

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2013-0119, City of Dover & a. v. New Hampshire Department of Environmental Services & a., the court on April 11, 2014, issued the following order:

The appellants have notified the court that the parties have reached a settlement and have filed an assented-to motion to dismiss. Treating the motion to dismiss as a motion to withdraw their appeal, the appellants' motion is granted.

This order is entered by a single justice (Lynn, J.). See Rule 21(7).

Appeal withdrawn.

**Eileen Fox,
Clerk**

Distribution:

Merrimack County Superior Court, 217-2012-CV-00212

Hon. Richard B. McNamara

Robert R. Lucic, Esq.

John E. Peltonen, Esq.

E. Tupper Kinder, Esq.

George Bisbee, Esq.

Evan J. Mulholland, Esq.

Michael S. Lewis, Esq.

✓ Sherilyn Burnett Young, Esq.

Allison Cook, Supreme Court

File

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into by the Cities of Dover, Portsmouth and Rochester, New Hampshire ("the Municipalities") and the State of New Hampshire and the New Hampshire Department of Environmental Services ("NHDES" and, together, the "State") (all collectively "the Parties") for the purpose of settling the claims, controversies and disputes among the Parties as more fully described herein.

WHEREAS, the Municipalities and the State desire to enter into an Agreement to discharge all claims, controversies and disputes among them related to the subject matter of the lawsuit currently pending among the Parties in the State of New Hampshire Supreme Court, No. 2013-0119, Petition for Appeal Pursuant to Rule 7 from a judgment of the Merrimack County Superior Court under the docket number 217-2012-cv-00212.

NOW THEREFORE, the Parties hereby agree as follows:

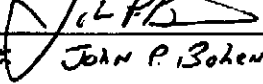
1. In light of the "Joint Report of Peer Review Panel" dated February 13, 2014 (attached hereto as Exhibit A), and issued as a result of the Parties' Peer Review Agreement, effective April 20, 2013, (attached hereto as Exhibit B), the NHDES will no longer use the .45, .30, .27 or .25 mg/ L TN (total nitrogen) numeric nutrient thresholds as derived and developed in the report released by NHDES in June 2009 entitled "Numeric Nutrient Criteria for the Great Bay Estuary" in its Section 305(b) and 303(d) water quality assessments for the Great Bay Estuary, including the Cocheco and Piscataqua Rivers, and Portsmouth Harbor.

2. The NHDES will modify its State of New Hampshire Section 305(b) and 303(d) Consolidated Assessment and Listing Methodology dated January 2014 in a manner consistent with Paragraph 1, above.

3. The Municipalities will withdraw their appeal of the above-referenced lawsuit, docketed as Case No. 2013-0119 in the New Hampshire Supreme Court.

Dated: 4-1-14

CITY OF PORTSMOUTH

By: 
Name: John P. Bohenko

City Manager
Title, duly authorized

CITY OF DOVER

Dated: _____

By: _____
Name: _____

Title, duly authorized

CITY OF ROCHESTER

Dated: _____

By: _____
Name: _____

Title, duly authorized

2. The NHDES will modify its State of New Hampshire Section 305(b) and 303(d) Consolidated Assessment and Listing Methodology dated January 2014 in a manner consistent with Paragraph 1, above.

3. The Municipalities will withdraw their appeal of the above-referenced lawsuit, docketed as Case No. 2013-0119 in the New Hampshire Supreme Court.

CITY OF PORTSMOUTH

Dated: _____

By: _____
Name: _____

Title, duly authorized

CITY OF DOVER

Dated: 4-2-14

By:  _____
Name: _____

Thomas Joseph Jr. City Manager
Title, duly authorized

CITY OF ROCHESTER

Dated: _____

By: _____
Name: _____

Title, duly authorized

2. The NHDES will modify its State of New Hampshire Section 305(b) and 303(d) Consolidated Assessment and Listing Methodology dated January 2014 in a manner consistent with Paragraph 1, above.

3. The Municipalities will withdraw their appeal of the above-referenced lawsuit, docketed as Case No. 2013-0119 in the New Hampshire Supreme Court.

CITY OF PORTSMOUTH

Dated: _____

By: _____

Name:

Title, duly authorized

CITY OF DOVER

Dated: _____

By: _____

Name:

Title, duly authorized

CITY OF ROCHESTER

Dated: 4/1/2014

By:  _____

Name: THOMAS J. JEAN

MAYOR
Title, duly authorized

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

Dated: 3/28/2014

By: 

Name: EVAN MULHOLLAND

ASSISTANT ATTORNEY GENERAL

Title, duly authorized

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Dated: _____

By: _____

Name: _____

Title, duly authorized

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

Dated: _____

By: _____
Name:

Title, duly authorized

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES**

Dated: 4/2/14

By: *Vicki D. Curran, Assistant Commissioner*
for Thomas S. Burack, Commissioner