

Great Bay Municipal Coalition

Regulatory Alert

Impact of EPA Newmarket Permit Decision On Communities in Great Bay Watershed

On November 16, 2012, EPA issued a final NPDES permit to the Town of Newmarket over the objections of the local communities that the scientific basis of the permit was fundamentally flawed and directly contradicted by the water quality data for the Great Bay system. Concurrently, NH Department of Environmental Services issued a 401 Certification specifying that the permit requirements were necessary to meet nitrogen criteria developed by DES. (DES 401 Certification is attached)

In issuing the permit and 401 Certification both DES and EPA confirmed that extreme stormwater, septic and non-point source controls are necessary to reduce nitrogen contributions from all sources in this basin in order to meet the new nitrogen criteria imposed on to the tidal rivers – 0.3 mg/l Total Nitrogen.

The Newmarket permit added a provision that directs the DES to develop a plan to impose stringent non-point source controls within the next 5 years. *DES is will be moving forward to develop a plan that will place land use restrictions on residential and commercial activities throughout the watershed and require treatment on individual septic tanks.*

Issues Raised by Coalition Communities

The permit and total nitrogen criteria are premised on the theory that excessive algal growth from nitrogen runoff is causing the presently poor transparency in the Lamprey and other tidal rivers, ultimately impacting eelgrass resources in the Great Bay Estuary. The Communities submitted the results of federally funded research and DES data collection that confirmed this impact was not occurring:

- Poor transparency is not caused by excessive algal growth anywhere in the system, but is primarily due to naturally occurring color originating from watershed wetlands.
- Changing nitrogen levels have not caused any change in water column algal levels or clarity in over 30 years and this has been documented by PREP; therefore, regulating nitrogen cannot materially improve transparency.
- The increased nitrogen level that raised recent concerns for the system were caused by several extremely wet years (2005-2008) and have subsequently dropped back to pre-1980 levels.
- Under oath DES admitted it intentionally excluded information from its criteria derivation process that showed a 0.3 mg/l TN criteria was not necessary to protect the Great Bay Estuary.
- A recent letter from Commissioner Burack admitted these facts were true but DES nevertheless refused to modify the state's position that stringent nitrogen reductions are required for all communities. DES also resisted requests to allow an independent peer review to assess whether the information identified by the Coalition justifies a different approach to protecting Great Bay.

Impact of EPA/DES Actions

The impact of the 401 Certification and final NPDES permit on the entire watershed will be profound, affecting future generations. *EPA has acknowledged that at least 60% reduction in “non-point” (i.e., septic system, lawn and farm runoff, golf courses, school athletic fields, etc.) will be required* while

Great Bay Municipal Coalition

acknowledging that this reduction is not physically attainable. These conclusions and treatment needs are based on research conducted by UNH researcher Michele Daley and were coordinated with DES.

DES/EPA plans on requiring treatment systems to be placed on each septic tank owner (anticipated cost > \$15,000 per family) or sewerage areas with septic tanks and building centralized treatment (likely more expensive) for outlying communities that do not have wastewater plants.

DES will also need to establish a “residual designation” to regulate all stormwater discharges from small communities, requiring all communities within the Great Bay basin to obtain NPDES permits to reduce nitrogen levels in stormwater by at least 60%. The basinwide cost of stormwater control will easily exceed \$1 billion based on costs being incurred in Chesapeake Bay and Massachusetts.

EPA is expected to issue compliance orders to all of the small communities subject to residual designation that will keep these communities in a ***permanent state of non-compliance*** because the reduction targets required for stormwater are physically unattainable.

Local resources for schools, roads, fire and police protection will be diverted to achieve these federal and state mandates because EPA compliance orders will require these expenditures and effectively place a growth moratorium on the basin communities.

Call to Action

The nitrogen reduction requirements being imposed are based on fundamentally flawed analysis and obviously incorrect “scientific” conclusions. ***DES representatives admitted under oath that the tidal river data confirm nitrogen control will not materially improve water clarity*** because it is not a nitrogen induced problem – it is natural.

Imposition of these erroneous regulatory mandates will likely bankrupt small communities throughout the watershed and misdirect local resources on an unprecedented scale. Residual designation will cede land use control to EPA. Environmental requirements and land use regulations developed by environmental groups and dictated by Federal and State Regulatory agencies will be our future. - This must be stopped now.

The adaptive management approach presented by the Coalition (and originally agreed to by DES) which would carefully evaluate the cause and effect response of gradual nutrient reductions rather than impose extreme reductions on speculation is still the only reasonable approach. This will prevent the complete loss of local control inherent in the EPA/DES determinations.

A meeting to discuss the local impacts of the proposed DES/EPA actions as well as possible options to reverse these arbitrary mandates is scheduled for 7 PM on December 6, 2012 at the Rochester City Hall Opera House (31 Wakefield St.). Please send a local official and ask a state representative to attend.

For further information please contact Dean Peschel at 603-781-5931 or 'dean_peschel@yahoo.com'.