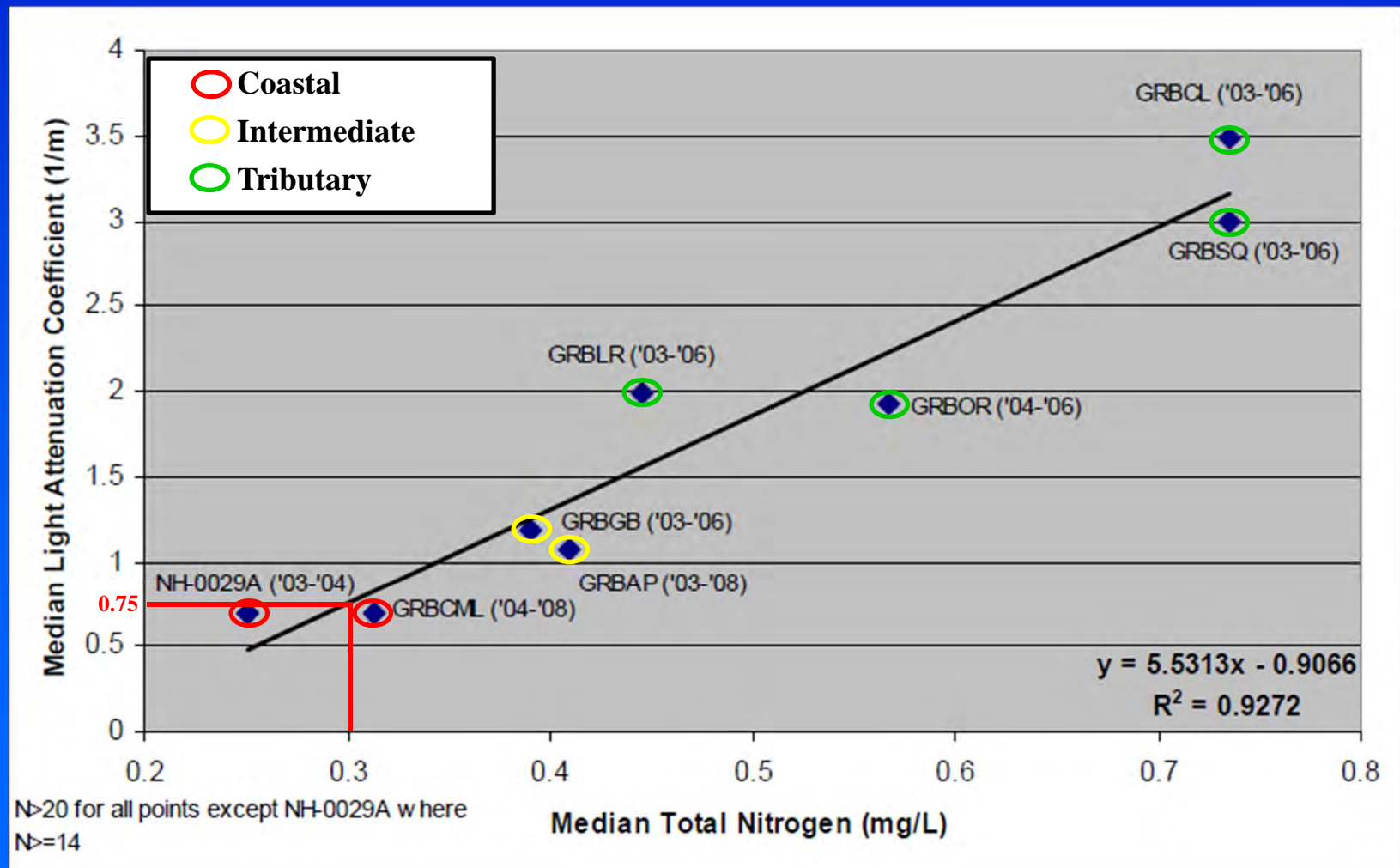
Draft 2012 PREP – Nutrients Report

Figure NUT3b-4: Average chlorophyll-a concentrations in 1974-1981, 1993-2000, and 2004-2011 at Adams Point in Great Bay (Error bars are 95th percentile confidence limits of the mean)



Relationship between Light Attenuation Coefficient and TN at Trend Stations

(New Hampshire DES, 2009)



SOURCE: Numeric Nutrient Criteria for Great Bay Estuary DES: June 2009

EXHIBIT– 5

MAYOR
and
CITY COUNCIL
citycouncil@dover.nh.gov



288 Central Avenue
Dover, New Hampshire 03820-4169
(603) 516-6000
Fax: (603) 516-6666
www.dover.nh.gov

City of Dover, New Hampshire

June 29, 2012

VIA E-MAIL

Ms. Ellen Gilinsky
Senior Policy Advisor, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: June 28, 2012, Meeting on Great Bay Nutrient and Science Misconduct Issues

Dear Ms. Gilinsky:

The Great Bay Municipal Coalition members greatly appreciated the opportunity to review key technical and regulatory concerns underlying our objections to the Region's proposed "limits of technology" (LOT) nitrogen requirements for our communities. As documented in our letter of May 4, 2012, and discussed at the meeting by our experts, the Region's proposed action is inappropriate because (1) federally-funded scientific studies and expert reviews have repeatedly determined Great Bay does not have any type of nutrient-induced transparency problem, (2) the Region's peer review process was seriously flawed and biased to produce reviews that supported the Region's position, and (3) the Region repeatedly changed scientific and regulatory findings to accommodate requests from the Conservation Law Foundation. Moreover, the Region's claim that LOT is required where significant non-point source (NPS) controls are necessary is not and never has been the position of EPA. If the Region's position correctly reflected existing regulatory requirements, LOT would be mandated throughout the Midwest and Chesapeake Bay due to nutrient impairments in those locations and high NPS load contributions. This new regulatory interpretation, however, has never been imposed in those areas, which have distinct nutrient problems. Given the very minor effect that increased nutrient levels have had on Great Bay – as repeatedly documented in the Piscataqua River Estuary Project reports for the past decade – there is no rational scientific or regulatory basis for now imposing such requirements on our citizens. Alternatively, the Coalition has supported an adaptive management approach and reasonable nitrogen reductions as a precautionary measure to protect the Estuary's resources.

At our meeting, you indicated that EPA did follow its peer review policy and had conducted a valid peer review. We would ask that EPA rethink that position, as it is not objectively

supported by the peer review record. The following events are well documented in the peer review record:

1. The public was excluded from the peer review, affecting over \$100 million in municipal expenditures, despite the state's position that community involvement should be allowed. This is contrary to both law and federal peer review policies.
2. The documentation provided to the 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 eelgrass populations were unknown; and (5) Great Bay was not a "transparency-limited" system. The failure to provide all relevant scientific information certainly violates federal peer review policies.
3. The peer review charge questions were crafted to avoid any serious scientific review and certainly did not address any of the key scientific questions raised by the Coalition (e.g., What data from this system show (a) increasing nitrogen has caused excessive plant growth and (b) transparency has changed during the period of eelgrass decline?). Failure to raise the critical scientific questions thoroughly undermined the basic purpose of a peer review.
4. This peer review occurred without consideration 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. We would note further that the recent depositions conducted of key experts and DES scientists confirmed that the methods used in the criteria development did not demonstrate "cause and effect." The key admissions made in those depositions were provided as part of the briefing materials given to the Agency.

Given these facts, plainly documented in the record presented to EPA Headquarters, it is hard to understand why EPA would defend the prior peer review exercise as consistent with federal policies and law. In any event, as discussed at our meeting, the Coalition's issues could be resolved by conducting an open, complete peer review that assesses the technical validity and need for stringent nitrogen criteria to protect the Estuary. The peer reviewers should be comprised of local University of New Hampshire scientists with decades of expertise on Great Bay issues and nationally recognized experts on pollutant fate and transport. Our communities are willing to live with the results of such a peer review, as it will ensure our municipal expenditures are properly justified and will produce demonstrable environmental improvements.


We understand that EPA has indicated that it has sufficient information to respond to our independent peer review request. In our view, that is the linchpin issue underlying local concerns. We ask that EPA provide a response on that request within the next two weeks, given that EPA Headquarters has been evaluating the science misconduct letter for over six weeks at

this point. We look forward to EPA's response and an opportunity to resolve our differences in an open scientific forum rather than through legal process.

Sincerely,

A handwritten signature in cursive script that reads "Eric Spear".

Mayor of Portsmouth

A handwritten signature in cursive script that reads "Sean Trefethen".

Mayor of Dover

cc. Congressman Guinta
Senator Ayotte
Senator Shaheen

EXHIBIT– 6

HALL & ASSOCIATES

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Washington, DC 20006-4033
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Reply to E-mail:
jhall@hall-associates.com

July 13, 2012

VIA E-MAIL

Ms. Ellen Gilinsky
Senior Policy Advisor, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Confirmation of Major Scientific Errors/Uncertainties Regarding Proposed TN Reduction for Great Bay Estuary in Depositions of Mr. Philip Trowbridge and Dr. Fred Short

Dear Ms. Gilinsky:

This letter follows our May 7, 2012 “science misconduct” letter to the Administrator and Inspector General Elkins, as well as our related meeting with your office to discuss whether EPA would support (1) deferral of further action on permitting with regard to the Coalition members and (2) conducting a new independent, local peer review to resolve underlying technical issues prior to imposing costly nutrient removal requirements. We have just completed the deposition of the DES’s lead scientist, Philip Trowbridge, who developed the 2009 Numeric Nutrient Criteria with assistance from EPA and Dr. Fred Short, the local University of New Hampshire eelgrass expert, who also worked closely with EPA and DES on developing those criteria. The following key technical points, *admitted under oath*, confirm that (1) application of the 2009 numeric nutrient criteria will not produce any demonstrable ecological benefit and (2) a new independent peer review should occur because key scientific information was withheld in the earlier review conducted by EPA Region I.

1. The numeric TN criteria for eelgrass and DO were not based on a demonstrated “cause and effect” relationship *and both the state 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.* (Trowbridge Deposition – July 11, 2011 and attached Exhibit 1 – Email from Trowbridge (DES) to Latimer (EPA) November 19, 2008)

2. Algal levels in the system did not change materially from 1980 to present, despite an estimated 59% increase in TN levels between 1980 and 2004 and *therefore TN inputs could not have caused changed transparency in the system.* (Trowbridge deposition- June 21, 2012; see also “State of the Estuary Reports 2000-2006 and draft 2013 Report)
3. The best available information shows that transparency in Great Bay and Lower Piscataqua River did not change materially from 1990 to 2005; *therefore this parameter could not be the factor causing eelgrass declines found in the system prior to that time as assumed in the draft 2009 numeric criteria.* (Trowbridge deposition- July 11, 2012)
4. Transparency in the major tidal rivers (Squamscott, Lamprey, Upper Piscataqua) is poor, but the available data (not previously analyzed by DES) 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.* (Trowbridge deposition – July 11, 2012; Exhibits 2, 3 and 4)
5. Great Bay itself is not a transparency limited system because eelgrass populations receive sufficient light during the tidal cycle. (Trowbridge deposition – June 21, 2012 and Short deposition- May 14, 2012, as discussed in numerous emails between DES, EPA and Dr. Short – not provided herein)
6. A large increase in rainfall and major floods occurring from 2006-2008 (a natural condition) could be the primary cause of significant eelgrass declines that occurred in Great Bay during that period due to increased turbidity and CDOM. DES failed to assess the importance of these events in triggering the eelgrass decline in the system despite the obvious temporal correlation. (Trowbridge deposition – July 11, 2012)
7. Available historical data and recent eelgrass regrowth in the system since 2008, which reached an estimated 40+% increase in areal coverage, indicate that the transparency level chosen to establish the draft 2009 numeric nutrient criteria is not necessary to support eelgrass growth and reestablishment in Great Bay, Little Bay and Lower Piscataqua River. (Trowbridge deposition – July 11, 2012).
8. No site-specific research has been completed to evaluate the cause of more recent eelgrass declines anywhere in the Great Bay system. To date, the causes of such eelgrass declines remain unknown. (Trowbridge deposition – July 11, 2012; Short deposition – May 14, 2012)
9. The various DES analyses that confirmed (1) TN increases did not cause changes in transparency, algal levels or DO and (2) a “cause and effect” relationship between TN and transparency/DO did not exist, were excluded from the technical information presented in the 2009 numeric nutrient criteria document and, therefore, were never presented to EPA’s internal peer review panel. (Trowbridge deposition - July 11, 2012)

As soon as we have the complete Trowbridge transcript, we will forward copies of the critical admissions to your office, as well as the other supporting exhibits. We will also be submitting an extensive supplement to the science misconduct letter that further documents that regional office staff knew the numeric criteria were based on faulty scientific findings, directly at odds with the detailed studies and site-specific data developed for the estuary, but nonetheless urged DES to adopt stringent TN criteria under the theory that nitrogen was the cause of changing eelgrass populations in the estuary system.

In closing, the deposition testimony precisely verifies the concerns raised in the science misconduct letter and fully supports the need for a new independent peer review. The testimony confirms that the proposed TN reductions are not necessary to protect the Estuary and will not produce the intended benefits to transparency or eelgrass populations. Moreover, critical scientific information was withheld from EPA's peer review panel, rendering that assessment biased and flawed. We hope that EPA will consider this information in deciding whether or not to support the suggested course of action presented by the Coalition at the June 28 meeting.

Please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,

/s/ John C. Hall

Enclosures

cc: Coalition Members
Arthur A. Elkins, Jr., Inspector General
Curt Spaulding, Administrator of EPA Region I
Thomas Burack, Commissioner of NH DES
Gov. John Lynch
Rep. Frank Guinta
Sen. Jeanne Shaheen
Sen. Kelly Ayotte
White House Council on Environmental Quality

Tony Lapa

From: Trowbridge, Philip
Sent: Wednesday, November 19, 2008 10:18 AM
To: 'Latimer.Jim@epamail.epa.gov'
Subject: RE: comments on NH estuaries N criteria document

Hi Jim,

Thanks for the comments. The meeting went well. There was some discussion but it was limited. It seemed like most people were taking some time to digest the proposal. The comment that seems hardest to refute is that nitrogen is correlated with light attenuation. Nitrogen was not proven to be the causative agent for light attenuation. Moreover, nitrogen is a component of all the factors causing attenuation (phytoplankton, CDOM, particulate organic matter) so a correlation would be expected. I will start working on the comments I received so far.

Thanks again.

Phil

-----Original Message-----

From: Latimer.Jim@epamail.epa.gov [mailto:Latimer.Jim@epamail.epa.gov]
Sent: Monday, November 17, 2008 5:56 PM
To: Trowbridge, Philip
Cc: Dettmann.Edward@epamail.epa.gov; colarusso.phil@epamail.epa.gov; [Darryl Keith/NAR/USEPA/US@EPA.epa.gov](mailto:Darryl_Keith/NAR/USEPA/US@EPA.epa.gov)
Subject: comments on NH estuaries N criteria document

Dear Phil,

I hope that you had a productive meeting this afternoon. As I said this morning, I really needed today to carefully go over the draft before I commented. Without the benefit of today's participation, I have ventured to provide you with some of my comments (attached). I thought the document was well thought out, but needs some tweaking.

I'm interested in what the TAC thought? Were there any over-riding issues? Was it well received?

(See attached file: comments_latimer.doc)

Best regards,
Jim

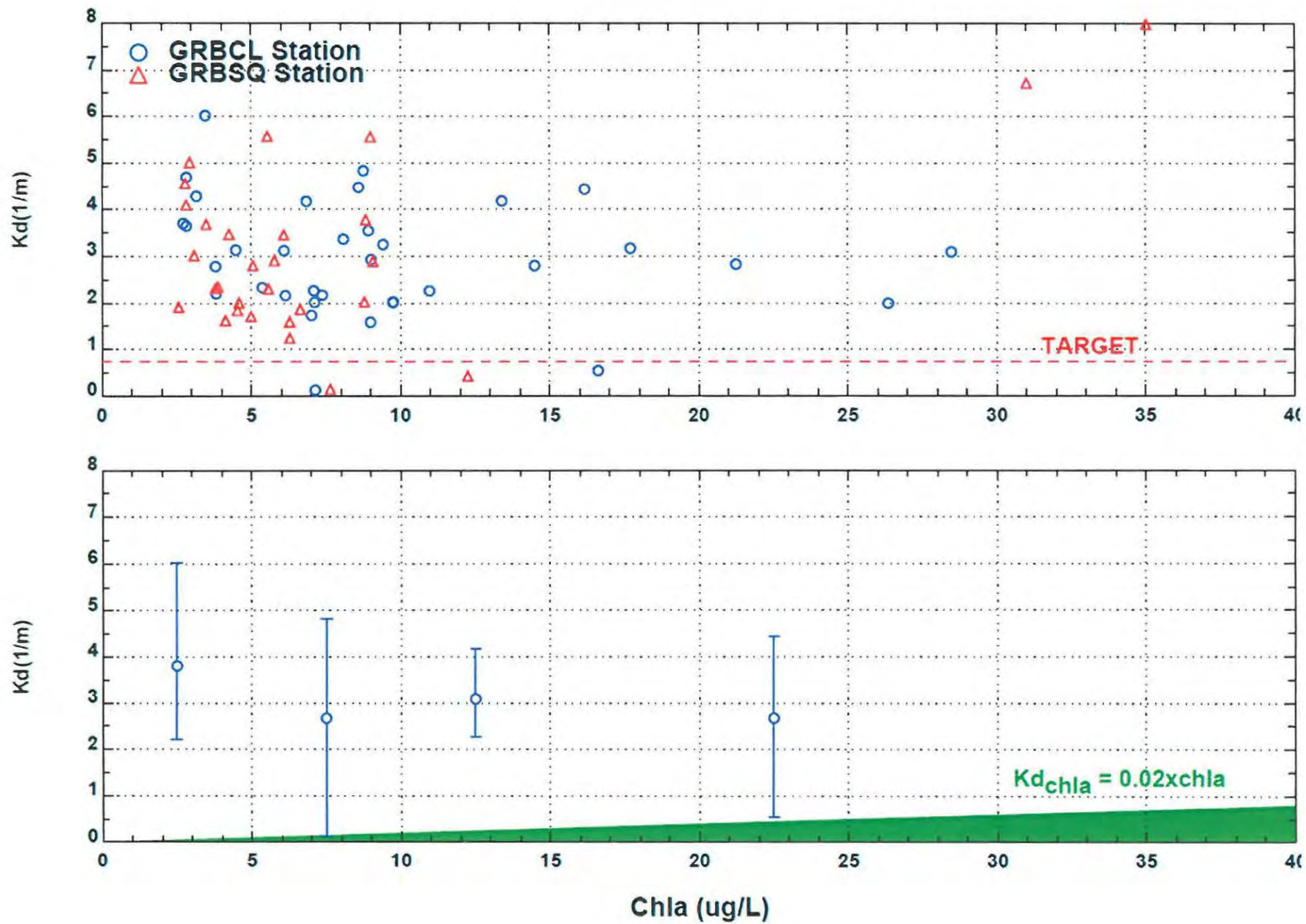
James S. Latimer, Ph.D.
U.S. Environmental Protection Agency
Office of Research and Development
National Health and Environmental Effects Research Laboratory
Atlantic Ecology Division
27 Tarzwell Drive
Narragansett, RI 02882

401-782-3167; FAX: 401-782-3030
latimer.jim@epa.gov

"All men by nature desire to know" – Aristotle

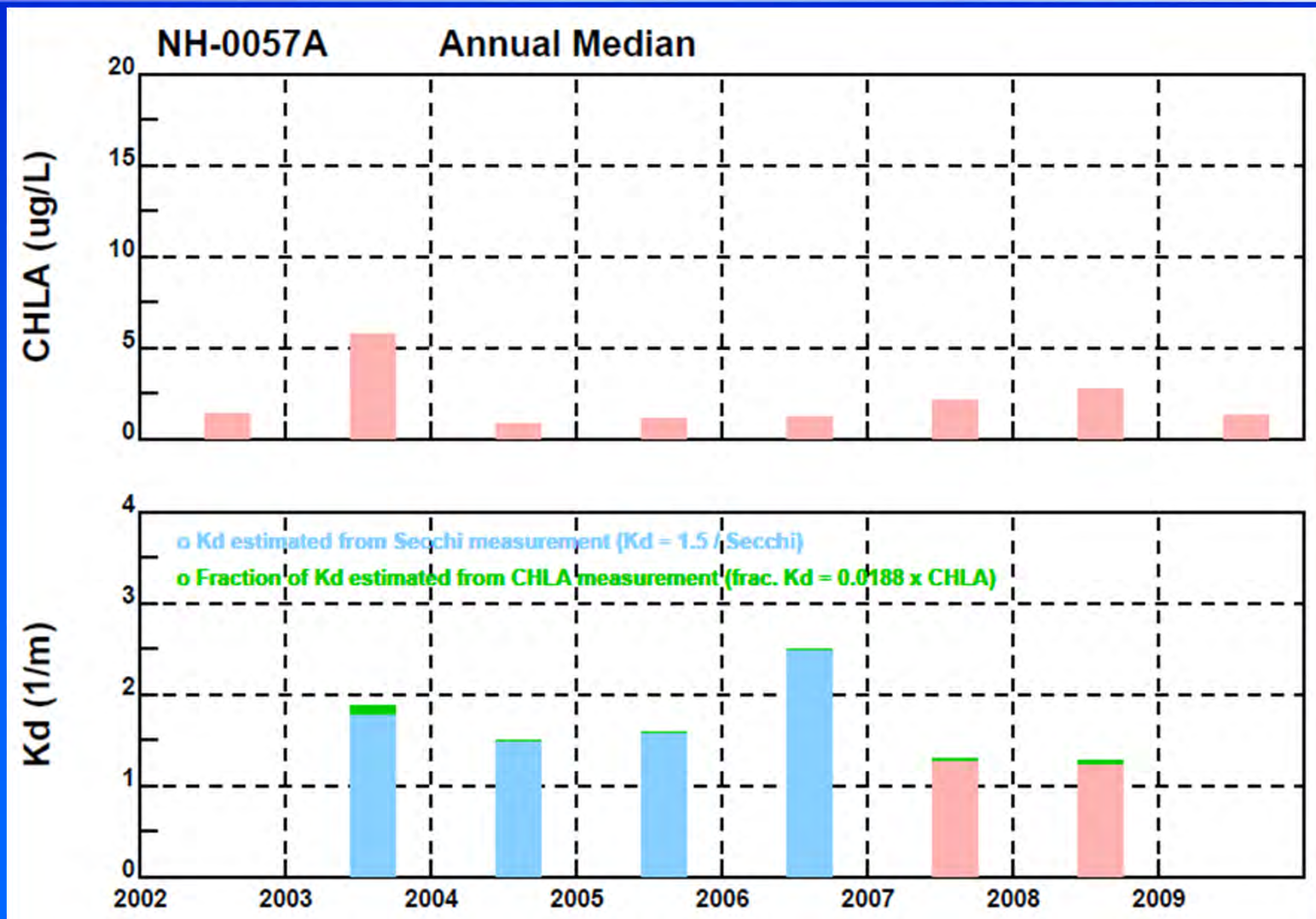
"The greatest kindness one can render to any man consists in leading him from error to truth." – Aquinas

"The right to search for truth implies also a duty; one must not conceal any part of what one has recognized to be true." – Einstein



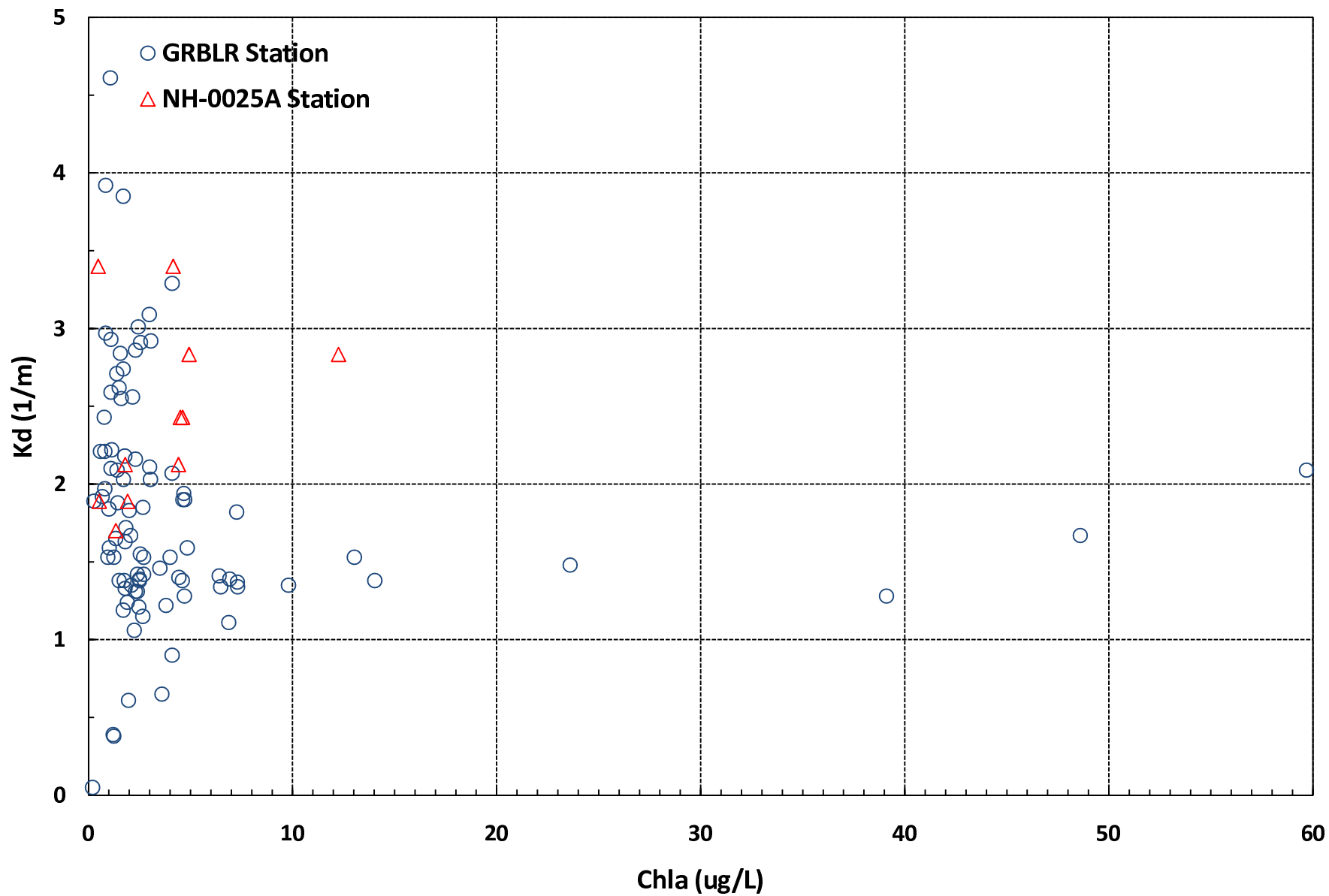
SOURCE: DES Database for Estuary

Upper Piscataqua River Measured Chla and Kd (2003-2008)



SOURCE: DES Database for Estuary

LAMPREY RIVER



EXHIBIT– 7

United States Senate
WASHINGTON, DC 20510

July 17, 2012

Administrator Lisa P. Jackson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Great Bay Municipal Coalition Peer Review Request

Dear Administrator Jackson:

We are writing on behalf of the New Hampshire Great Bay Municipal Coalition, consisting of the towns of Dover, Exeter, Newmarket, Portsmouth and Rochester, who have contacted us requesting assistance with the ongoing concerns they have with the Environmental Protection Agency. Enclosed please find a letter from the cities of Portsmouth and Dover, New Hampshire regarding a request for an independent scientific peer review of the numeric nutrient criteria.

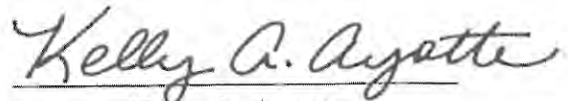
We respectfully ask that you review the Coalition's concerns in a timely manner and we look forward to hearing back from you. We hope that we can continue to work collaboratively to address the challenging issues facing the Great Bay Estuary.

Thank you in advance for your consideration of this request.

Sincerely,



Jeanne Shaheen
U.S. Senator



Kelly A. Ayotte
U.S. Senator

Cc: Ms. Ellen Gilinsky, Senior Policy Advisor, EPA Office of Water
Curt Spalding, EPA Region I Administrator
Thomas Burack, Commissioner of NH DES
The Honorable Dean Trefethen, Mayor, City of Dover
Matthew Quandt, Chair, Exeter Board of Selectmen
Philip Nazzaro, Chair, Newmarket Town Council
The Honorable Eric Spear, Mayor, City of Portsmouth
The Honorable T. J. Jean, Mayor, City of Rochester

MAYOR
and
CITY COUNCIL
citycouncil@dover.nh.gov



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(603) 516-6000
Fax: (603) 516-6666
www.dover.nh.gov

City of Dover, New Hampshire

June 29, 2012

VIA E-MAIL

Ms. Ellen Gilinsky
Senior Policy Advisor, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: June 28, 2012, Meeting on Great Bay Nutrient and Science Misconduct Issues

Dear Ms. Gilinsky:

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supported by the peer review record. The following events are well documented in the peer review record:

1. The public was excluded from the peer review, affecting over \$100 million in municipal expenditures, despite the state's position that community involvement should be allowed. This is contrary to both law and federal peer review policies.
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Given these facts, plainly documented in the record presented to EPA Headquarters, it is hard to understand why EPA would defend the prior peer review exercise as consistent with federal policies and law. In any event, as discussed at our meeting, the Coalition's issues could be resolved by conducting an open, complete peer review that assesses the technical validity and need for stringent nitrogen criteria to protect the Estuary. The peer reviewers should be comprised of local University of New Hampshire scientists with decades of expertise on Great Bay issues and nationally recognized experts on pollutant fate and transport. Our communities are willing to live with the results of such a peer review, as it will ensure our municipal expenditures are properly justified and will produce demonstrable environmental improvements.

We understand that EPA has indicated that it has sufficient information to respond to our independent peer review request. In our view, that is the linchpin issue underlying local concerns. We ask that EPA provide a response on that request within the next two weeks, given that EPA Headquarters has been evaluating the science misconduct letter for over six weeks at

this point. We look forward to EPA's response and an opportunity to resolve our differences in an open scientific forum rather than through legal process.

Sincerely,

Handwritten signature of Eric Spear in cursive script.

Mayor of Portsmouth

Handwritten signature of Sean Trefethen in cursive script.

Mayor of Dover

cc. Congressman Guinta
Senator Ayotte
Senator Shaheen

EXHIBIT– 8

HALL & ASSOCIATES

Suite 701
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Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

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

August 30, 2012

VIA EMAIL & FIRST CLASS U.S. MAIL

Lisa Jackson, Administrator
Arthur A. Elkins, Jr., Inspector General
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Great Bay Nutrient Criteria and Permit Development - Documentation of Apparent Scientific Misconduct and Agency Bias; Request for Transfer of Matter to Chesapeake Bay Office for Independent Review

Dear Administrator Jackson and Inspector General Elkins:

As you are aware, on May 4, 2012 the Great Bay Municipal Coalition requested an independent review of actions by EPA Region I with respect to nutrient regulation for the Great Bay Estuary. That letter provided considerable documentation of actions that the Coalition believed constituted since misconduct. Since that initial submission, we had requested that the Inspector General's (IG's) Office defer a formal investigation pending discussion of the matter with the Office of Water. It was hoped that those discussions would lead to an agreement that another, independent peer review would be supported by EPA Headquarters. Unfortunately, despite Congressional support for such action as a means to resolve the matter and the group's proffer of sworn deposition testimony confirming the basis of our original request was well founded (see, July 13, 2012 letter to Ellen Gilinsky), no response has been forthcoming. We therefore ask that the IGs Office initiate its review of the serious improprieties that were documented in our original correspondence and confirmed by the depositions of key state officials. (See, attachments, including deposition transcripts)

As discussed in the attached supplemental permit comments, these depositions confirmed that:

1. EPA first informed the state it must formally adopt the new numeric nutrient criteria and then, after CLF threatened to sue EPA if Great Bay wasn't listed as nutrient impaired, EPA told the state criteria adoption wasn't needed. This plainly violated federal law and local due process rights.

HALL & ASSOCIATES

2. EPA was under contract to assist the state 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 nonetheless.
3. The nutrient criteria document developed by DES with EPA assistance did not include the prior information and findings of studies confirming that nitrogen had not caused adverse impacts. Rather, the analysis was based on a claimed nitrogen transparency relationship that was known to be in error and not represent a “cause and effect” relationship. Consequently, the “peer review” conducted by the Region was purposefully biased to avoid disclosure of information confirming the criteria were not scientifically defensible.
4. Although available data did not show the Great Bay was nutrient impaired, EPA asked DES to change the impairment listing to “nitrogen impaired” to avoid a potential lawsuit with CLF.

In summary, the depositions confirm that scientific and regulatory misconduct has occurred, as originally claimed by the Coalition. Critical scientific information was purposefully excluded from the “weight of evidence” criteria that EPA had a primary role in developing for the Great Bay estuary. Moreover, that information was knowingly shielded from both public and peer review to avoid a finding that the proposed criteria were technically flawed. Wholly improper and unsupported listing decisions were promoted by EPA to appease CLF – regardless of the fact that no objective scientific information from Great Bay supported the position that increasing nitrogen levels had caused a loss in eelgrass populations. Finally, to justify the changed impairment listing, EPA recommended that the state violate federal law by using an unadopted (and scientifically fraudulent) draft numeric criteria to support that action.

Given this information, confirmed by sworn testimony of state officials and local experts familiar with these events, we ask that the IG’s office proceed with its investigation, as it is apparent that the Office of Water has no intention of rectifying these serious violations of ethical duties, statutory mandates and administrative law.

Please do not hesitate to contact me if you have any question regarding the enclosed information or allegations contained herein.

Respectfully submitted,

/s/

John C. Hall

Enclosures

HALL & ASSOCIATES

cc: Coalition Members
Curt Spaulding, Administrator of EPA Region I
Thomas Burack, Commissioner of NH DES
Gov. John Lynch
Rep. Frank Guinta
Sen. Jeanne Shaheen
Sen. Kelly Ayotte
Rep. Darrell Issa

EXHIBIT– 9



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 27 2012

OFFICE OF WATER

Mr. John C. Hall
Hall and Associates
Suite 701
1620 I Street, N.W.
Washington, D.C. 20006-4033

Dear Mr. Hall:

I am writing in response to your May 4, 2012, letter requesting that further review of Great Bay Estuary matters be withdrawn from the Environmental Protection Agency (EPA)'s Region 1 office and transferred to an independent panel of experts for their evaluation of the relevant scientific information.

Your letter makes a number of very serious allegations concerning the EPA Region 1 office, including that "serious regulatory violations, bias, and scientific misconduct underlie the Region's actions..." and that the Region has "intentionally, knowingly, or recklessly committed violations of the Federal Policy on Research Misconduct and the EPA Scientific Integrity Policy in every step of these proceedings..." Because of the seriousness of these allegations, the EPA's Office of Water has initiated a careful review of the issues raised in your letter.

The EPA's 2012 Science Integrity Policy indicates that, "Scientific misconduct includes fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the publication or reporting of these activities; scientific misconduct does not include honest error or differences of opinion." Due to the seriousness of your integrity claim, I contacted the EPA's interim science integrity official, and he determined that your letter and its attachments do not provide a basis to conclude that the Region's actions in any way constituted scientific misconduct as defined by the EPA's Scientific Integrity Policy.

The EPA appreciates the fact that you and your clients may not agree with many of the determinations reached by the New Hampshire Department of Environmental Services (NH DES) and the EPA Region 1 office. It is, of course, not unusual for parties to disagree – and often disagree strongly – with the EPA over Agency actions that may affect them, especially when those actions rely on interpretations of legal authority and analysis of scientific data. I recognize that you are concerned that the EPA-proposed limits may result in the need for action by your clients, as well as other stakeholders, to reduce nutrient loadings to the Great Bay Estuary. Nevertheless, based on careful consideration of your letter and the documents you provided, the EPA Office of Water has not seen evidence that Region 1 has engaged in scientific misconduct, as you suggest.

The EPA has not made a final decision on your request for additional peer review. However, I want to clarify the scope of previous EPA peer review activities. Pursuant to a December 2009 request of the NH DES, we conducted a peer review of the State's final draft criteria document through EPA's Nutrient Scientific Technical Exchange Partnership and Support (N-STEPS) program. N-STEPS is an external, independent peer review process administered through an EPA-funded contract. The two scientists chosen for the peer review have national expertise in the field of marine eutrophication and had no involvement in the development of the NH DES criteria. Neither Region 1 nor the Office of Water had a role in selecting the reviewers. The reviewers had access to all comments provided to NH DES during the public comment period described above, including those of the affected municipalities.

It is the EPA's opinion that the reviewers and the charge questions to them were consistent with the Office of Management and Budget (OMB)'s 2004 guidance for peer review as well as Section 1.2.3 of the EPA's Peer Review Handbook (3rd edition). The purpose of the peer review was to support the state by providing advice from national experts on how to improve the technical and scientific soundness of the document as a basis for future development of numeric nutrient water quality criteria. The peer review was not intended to resolve the many complex issues concerning the development of nutrient criteria and the implementation of nutrient controls for the Great Bay.

I also recognize that you have sent the EPA several additional letters, most recently on September 7, 2012, providing information that you believe supports your concerns about the scientific basis for contemplated EPA permitting actions. Although the Office of Water has not seen any evidence of scientific misconduct, it is continuing to review your submissions and intends to provide a comprehensive response at a later date. In the interim please continue to direct your questions to my senior advisor, Ellen Gilinsky, at gilinsky.ellen@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

EXHIBIT– 10

(no document)