Message

**From:** Dunn, Alexandra [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=426D0177EAAB4001A5C85F051565997E-DUNN, ALEXA]
**Sent:** 5/1/2018 11:02:37 PM
**To:** Moraff, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6170ef3baef40c3bdecab56fd74b07a-Moraff, Kenneth]; Dixon, Sean [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8660dcc366ca4c6faf8af23f1f29ec3b-Dixon, Sean]; Webster, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=85a1907bc2844e879bcc1b9c6373f12b-Webster, David]; Szaro, Deb [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a189e7c928e4eb3930e29543cad5e5d-Szaro, Deb]
**Subject:** Fwd: Follow Up on Dover Permit

Sent from my iPhone
Alexandra Dapolito Dunn, J.D. , Regional Administrator

Region 1 New England. ***This email is for official EPA business only and may be subject to disclosure under the Freedom of information Act***

Begin forwarded message:

**From:** "Robert R. Lucic" <RLUCIC@sheehan.com>
**Date:** May 1, 2018 at 4:40:29 PM EDT
**To:** "dunn.alexandra@epa.gov" <dunn.alexandra@epa.gov>
**Subject: Follow Up on Dover Permit**

Alex

I wanted to give you quick follow up on our call last week on a few of the questions/concerns raised by staff regarding the Coalition's request to proceed on the Dover permit without imposing a specific numeric nitrogen limitation and how such a decision may be viewed in light of the NH prior permits issued by EPA, where such limits had been imposed.

**The physical settings are different**

The municipal permittees with existing numeric TN limitations all discharge directly to Great Bay and their tidal rivers experiences elevated algal growth (particularly the Squamscott, the Lamprey to a lesser extent). Dover does not discharge to Great Bay, it discharges to the Piscataqua River where elevated algal growth does not occur due to much higher tidal exchange and reduced detention time in this area. DES has long recognized that the Piscataqua system needs to be assessed differently from the Great Bay system.

**The applicable numeric criteria changed**

The prior permits issued to Exeter, Durham and Newmarket were based on assuring compliance with the state's 2009 Numeric Nutrient Criteria which was set a 0.3 mg/l TN to protect eelgrass populations from TN-related transparency effects. That objective was subsequently withdrawn by DES in 2014 based on the independent peer review which confirmed there was no scientifically defensible/demonstrated connection between eelgrass declines, transparency and TN levels in the Great Bay system.

**DES revised the impairment listing**

Previously, DES had presumed that the 2006 downturn in eelgrass population was caused by TN impacts and in 2009, listed Great Bay and part of the Piscataqua River as impaired by nitrogen. Following the 2014 Peer Review and voluntary plant improvements which documented no demonstrable impact of TN reductions on eelgrass populations or algal growth, DES concurred that the effect of TN on system ecology was not demonstrated by the available information. This conclusion was supported by the hydrodynamic modeling which indicated insufficient time for nitrogen to cause elevated algal growth or impacts on system transparency. Consequently, DES has proposed delisting of Great Bay and Piscataqua as TN impaired (due to uncertainty over narrative criteria exceedance). PREP's 2017 State of Our Estuaries report (which EPA funded) likewise concluded that available data are presently insufficient to confirm whether or how TN is having an adverse impact on the system. PREP's External Advisors recommended comprehensive sampling program the verify what factors are having the most influence on system health. Thus, TN remains an open, not documented concern.

**Major Ongoing Improvements in Water Quality**

2016-2017 data (collected well after the other NPDES permits were issued) indicate that existing TN water quality now is at or below the level that is expected to protect estuarine resources based on various New England studies that EPA has previously relied on in rendering NPDES permitting decisions (See, e.g., 2003 SMAST Critical Indicator's Report). This information indicates that the system is not beyond its assimilative capacity as EPA had originally believed. Additional major load reductions are still under development by Exeter, Newmarket and Portsmouth which will further improve ambient water quality, with respect to nutrients. These points all support a finding that a narrative criteria violation is not presently occurring or projected to occur. Consequently, further nutrient reductions are not necessary at this time.

**Where a defensible numeric limit cannot be established, management practices may be appropriate**.

Management practices established in a permit constitute a form of "effluent limitation" which is "any restriction on the discharge". 40 CFR 122.2. Such management practices may be used if a limitation is "necessary" but setting a numeric limit is "infeasible". 40 CFR 122.44(k). Although the Coalition does not believe a limitation is "necessary," it is certainly "infeasible" to calculate a proper WQ-based limit at this time (discussed above – there is no valid narrative translator or objective basis for concluding TN is harming the system), a "best management practices" approach may be considered to address the concerns of the parties. Dover is volunteering accept a provision to use best efforts to maintain its TN-reduction performance because the regulatory community has lingering concerns regarding TN impacts and system studies to resolve such concerns are ongoing.

We are looking forward to talking with your team soon.

Bob

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