



GREAT BAY MUNICIPAL COALITION

c/o City of Portsmouth
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March 11, 2015

VIA U.S. FIRST CLASS MAIL & E-MAIL

Regional Administrator Curt Spalding
U.S. Environmental Protection Agency – Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: EPA Nitrogen Impairment Conclusion for Great Bay Estuary

Dear Regional Administrator Spalding:

As you are aware, the Great Bay Municipal Coalition, working cooperatively with the New Hampshire Department of Environmental Services (DES), completed a detailed peer review of nitrogen impacts in the Great Bay estuary in February 2014. That detailed review concluded that the 2009 Numeric Nutrient Criteria was not scientifically defensible. The four nationally recognized experts also concluded that the “weight of evidence” does not demonstrate that nitrogen is responsible for either low DO or eelgrass declines in the system. The experts recommended that further analyses be undertaken to determine what, if any, role TN is playing in these conditions. Based on these recommendations, DES withdrew the 2009 Criteria (which had been the basis for the prior Section 303(d) TN impairment designation) and the parties have been working cooperatively to collect data and develop the analyses needed to properly evaluate the effect of nitrogen and other factors on this system.

Despite these findings by four of the top water quality scientists in the country, EPA has continued to claim that “the available information indicates that downstream waters are suffering significant effects that are consistent with excessive nutrient loadings.” (See, EPA’s December 16, 2014 letter to the City of Rochester). EPA has also rejected the findings of the expert panel: “We understand that arguments have been raised about the science supporting nutrient limits in NPDES permits for Great Bay facilities. EPA has carefully reviewed those arguments and does not find them persuasive.” Finally, EPA claims that data regarding reduced eelgrass populations and increased epiphytes and macroalgae confirm that its position is correct.

The Coalition, DES and the peer review experts are aware of what we believe constitutes all of the available information and studies for this system. We are not aware of any study of changing epiphyte growth for this system. Macroalgae growth has been noted as highly variable and influenced by invasive species. There is, to our knowledge, no analysis for any location in this


system showing that TN loads or concentrations have caused any increased macroalgae growth, or to the degree it exists, that macroalgae growth is causing demonstrable ecological impairment. We understand that current TN levels in this system are, in fact, lower than the levels found to be adequately protective in published, peer reviewed studies for nearby estuarine systems and that EPA has relied upon in issuing other permits and approving TMDLs.

EPA's conclusory statements have serious regulatory consequences that should be supported by detailed and competent scientific assessment of the data for this system. To date EPA has declined to participate in any of the peer review meetings, nor has it presented any points of disagreement (with supporting analyses) to the Coalition, DES or the estuarine experts for its consideration. This leads us to question whether such analyses have actually been conducted by EPA. For example, EPA recently asserted that the freshwater section of the Cocheco River requires stringent total phosphorus (TP) reduction, despite the fact that DES has never designated this area as nutrient impaired and the information collected by the City of Rochester confirmed that plant growth in the Cocheco River is well below the level of concern set by DES. These actions suggest an EPA determination biased toward imposing nutrient reduction without regard to legal requirements, available data or scientifically defensible analyses.

Good public policy demands that EPA base its decisions on sound science, and not on presumed impacts using simplified assessments. Therefore, we request that EPA provide its independent analysis of the 2014 Peer Review Report, together with EPA's analysis of epiphyte and macroalgae data for this system showing (1) that the degree of plant growth is excessive and causing impairment, (2) that TN is the cause of this condition, and (3) the TN level that is required to preclude this impairment from occurring. In the alternative, we ask that EPA withdraw its assertion that nutrient impairment of this system is well documented, and join in our efforts to develop better data and a clearer, scientifically based, understanding of the factors affecting eelgrass growth in the Great Bay estuary.

We look forward to receiving your answer to this request.

Sincerely,



Dean Peschel

cc. Great Bay Municipal Coalition
Congressman Frank Guinta
Senator Ayotte
Senator Shaheen
Commissioner Thomas Burack