



**VIA ELECTRONIC FILING**

August 30, 2013

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

**RE: In re Town of Newmarket Wastewater Treatment Plant  
NPDES Permit No. NH0100196; NPDES Appeal No. 12-05**

Dear Ms. Durr:

Please find enclosed a response of the Conservation Law Foundation, which submitted a non-party amicus brief in this matter, regarding Petitioner's Motion to Dismiss the Petition for Review in the above-captioned docket.

Thank you for your assistance in this matter.

Sincerely,

/s/ Thomas F. Irwin  
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Vice President & CLF New Hampshire  
Director  
Conservation Law Foundation  
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**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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

Town of Newmarket )

Wastewater Treatment Plant )

NPDES Permit No. NH 0100196 )

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**NON-PARTY AMICUS FILING OF CONSERVATION LAW FOUNDATION  
IN RESPONSE TO PETITIONER’S MOTION TO DISMISS**

Conservation Law Foundation (“CLF”), which submitted a non-party *amicus* brief in response to Petitioner Great Bay Municipal Coalition’s (“Petitioner”) Petition for Review,<sup>1</sup> respectfully requests leave to submit the instant filing as non-party *amici*, responding to Petitioner’s motion to dismiss its Petition in this matter.

As briefly described in its motion for leave to intervene (Docket No. 19), CLF has members who use and enjoy the Great Bay estuary and has been actively engaged in efforts to protect the estuary’s health, including efforts to reduce nitrogen pollution. CLF, which has established a Great Bay-Piscataqua Waterkeeper program dedicated solely to addressing water quality problems in the estuary, actively participated in the public process relative to the NPDES permit at issue in this appeal. CLF has been greatly troubled by the multi-pronged strategy of delay employed by the Petitioner as a means to slow the regulatory process as it relates to nitrogen pollution in the Great Bay estuary – a strategy that has included, but is not limited to,

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<sup>1</sup> See Docket No. 20. CLF filed its brief jointly with the Town of Newington, NH and New Hampshire Audubon. CLF has not had the opportunity to confer with those parties on this matter.

federal litigation against the U.S. Environmental Protection Agency (recently dismissed by the U.S. District Court for the District of Columbia),<sup>2</sup> state-level litigation against the N.H. Department of Environmental Services (dismissed by the N.H. Superior Court and currently pending on appeal in the N.H. Supreme Court), and this appeal.

In the first instance, the grounds for Petitioner’s motion to dismiss are of no relevance to the permit at issue in this matter. The fact that Petitioners and the N.H. Department of Environmental Services may be engaging in a peer review of nitrogen-related issues in the estuary (particularly after the Environmental Protection Agency (“EPA”) already obtained peer review) simply has no bearing on this appeal, which is premised on, and limited to, an established administrative record. *See, e.g., Upper Blackstone Water Pollution Abatement District v. EPA*, 690 F.3d 9, 23 (1<sup>st</sup> Cir. 2012) (*cert. denied* 133 S.Ct. 2382 (2013)) (explaining that the ever-existing potential for additional data and “better science” cannot interfere with or delay implementation under the Clean Water Act).

Furthermore, significant resources have been invested in this pending appeal – by the Environmental Appeals Board (“Board”), EPA, Petitioner, and a number of non-party *amici*, including CLF. The matter has been fully briefed and, presumably, is close to a final decision. A dismissal at this eleventh hour, as requested by Petitioner, will only open the door for matters that already have been fully litigated to be *re*-litigated in upcoming NPDES permits anticipated to be issued by EPA (particularly permits to be issued to the Cities of Dover and Rochester, the municipalities which brought this appeal in the first place). In addition to greatly undermining the efficiency of the administrative and adjudicative process and further burdening administrative and judicial resources, such a result will result in delayed implementation of

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<sup>2</sup> *See* Docket No. 54.

necessary and well-supported Clean Water Act protections in the Great Bay estuary, to the detriment of the estuary's health.

For the above reasons, CLF urges the Board not to grant Petitioner's motion to dismiss, and to proceed to its final decision.

Respectfully Submitted,

CONSERVATION LAW FOUNDATION

By its attorney,

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Dated: August 30, 2013

### **CERTIFICATE OF SERVICE**

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

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Dated: August 30, 2013

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