

Great Bay Communities Sue the State and NH Department of Environmental Services

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**Contact: Dean Peschel, Dover environmental consultant,
phone no 603-781-5931.**

CONCORD -- A Coalition of Great Bay Area communities filed suit Friday against the State of New Hampshire and the NH Department of Environmental Services, claiming NHDES's failure to conduct a formal and inclusive public rulemaking process as required by law to establish scientifically defensible water quality standards in the Great Bay Estuary will expose them to unnecessary multimillion-dollar wastewater treatment costs.

The Cities of Dover, Portsmouth and Rochester joined the towns of Exeter and Newmarket in the suit filed in Merrimack County Superior Court, claiming the State and DES violated State and Federal law by not conducting the formal public process. According to the suit, NHDES instead proposed arbitrary water quality standards that resulted in severe nitrogen reduction requirements on all area wastewater treatment plants which will result in enormous increases in wastewater treatment costs.

In addition, the group said NHDES has disregarded sound scientific studies that demonstrate that less restrictive limits on wastewater discharges would be protective of the Estuary.

"The Coalition is deeply disappointed that NHDES and USEPA have acted in such a way as to ignore important scientific data and to block efforts to allow public participation in an open peer review that could resolve these key scientific questions," Dean Peschel, Dover's environmental consultant, said on behalf of the Coalition. "The Great Bay Estuary is a jewel of a resource that deserves to be protected, but this can only occur if municipal resources are spent wisely on efforts that will produce tangible environmental benefits."

“If these initial USEPA and DES decisions become final, our communities and the entire watershed will experience an enormous financial impact that could cripple us financially for decades, fail to protect the Great Bay Estuary, and impact all future development in the region,” he added.

The central issue in this action is that NHDES produced a document in June of 2009 which posited that the eelgrass resource in the Great Bay Estuary was diminishing because nitrogen levels in the Estuary had increased over the last several decades. According to NHDES’s theory, these nitrogen levels caused increased phytoplankton growth and a loss of water clarity adversely affecting eelgrass growth. The Coalition believes there is no scientific support for this theory in the data from the Estuary. Generally, phytoplankton growth is limited and not measurably reducing water clarity in the Estuary. Moreover, a study of eelgrass distribution published in June 2011 shows that the eelgrass resource is expanding.

Editor’s Note: For a copy of the lawsuit or background material, contact Dean Peschel at dean_peschel@yahoo.com.