



REGION 1

BOSTON, MA 02109

August 8, 2024

Via email

Tom Irwin

Vice President, New Hampshire
Conservation Law Foundation, Inc.
27 North Main Street
Concord, NH 03301

RE: Update on Clean Water Act Residual Designation Petition for the Great Bay Watershed

Dear Mr. Irwin:

Thank you for the Conservation Law Foundation's (CLF) February 15, 2023 petition for EPA to exercise its residual designation authority (RDA) under 40 CFR § 122.26(a)(9)(i)(D) to designate certain categories of unpermitted stormwater discharges from commercial, industrial, and institutional (CII) properties in the New Hampshire portion of the Great Bay watershed as needing coverage under a National Pollutant Discharge Elimination System (NPDES) permit on the grounds that these discharges contribute to violations of water quality standards. This letter is to update you and your colleagues on EPA's ongoing evaluation of whether it is appropriate to exercise RDA in the Great Bay watershed. EPA is interested in pursuing a holistic approach to reducing nitrogen discharges that works with and not against existing NPDES permits and local efforts. EPA must support any RDA determination with a robust scientific and administrative record that demonstrates how EPA's decision meets the RDA regulatory criteria.¹

As you note in your petition, the Great Bay Estuary is experiencing a decline in water quality, including nutrient-related water quality impairments because of population growth and land development. As EPA explained throughout the Fact Sheets for the New Hampshire 2017 Small MS4 General Permit and

¹ The EPA Regional Administrator may designate a storm water discharge as requiring an NPDES permit where he/she determines that: "... (C) storm water controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) that address the pollutants of concern, or (D) the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." 40 C.F.R. §§ 122.26(a)(1)(v), 122.26(a)(9)(i)(C), (D).

the 2020 Great Bay Total Nitrogen General Permit, EPA agrees that it is necessary to regulate major nitrogen loading sources to achieve water quality standards and restore the estuary's ecological health.

Thank you for participating in several calls with EPA and the Cities of Rochester, Dover, and Portsmouth, New Hampshire in 2023 and 2024. As EPA has described in these calls, EPA is analyzing various land use categories' impervious cover percentages within the Great Bay Watershed. This will enable EPA to estimate such properties' nitrogen loadings from stormwater, assess whether such properties should be required to reduce nitrogen loadings under an NPDES permit, and determine any appropriate acreage thresholds for potential permitting. This analysis will likely be complete in Fall 2024, and EPA will post it on our website. CLF's 2023 petition did not request that EPA designate stormwater discharges from Maine CII properties within the Great Bay Watershed. However, EPA is including such discharges in its parcel analysis and is coordinating with the Maine Department of Environmental Protection to fully understand nitrogen contributions into Great Bay from Maine publicly owned treatment works (POTWs) and stormwater sources.

EPA also continues to monitor Great Bay municipalities' compliance with the mandatory and voluntary conditions of the Great Bay Total Nitrogen General Permit (GBTNGP), effective February 1, 2021, which was designed to regulate nutrient loading into Great Bay by coupling effluent limitations at 13 New Hampshire wastewater treatment plants (WWTP) with a framework for municipalities to pursue nonpoint source reductions, including stormwater. EPA will continue to support implementation of GBTNGP permittees' adaptive management plan progress and will consider any necessary changes to the next version of that NPDES permit when the current permit expires in 2025.

EPA invited the cities of Dover, Portsmouth, and Rochester to attend listening sessions that EPA held for Massachusetts municipalities as part of EPA's NPDES RDA permit development process for the forthcoming draft General Permit for Private, Commercial, Industrial and Institutional Stormwater Discharges in the Charles, Mystic and Neponset River Watersheds in Massachusetts (CII GP).² These listening sessions have provided EPA with valuable information about how an RDA permit could impact Massachusetts municipalities' ongoing efforts to establish stormwater utilities. As CLF is aware, several Great Bay municipalities are interested in establishing stormwater utilities but have not yet done so; EPA will continue to stay abreast of those municipalities' progress and offer input as appropriate.

Concurrently, EPA is drafting the next iteration of the New Hampshire Small MS4 permit, which expired in June 2023 and is administratively continued. The next draft New Hampshire Small MS4 permit may propose new or more stringent requirements to address nutrients in the Great Bay watershed. EPA will also reconsider all waivers submitted under the next MS4 permit issuance on a case-by-case basis.

EPA anticipates that diverse stakeholders will be interested in EPA's eventual response to your RDA petition. As EPA evaluates whether to exercise RDA in the Great Bay Watershed, we may conduct outreach and informational sessions with property owners who may be impacted by an RDA

² EPA Region 1 has posted Massachusetts-related RDA updates, presentations, and other information at: <https://www.epa.gov/npdes-permits/watershed-based-residual-designation-actions-new-england#EPAsRDADetermination>

determination, as well as municipalities, community groups, and environmental groups. EPA will keep CLF, Great Bay municipalities, and all stakeholders apprised of EPA's progress on this analysis by posting this letter and periodic project updates at: [<https://www.epa.gov/npdes-permits/watershed-based-residual-designation-actions-new-england#GreatBayEstuaryWatershed>]

We hope that this update demonstrates that EPA is considering your RDA petition carefully while simultaneously working on complementary efforts intended to reduce Great Bay nutrient pollution. We look forward to future Great Bay RDA discussions with you, key municipalities, and other stakeholders as EPA continues its analysis.

Please contact me at (617) 918-1502 or Moraff.ken@epa.gov, or Erin Flannery-Keith in the Office of Regional Counsel at (617) 918-1096 or Flannery-keith.erin@epa.gov if you have any questions.

Sincerely,

Ken Moraff
Director, Water Division