

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,

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