

*Dover, Durham, Exeter, Newmarket, Portsmouth, Rochester*

December 21, 2010

Harry T. Stewart, P.E., Director  
NHDES Water Division  
29 Hazen Drive  
PO Box 95  
Concord, NH 03302-0095

**RE: Great Bay POTW Meeting December 2, 2010**

Dear Mr. Stewart:

This letter is sent on behalf of the municipalities (Dover, Durham, Exeter, Newmarket, Portsmouth and Rochester) which attended the above meeting at the NHDES offices at the Pease Tradeport on December 2, 2010. First, we thank you and your staff for attending the meeting that we viewed as very productive. At the close of the meeting, the group of municipalities agreed to provide NHDES with a proposed approach to resolution of the outstanding issues relating to nutrient water quality criteria in the Great Bay Estuary. All the communities share the State's concern for the Great Bay Estuary and are committed to finding a successful way to protect it. However, as you know, these communities are concerned that the Numeric Nutrient Criteria Document dated June 2009 appears to be based on incorrect assumptions regarding key environmental factors influencing the health of the Bay (e.g., eelgrass decline and tributary DO). In particular, ambient data collected this summer by UNH confirmed that nutrients are not playing a significant role in water column transparency. Based on this information, the proposed criteria are not likely to remedy eelgrass declines and would result in misdirection of scarce municipal resources. These results were forwarded to your staff and we plan on forwarding the report of the summer sampling program for your consideration shortly.

The municipalities believe that the prompt, collaborative resolution of these concerns is necessary because we understand that EPA intends on reissuing municipal permits with stringent nitrogen limits (potentially costing several hundred million dollars), based on the 2009 DES report. Given the more recent scientific information, the impacted communities would be forced to challenge those actions. This would be a very unfortunate turn of events for all concerned since local resources will be diverted from more important Bay restoration activities. Therefore, we ask that you contact Region I to set up a meeting to discuss our mutual concerns and our proposed program of collaborative efforts to protect the Bay, as outlined below.

Our communities believe that the following activities would provide the best means ensuring the long term protection of the Bay's resources and wise expenditure of local resources:

1. After submission of our consultant's updated technical report, NHDES and Region I staff responsible for the development/approval of the Numeric Nutrient Criteria Document will meet with consultants for the municipalities (HydroQual, Inc. and Hall & Associates) for a collaborative exchange of their respective views of the scientific principles and existing data relevant to the establishment of nutrient criteria for the Great Bay. This meeting should occur on or before January 31, 2011.
2. As part of this meeting, the parties should seek consensus on important scientific data which could be developed through studies over the next year to assist NHDES in setting appropriate numeric nutrient criteria for the Great Bay Estuary.
3. The municipalities agree to contribute to funding, the studies identified by the above process to be performed during the calendar year 2011. EPA should identify if any federal matching funds may be available to assist in this effort.
4. The municipalities agree to also contribute to funding , a comprehensive and independent peer review process to review the June 2009 document, updated consultant's report and consensus studies identified in the January 2011 meeting. The nature and scope of the peer review process (including charge questions) will be jointly prepared through collaborative efforts by NHDES and the municipalities.
5. The peer review process will completed no later than September 2011.
6. To protect Bay resources while the peer review process is ongoing, the communities agree to establish "practices" to reduce nutrients and inorganic solids discharged at each of their facilities including stormwater discharges. This should help to prevent any increase in loadings to the Bay in the near term.
7. Each community agrees to retain a qualified engineering consultant to prepare and analyze the options and costs for each facility to achieve an effluent limit of 8 mg/l TN (annual average). This level of control, if implemented, should result in pre-1990 municipal loads when eelgrass populations were stable.
8. During the time period of the peer review process, the municipalities agree to contribute to funding, an Oyster and Eelgrass Restoration Project to be designed collaboratively by NHDES staff, the Piscataqua River Estuary Partnership ("PREP") and the municipalities. These studies will help to determine if TN concentration is the factor adversely impacting eelgrass health via pathways other than light penetration.

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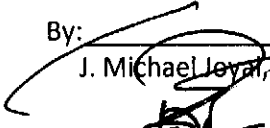
We request that NHDES agree to participate in good faith in the above collaborative effort and to issue a letter to the municipalities stating that the Department believes that the conclusions of the June 2009 Numeric Nutrient Criteria for the Great Bay Estuary document should be re-examined through an independent Peer Review Process to be completed over the next 12 months.

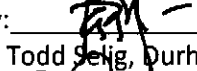
The municipalities recognize that the Great Bay Estuary is an important and irreplaceable resource for the State of New Hampshire and for the New Hampshire Coastal Communities. The rigorous scientific process described above is necessary to assure that municipal resources are spent wisely and that the chosen regulatory path will achieve its desired outcome. We hope that NHDES is willing to participate in this collaborative effort and would appreciate a written response to this proposal as it reflects a major commitment of municipal resources by mid-January 2011. In particular, we would appreciate your concurrence regarding the recommended peer review process in light of the recent technical data collected by UNH.

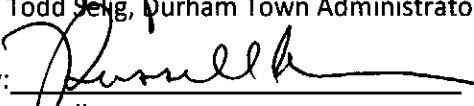
We look forward to your response.

Respectfully submitted,

**Great Bay Estuary Municipal Group**

By:   
J. Michael Joyal, Jr., Dover City Manager

By:   
Todd Selig, Durham Town Administrator

By:   
Russell J. Dean, Exeter Town Manager

By: \_\_\_\_\_  
Edward J. Wojnowski, Newmarket Town Administrator

By:   
John P. Bohenko, Portsmouth City Manager

By:   
John Scruton, Rochester City Manager