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EPA OVERREACH AND THE IMPACT ON NEW HAMPSHIRE COMMUNITIES

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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EPA OVERREACH AND THE IMPACT ON NEW HAMPSHIRE COMMUNITIES

Monday, June 4, 2012

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
Washington, D.C.

The committee met, pursuant to call, at 9:01 a.m., at Exeter Town Office Building, Nowak Room, 10 Front Street, Exeter, New Hampshire, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa and Guinta.

Staff Present: Molly Boyl, Majority Parliamentarian; Lawrence Brady, Majority Staff Director; Linda Good, Majority Chief Clerk; Kristina Moore, Majority Senior Counsel; Christine Martin, Majority Counsel; Brian Quinn, Minority Counsel; Rebecca Watkins, Majority Press Secretary.

Chairman ISSA. This committee will come to order.

Before I begin, this is a Congressional hearing no different than any hearing in Washington. We abide by the same rules. Obviously, it is a little more folksy by design, and we will try to be accommodating in any way we can. If there are questions or other items that people would like to have placed in the record, if you will hand them over to committee staff, we will try to accommodate written information and let it into the record.

Additionally, I am going to notify that the record will remain open for five days, which means that if you get any additional information to Mr. Guinta's office within five days, he will have it included in the record. Now, that doesn't make it testimony, but it does make it material that will be a part of the entire record of consideration for this and future hearings.

The Oversight Committee's mission statement is that we exist for two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent; and, second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

As we begin the discussion today, I think it is safe to say everyone here on the dais, and I am sure everyone in the audience, ap-

preciates the goal for the Great Bay Estuary is, in fact, to make it cleaner than it is today and to make it clean enough for habitat, including plant life, to flourish.

Having said that, there will be multiple views—having reviewed the written statements, multiple views on how to achieve and to what level. And ultimately, this area, like so many areas of America, is dealing with a cost-benefit consideration: how much improvement for how many dollars and where those dollars could otherwise be spent, whether remaining in the pockets of the ratepayers or in fact providing as much as $100 million for other clean air and clean water projects in the region.

Under the Clean Water Act and the National Pollutant Discharge Elimination System, permits for pollutants ultimately have to be granted. This gives the EPA a considerable amount of authority. Early in my career and even a few years beforehand, the Federal Government provided substantial dollars for non-source pollution. Those dollars have not just evaporated, but ultimately the demands are virtually everywhere in America. What you see in the Great Bay communities, ultimately we see in California; we see in Ohio; we see throughout America.

This form of pollution, primarily driven from runoff and other waste considerations, nonindustrial, is in fact an area of pollution once not measured. Today, it in fact is not only measured, but household pollutants are in fact the largest single source of water concerns in America. Whether it is on the Chesapeake or here in New Hampshire, we have a problem.

In your case, the need to reduce nitrogen levels by at least 73 percent, back to 1980 levels, are a clear goal. The question is not do you go back to that level. The question is, do you go beyond it, how much can the ratepayer pay, and are those dollars better used elsewhere?

The EPA has a mission. That mission is clearly defined. But the levels that EPA seeks is in fact within a judgment decision. It is one of the reasons that Federal regulators, particularly your Congressman, asked us to come here and hear from local authorities of whether in fact this balance, this cost-benefit, is in fact being properly measured. More importantly, has the EPA bypassed or circumvented the state legislature and imposed its own requirement?

As I prepared for this hearing, I found a mixed result. I have to side with EPA in one sense: There was in fact no clear vote of the legislature, and at some point there is a responsibility for the EPA to act. Do I believe, and do our witnesses believe that they acted appropriately, that they acted properly, or that they should have insisted that the legislature at least codify what some would say is a significantly flawed study?

As we listen to our witnesses here today, it is not for us to be the final judges. It is for us to collect a record, make it available to the entire committee, and then urge the EPA, and, if appropriate, the State of New Hampshire to act in a way that is in the best interest of this community, and, more importantly, to set a standard for other projects around the country.

As Congressman Guinta and myself recognize, our committee, no matter how many hearings we have, no matter how many investigators do work like this, we, in fact, are not doing work for one

community. This community today is a community that we hope will set the stage for better decisions by the EPA and other agencies around the country. Ultimately, Congressman Guinta's leadership on this has been appreciated because, in fact, as a former mayor, he brought to the Congress an understanding of many of these issues and has been a leader in helping us understand some of the unique challenges faced in New England.

And with that, I recognize my colleague for his opening statement.

Mr. GUINTA. Thank you very much, Mr. Chairman, for holding this hearing here in New Hampshire today.

This is the first field hearing that I have had here in New Hampshire. I very much appreciate this issue being a central issue to the committee, and to you and to our staff.

I also want to thank the distinguished witnesses for being here today, as well as the concerned Granite Staters who have great interest in the Great Bay issue.

Personally, I want to first mention this is an incredibly important issue to me. This is the first piece of legislation that I ended up introducing in the House, called the Great Bay Community Protection Act. The reason that I proposed this legislation as one of the—as the first piece of legislation is that I was contacted by several of the contiguous communities in this region who expressed some concern about this issue.

I think there is one common goal that we all share, and that we want to ensure that the estuary remains a wonderful asset to this region and to our state. There are, however, as the chairman pointed out, some differences of opinion as to how to meet the goal and objective of reducing nitrogen levels. And while I share the goal of reducing nitrogen levels in Great Bay, I think there are various ways that we can address and achieve that objective.

So I think that there is a lot of common support. I think there are also different perspectives and different unique approaches into how to meet that objective.

But what is the best way to achieve that objective? And that is why we are here: to hear different opinions and different viewpoints today. Some of the proposed solutions would carry very steep price tags for local municipalities, small businesses, and families, particularly here in Exeter, as well as the communities of Dover, Newmarket, Rochester, and Portsmouth, and I have heard from those communities over the course of the last year about that legitimate concern.

So, today, I am here to listen to these communities and their representatives. I want to hear more about the individual plans that will be presented, and I would like to hear more about how residents will shoulder the financial impact of the decisions being made in their name. It is my hope that when this field hearing is concluded, we will have, and leave with a deeper, more complete understanding of exactly what is at stake for the Great Bay Estuary and how it impacts everyone.

In addition, I feel that we also have the responsibility as American citizens to make sure that the Federal Government operates within its proper boundaries. Our government was specifically created to serve we the people. It exists to meet our needs, not to

needlessly intrude into our lives. For as we are reminded in the Declaration of Independence, the government derives its powers from the consent of the governed. That is why this hearing I think is so important. Today, Granite Staters will make their voices heard on the permitting process.

I am proud to say to the chairman and to the group here that this is not a partisan issue. Democrats, Republicans, and independents alike agree that EPA needs to take into consideration the views of the many people who live in the Great Bay Estuary and who would be directly impacted by the Agency's regulatory actions. Governor Lynch, Senator Shaheen, and Senator Ayotte have all raised the similar and same concerns and have shown their willingness and support to work collectively to try to address this issue. And I want to particularly commend Senator Shaheen, Senator Ayotte, and Governor Lynch for supporting a reasonable, long-term approach and compromise on how to best ensure that this estuary reduces nitrogen, but also does it in a meaningful way and in a way that does not significantly and financially place an undue burden on the communities that are here today.

I also specifically want to commend EPA Region 1 Director Curt Spalding, who is here and will testify in the second panel, for his personal involvement in this issue. He has met with me personally and my staff to discuss options and alternatives for moving forward to a reasonable resolution, and I commend him and the EPA for trying to find a way to meet the concerns of the communities.

Finally, I want to say my thanks to all of you for attending this hearing. New Hampshire is a place where we are very civically engaged and take great interest in our environment. I am here eager to listen to the witnesses who have agreed to testify today and I look forward to the question-and-answer period as well, and I yield back the balance of my time.

Chairman ISSA. I thank the gentleman.

I would now like to ask unanimous consent that three letters presented to us be placed in the record: one from the Lamprey River's Advisory Committee, one from the Lamprey River Watershed Association, and the last a letter from Phil Gingbird—Ginsberg, I'm sorry—who is a member of the New Hampshire House.

Without objections, so ordered.

Chairman ISSA. Thank you.

Frank, would you like to introduce our witnesses?

Mr. GUINTA. Yes. Thank you.

Chairman ISSA. They are your community leaders.

Mr. GUINTA. Thank you very much, Mr. Chairman.

We have in the first panel four distinguished individuals. First, the Honorable T.J. Jean, who is the mayor of the City of Rochester, New Hampshire, as well as a lifelong resident of Rochester, testifying on behalf of the Great Bay Municipal Coalition.

Second, we have Mr. Dean Peschel of Peschel Consulting, who has extensive experience in environmental project management and is testifying on behalf of Dover, New Hampshire, and the Great Bay Municipal Coalition.

Third, we have Mr. John Hall of Hall & Associates, who is one of the nation's leading environmental attorneys and is testifying on behalf of the Great Bay Municipal Coalition.

And, finally, to conclude the first panel, we have Mr. Mr. Peter Rice, who is a water and sewer engineer for the City of Portsmouth, New Hampshire, and is testifying on behalf of the City of Portsmouth.

Chairman ISSA. Thank you.

Pursuant to the committee rules, would you all rise to take the oath. Raise your right hand.

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that all witnesses answered in the affirmative. Please take seats.

In Washington, we have the same red, yellow, and green lights. My predecessor on the committee, Chairman Towns, was always quick to remind people that this is not a new phenomenon, that green means go, yellow means prepare to stop, and red means stop. So I would ask you to try to time your opening statements to be as close to that five minutes as possible.

I might remind you that your entire opening statement is in the record, and since none of you are presidential administration witnesses, you undoubtedly have a little ability to summarize if necessary.

And with that, Mayor, you are recognized.

STATEMENT OF T.J. JEAN

Mr. JEAN. Good morning. My name is T.J. Jean and I am the mayor of the City of Rochester.

On behalf of the city, I want to extend our sincere thanks for your willingness to hold this oversight hearing which is addressing issues of critical importance to the City of Rochester and its citizens.

The purpose of my testimony today is to discuss with you the severe financial impacts which the regulatory actions proposed by the United States Environmental Protection Agency will have on our city and its citizens.

Rochester is committed to protecting the natural environment for the benefit of its citizens and all citizens of our state. However, Rochester and other major cities in the Great Bay area are concerned that the proposed regulatory actions designed to protect the Great Bay are not based upon sound science, and, if implemented, would do more than constitute a waste of scarce local resources. It would financially cripple our city, prevent us from attracting and maintaining our business base, and impose an unreasonable financial burden on our citizens and ratepayers. We are disappointed that the EPA would gamble away our future based on little more than guesswork. This committee needs to stop the EPA now and insist on an independent review of their actions.

Like other New Hampshire municipalities, Rochester has been adversely impacted by the recent national economic downtown. However, those impacts have been felt even more significantly in our city.

By way of brief background, the poverty rate in Rochester is at 13.1 percent, the highest of any city in the Strafford County region. The Rochester School District has 32.6 percent of its student population eligible for free or reduced lunch. Rochester accounted for 31.6 percent of foreclosures in the Strafford County region, with

118 foreclosures in 2011 alone. The city's tax base or net assessed value has decreased each of the last three years, from approximately $2.36 billion in 2009 to approximately $2 billion in 2011.

It is no surprise that this recent economic downturn has resulted in significant job losses in our city. In the last three years, Rochester has experienced 504 lost jobs or 58 percent of the regional employment loss. The largest of those jobs involved 374 jobs lost at Thompson Center Arms, formerly the city's largest employer.

With respect to the employers which remain in the city, shifting and unstable international economics have put additional pressure on manufacturers with global products, such as medical devices, composite materials, machine parts, and aerospace components, all major employment sectors in Rochester. The result of the foregoing is a ripple effect throughout our local economy and that consumer spending has dropped significantly, having major impacts on the downtown business district and the retail and hospitality sectors in our city.

While the financial resources of the city and its citizens have plummeted, the financial obligation imposed upon and accepted by the city to meet the basic needs of its residents has increased. The city continues to finance a number of important major capital expenditure projects to meet the needs of our citizens. These include major bridge and road rehabilitation and reconstruction projects to better serve our community. As a result, wholly apart from those projects which the regulations which are subject of this hearing could impose on the city, the city's annual debt expense is projected to increase from approximately 4 million per year to approximately 6.3 million per year over the next five years. This brings me to the financial impacts proposed by the EPA mandate.

Rochester has been informed that EPA intends to issue a new permit requirement for both total nitrogen and phosphorus, which would require the city to construct an additional wastewater treatment facility. The city is still retiring a $20 million debt-related bond relative to our wastewater treatment plan improved in 1997. The city recognized at the time that the construction of these upgraded facilities was appropriate to protect the health of the Cocheco River, its aquatic environment, and its users.

The EPA's latest mandate will likely require that facility with outstanding bonds to be abandoned, as EPA has now changed its regulatory focus to total nitrogen. However, the city has been informed by its consultants that EPA's new proposed nitrogen and phosphorus limitations are not based on sound science and will not result in demonstrable benefits to the aquatic environment of the Cocheco River or Great Bay. While I am not qualified to discuss that science, I am certainly able to discuss the financial impact which implementation of those requirements would have on the city.

EPA's indifference to mandating major local expenditures every time a new permit is issued based on the flimsiest of information simply must cease. We cannot offered such multi-million-dollar guesswork. Our consultants have advised us that the capital costs related to the upgrade to the city's wastewater treatment facility necessary to comply with the proposed nitrogen and phosphorus limits would be approximately $20.5 million. Assuming a 20-year

amortization period at 5.5 percent interest, this would result in additional debt service costs of approximately $2 million per year beyond those I previously mentioned. After capital construction is complete, additional operating costs required to meet these permit limits would be approximately 2 million per year, beginning in fiscal year 2016.

The impact of these costs on our sewer rates is staggering. The city's current sewer rate is $6.11 per 100 cubic feet, already among the highest in the region. Compliance with the latest EPA mandates would immediately result in a 23 percent increase in rates. By fiscal year 2016, the projected sewer rate would more than double to $12.50 per 100 cubic feet, which would, in turn, mean an estimated yearly user bill of $1,200 per year in fiscal year 2016.

I see my time has elapsed. I just would like to conclude by saying and reaffirming that the city is committed to take whatever steps are necessary to protect the health of its citizens and the natural environment of Rochester and its surroundings. However, the city should not be forced into the kind of economic crisis outlined above for little or no demonstratable environmental benefit.

I appreciate your attention to my remarks and hope you will give them due considerable in your role of overseeing these proposed regulatory actions.

Thank you.

[Prepared statement of Mr. Jean follows:]

TESTIMONY OF MAYOR JEAN.

Good morning. My name is T. J. Jean, and I am the Mayor of the City of Rochester. On behalf of the City, I want to extend our sincere thanks for your willingness to hold this oversight hearing, which is addressing issues of critical importance to the City of Rochester and its citizens. The purpose of my testimony today is to discuss with you the severe financial impacts which the regulatory actions proposed by the United States Environmental Protection Agency will have on our City and its citizens. Rochester is committed to protecting the natural environment for the benefit of its citizens, and all citizens of our State. However, Rochester, and the other major cities in the Great Bay area, are concerned that the proposed regulatory actions, designed to protect the Great Bay, are not based upon sound science and, if implemented, would do more than constitute a waste of scarce local resources – – it would financially cripple our City, prevent us from attracting and maintaining our business base, and impose an unreasonable financial burden on our citizens. We are disappointed that EPA would gamble away our future based on little more than guesswork. This Committee needs to stop EPA now and insist on an independent review of their actions.

Before I get into my remarks, by way of introduction, I have been Mayor of the City of Rochester since January 2010, and was recently re-elected to my second term with 83 percent of the vote. I have lived in Rochester my entire life. Both my wife and I attended Rochester schools, both graduating from Spaulding High School. My wife is currently a teacher in the Rochester School District. I work in Rochester, as manager of the Frisbie Center for Cancer Care at Frisbie Memorial Hospital. We have two young children who we are raising in Rochester and who will also attend Rochester schools. The proposed regulatory actions will significantly impact their future, and that of all Rochester children.

Like other New Hampshire municipalities, Rochester has been adversely impacted by the recent national economic downturn. However, those impacts have been felt even more significantly in our City. By way of background, the poverty rate in Rochester is 13.1%, the highest of any city in the Strafford Region. The Rochester School District has 32.6% of its student population eligible for free or reduced lunch. Rochester accounted for 31.6% of foreclosures in the Strafford Region, with 118 foreclosures in 2011 alone. The City's tax base, or Net Assessed Value, has decreased each of the last three years, from approximately $2.36 billion in 2009 to approximately $2 billion in 2011.

It is no surprise that this recent economic downturn has resulted in significant job losses in our City. In the last three years, Rochester has experienced 504 lost jobs, or 58% of the regional employment loss. The largest of those job losses involved 374 jobs lost at Thompson Center Arms, formerly the City's largest employer, in three separate layoff events which culminated with the company closing its Rochester facility this past December. While Rochester has done its best to attract new businesses to mitigate these losses, it faces unique challenges in doing so. We regularly compete for relocations and expansions with locations in Texas, North and South Carolina, and Tennessee, not to mention the Commonwealth of Massachusetts which has a large inventory of distressed properties. State and federal

regulations continue to increase, and often make relocation to New Hampshire less attractive than elsewhere. Moreover, initial up front investment for new business locations is significantly difficult to finance since our State does not provide relocation incentives and New Hampshire financial institutions tend to be smaller and serve smaller business customers.

With respect to the employers which remain in our City, shifting and unstable international economics have put additional pressure on manufacturers with global products, such as medical devices, composite materials, machine parts and aerospace components, all major employment sectors in Rochester. The result of the foregoing is a ripple effect throughout our local economy, in that consumer spending has dropped significantly, having major impacts on the Downtown Business District, and the retail and hospitality sectors in our City.

While the financial resources of the City and its citizens have plummeted, the financial obligations imposed upon and accepted by the City to meet the basic needs of its residents have increased. The City continues to finance a number of important major capital expenditure projects to meet the needs of its citizens. These include major bridge and road rehabilitation and reconstruction projects, damn rehabilitation, building maintenance reconstruction, storm drainage projects, and compliance assistance relative to federal stormwater management requirements. As a result, wholly apart from those projects which the regulations which are the subject of this hearing could impose on the City, the City's annual debt expense is projected to increase from approximately $4 million per year, to approximately $6.3 million per year over the next five years.

This brings me to the financial impacts which the proposed EPA mandates would have on the City of Rochester. Rochester has been informed that EPA intends to issue new permit requirements for both total nitrogen and phosphorous which will require the City to construct additional wastewater treatment facilities. The City is still retiring a $20 million debt related to wastewater plant improvement ordered by EPA in 1997 which required the City reduce ammonia as nitrogen, as opposed to the proposed permit which requires reductions in total nitrogen. The City recognized at the time that construction of these upgraded facilities was appropriate to protect the health of the Cocheco River, its aquatic environment and its users. EPA's latest mandate will likely require that facility, with outstanding bonds, to be abandoned as EPA has now changed its regulatory focus to total nitrogen. However, the City has been informed by its consultants that EPA's new proposed nitrogen and phosphorous limitations are <u>not</u> based upon sound science and will <u>not</u> result in demonstrable benefits to the aquatic environment of the Cocheco River or Great Bay. While I am not qualified to discuss that science, I am certainly able to discuss the financial impact which implementation of those requirements would have on the City. EPA's indifference to mandating major local expenditures every time a new permit is issued based on the flimsiest of information simply must cease. We cannot afford such multimillion dollar guesswork.

Our consultants have advised us that the capital costs related to upgrades to the City's wastewater treatment facility necessary to comply with the proposed nitrogen and

phosphorous limits would be approximately $20,500,000. Assuming a 20-year amortization period at 5.5% interest, this would result in additional debt service costs of approximately $2 million per year, beyond those I previously mentioned. After capital construction is complete, additional operating costs required to meet these permit limits would be approximately $2 million per year, beginning in fiscal year 2016. The impact of these costs on our sewer rates is staggering. The City's current sewer rate is $6.11 per 100 cubic feet, already among the highest in the region. Compliance with the latest EPA mandates would immediately result in a 23% increase in rates. By fiscal year 2016, the projected sewer rate would more than double to $12.50 per 100 cubic feet. The estimated yearly user bill would escalate to over $1,200 per year in fiscal year 2016.

It is not hard to imagine what impact an increase of this magnitude would have on the business base and citizens of Rochester. I have already outlined the challenges that Rochester faces in not just attracting new business but maintaining its existing business base. An increase in sewer rates of this magnitude will surely make the job of attracting business to Rochester extremely difficult. Perhaps more significantly, an increase of this magnitude will provide a significant incentive for existing businesses to consider relocation to locations both within and outside our State with more reasonable sewer rates.

With respect to the impact on our individual citizens a 100% rate increase will certainly make it more difficult for our citizens to make ends' meet, let alone have disposable income to spend in our retail and hospitality sectors. These impacts will only be exacerbated if imposition of these mandates result in additional job losses. Simply put, EPA's latest unfunded mandate will have a long term negative impact on the City of Rochester, its businesses and citizens.

It would be one thing if such economic consequences were necessary to protect the natural environment. Our consultants assure us that this is not the case. They inform me that EPA is using methods that its own Science Advisory Board declared unreliable and that the federally funded research on Great Bay confirmed was in error. EPA simply chose to ignore that information since it disagreed with its intended approach. To cap it off, EPA prevented the municipal coalition from participating in a peer review that could have helped to set the record straight. That is not an acceptable way for a regulatory agency to do business and that is why we need an independent review of EPA's actions.

Let me conclude my remarks by confirming the City's commitment to take whatever steps are necessary to protect the health of its citizens and the natural environment of Rochester and its surroundings. However, the City should not be forced into the kind of economic crisis outlined above for little or no demonstrable environmental benefit. I appreciate your attention to my remarks and hope that you will give them due consideration in your role of overseeing these proposed regulatory actions.

Chairman ISSA. Thank you.

Mr. Peschel?

STATEMENT OF DEAN PESCHEL

Mr. PESCHEL. My name is Dean Peschel of Peschel Consulting, and I'm speaking on behalf of the City of Dover and the Great Bay Municipal Coalition.

Congressman Issa, Congressman Guinta, thank you for convening this hearing of the Oversight and Government Reform Committee here in Exeter.

The USEPA has proposed limit of technology nitrogen permit limits of 3 milligrams per liter for the coalition communities' wastewater treatment facilities. Nitrogen removal will require all wastewater treatment plants to either modify their existing facility or completely build new facilities.

New Hampshire DES Environmental Services issued a draft nutrient criteria in 2008 which establishes a very low water quality standard. EPA relies heavily on this analysis in justifying strict nitrogen limits in the draft permits. The coalition communities reviewed the nutrient criteria and questioned the underlying assumptions and analysis used. Expert consultants were engaged by the coalition to review both the science and to analyze the potential economic impacts to meet the likely permit limits. Holland Associates of Washington, D.C., and HydroQual of Mahwah, New Jersey, were the nationally recognized technical experts selected. Applied Economic Research of Laconia, New Hampshire, was the firm chosen to assess the economic impacts associated with these upgrades.

Our technical experts reviewed the nutrient criteria and told us the document has fatal flaws in the methodology and incorrectly concludes that nitrogen is causing excessive algae growth which is reducing water clarity in the estuary.

Chairman ISSA. Mr. Peschel, could you speak just a little louder? I apologize, but——

Mr. PESCHEL. Sure.

Chairman ISSA. That mic, the one you have closer, that is the one that counts the most from the standpoint of the record.

Mr. PESCHEL. Thank you.

The consultants further informed us the nitrogen water quality standard established by DES is unattainable and will likely require communities to expend even more resources on stormwater reductions indefinitely into the future, at a cost two to five times more than that of the wastewater treatment upgrades. Based on stormwater costs incurred in other states, the basin-wide costs to meet EPA mandates could easily exceed $1 billion. That's a staggering number.

EPA has issued three draft permits which use the draft criteria as justification for imposing limit of technology nitrogen limits. John Hall will address how this action violated Clean Water requirements in more detail with you.

Our economist, Russ Thibeault, principal of Economic Research, is a well-respected national expert. AER was provided the capital costs, operation and maintenance costs expected, and over a range of nitrogen removals. The cost for the five communities to meet a 3-milligram-per-liter limit is $588 million. This represents a huge

environmental cost. The costs represent capital costs, the building improvements, O&M, and the cost to finance it over a 20-year period. If we look closer at the economic impacts for the City of Dover, we see that the cost to meet an 8-milligram-per-liter limit is 36.4 million, and a 3-milligram-per-liter, 94 million. That's a difference of $58.5 million.

The City of Dover and other coalition communities do not want Great Bay to continue to degrade. The communities also want to ensure that the investments to improve the conditions in the estuary are effective and achieve intended results. It is clear to us that requiring the communities to upgrade wastewater plants to limits of technology is unwarranted and will not achieve the desired results, at an extraordinary cost to the ratepayers.

Times have changed dramatically with respect to funding wastewater. 20 years ago, when the Dover treatment plant was constructed, federal grants paid for 95 percent of those capital costs. Today, the local ratepayer will be paying 100 percent of all the costs.

In order to move the process forward, the coalition developed an alternative approach to the 3-milligram-per-liter permit. Nitrogen levels have increased. We do not want them to continue to increase unabated. Nitrogen sources in the watershed are estimated to be 25 percent to 30 percent from point sources and 65 to 75 percent from non-point sources.

Chairman ISSA. If you could wrap up.

Mr. PESCHEL. Yes.

The coalition has proposed an Adaptive Management Plan. It will provide significant nitrogen reduction quickly, addresses both point and non-point sources, funds needed for monitoring the restoration, and avoids legal appeals and a waste of financial resources and delays of implementing nitrogen reduction. A copy of that plan is attached to this written testimony. And I will wrap up——

Chairman ISSA. Without objection, it will be placed in the record in its entirety.

Mr. PESCHEL. Thank you.

The coalition believes that the Adaptive Management Plan is an effective and rational approach that will engage the entire watershed community, not just the sewer ratepayers. It will build upon success that will lead to future success and garner the public support needed to fund future improvements over the long term. It will provide significant nitrogen reduction at an affordable cost, and, most importantly, provide a process to determine if additional reduction is needed. It will also save over $200 million in expenditures that have no proven need for benefit.

With that, I will conclude, and thank you very much.

[Prepared statement of Mr. Peschel follows:]

Testimony of:

Dean M. Peschel
Peschel Consulting
Dover,NH

On Behalf of the City of Dover and the Great Bay Municipal Coalition

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"EPA Overreach and the Impact on New Hampshire Communities"

United States House of Representatives
Committee on Oversight and Government Reform

June 4, 2012

My name is Dean Peschel of Peschel Consulting and I am speaking on behalf of the City of Dover and the Great Bay Municipal Coalition. I grew up in Kittery, Maine across the river from Portsmouth and spent countless hours with my friends playing, fishing, and swimming in the estuary. We live in a beautiful place and want to keep it that way. I have an undergraduate Degree from the University of New Hampshire where I majored in Geology and a Master's Degree from Oklahoma State University where I studied Soil Science and Engineering Geology. I am currently an environmental consultant to the City of Dover, NH and prior to that was the City of Dover's Environmental Project Manager and Natural Resource Planner for 21 years. My experience in the natural resource field spans more than 36 years.

Congressman Issa and Congressman Guinta, thank you for convening this field hearing of the Oversight and Government Reform Committee here in Exeter, New Hampshire. As you have heard from Peter Rice, Portsmouth City engineer, the USEPA has proposed limit of technology nitrogen permit limits of 3 milligrams per liter (mg/l) for the coalition communities waste water treatment facilities. Nitrogen removal will require all the waste water treatment plants (WWTP) to either modify their existing facility to accommodate nitrogen removal or build completely new facilities.
The NH Department of Environmental Services issued draft nutrient criteria in 2008 which establishes a very low nitrogen water quality standard. The Coalition communities reviewed the nutrient criteria and

questioned the underlying assumptions and analysis used. Expert consultants were engaged by the Coalition to review both the science and to analyze the potential economic impacts to meet likely nitrogen permit limits.

Hall & Associates of Washington DC and Hydroqual of Mahwah, New Jersey were the nationally recognized technical experts selected. Applied Economic Research of Laconia New Hampshire was the firm chosen to assess the economic impacts associated with WWTP upgrades.

Our technical experts reviewed the nutrient criteria and told us the document has fatal flaws in the methodology and incorrectly concludes that nitrogen is causing excessive algae growth which is reducing water clarity in the estuary and therefore responsible for eelgrass decline. They further informed us that the nitrogen water quality established is unattainable and will likely require communities to expend even more resources on stormwater reductions indefinitely into the future at a cost 2 to 5 or more times the cost of waste water treatment plant upgrades. Based on stormwater costs incurred in other states, the basinwide costs to meet RPA's mandates could easily exceed one billion dollars. That is a staggering number.

EPA has issued three draft permits which use the draft NHDES criteria as the justification for imposing "limit of technology" nitrogen permit limits of 3mg/l at all waste water treatment facilities. John Hall of Hall Associates will address how this action violated Clean Water Act requirements in more detail with you.

Our economist, Russ Thibeault principal of Applied Economic Research is a well-respected national expert on economic issues. Russ was provided capital costs and anticipated operation and maintenance cost increases to implement nitrogen removal at each of the WWT facilities. Those cost estimates were generated for each community by their waste water engineering consulting firms. Costs to implement nitrogen removal at three potential permitting limits were analyzed, which were 8, 5, and 3 mg/l of total nitrogen.

The total estimated cost for the five communities is to meet 8 mg/l is $364,000,000. The cost to meet 3 mg/l is $588,000,000. The cost difference between a limit of 8mg/l and 3mg/l is $225,000,000. This represents a small incremental environmental benefit at a great additional cost. The above costs represent the capital cost to build the improvements, the additional annual O & M costs for nitrogen removal and the finance costs for 20 years which is the typical period that major improvements are bonded for.

If we look closer at the economic impacts for the City of Dover we see that the cost to meet an 8mg/l limit is $36.4 million where a 3mg/l limit is $94.9 million, a difference of $58.5 million.

A permit limit of 8mg/l will achieve a 73% nitrogen reduction where a limit of 3mg/l achieves an 83% reduction. Simply on the cost differential alone it is irrational to impose "limits of technology" in this case.

The City of Dover and other coalition communities do not want Great Bay to continue to degrade. The communities also want to insure that the investments to improve the conditions in the estuary are effective and achieve the intended results. It is clear to us that requiring the communities to upgrade WWTP to limits of technology is unwarranted and will not achieve the desired results at an extraordinary cost to rate payers. Times have dramatically changed with respect to funding wastewater. Twenty years ago when the Dover treatment plant was constructed, federal and state grants paid 95% of the capital costs. Today the local rate payer will be paying 100% of all the costs.

In order to move the process forward the Coalition developed an alternative approach to the 3 mg/l permit limit. Nitrogen levels have increased in the estuary. We do not want to them to continue to rise unabated. Nitrogen sources in the watershed are estimated to be 25-30% from point sources which are WWTP's and 65-70% from non-point sources. Nonpoint sources are primarily run off from stormwater which includes fertilizers, on agriculture, lawns and recreational facilities, septic systems and urban storm water.

The alternative proposed is called the Great Bay Municipal Coalition Adaptive Management Plan (AMP). It is a plan that:

1. Makes effective use of available resources.
2. Addresses both point and non-point sources.
3. Monitors progress and adapts.

What is adaptive management? It is a process in which one analyzes available data, conducts research, and then implements management practices, monitors the effectiveness of those practices. If a practice shows good results one implements more of those practices, where needed, and if a practice is found ineffective stop using it and try new ones. It is learn by doing.

The benefits of the Coalition AMP are:

1. Provides significant nitrogen reductions quickly.
2. Addresses both point and non-point sources.
3. Funds needed monitoring and restoration efforts.
4. Avoids legal appeals which waste financial resources and delays implementation of nitrogen reductions.

The AMP is based on the recommendation in the Piscataqua Region Estuary Partnership's Comprehensive Conservation Management Plan. The AMP was presented to EPA in the fall of 2011. A copy of the plan will accompany my written testimony.

The AMP includes the following:

- Coalition waste water treatment plants (WWTP's) that discharge to the estuary will be upgraded to meet an 8 mg/l nitrogen limit and be operational in 5 years or less.
- Coalition communities will each invest $30,000 in water quality and habitat monitoring annually.
- Coalition communities will each invest $25,000 annually for habitat restoration.

The Coalition will provide leadership working with the smaller unregulated communities, the state of New Hampshire, and other stakeholders on:

- Stormwater improvements
- A strategy to implement nitrogen reduction from septic systems:
- Fertilizer controls
- Stream and wetland buffers

The Coalition believes that the AMP is an effective and rational approach that will engage the entire watershed community not just the sewer rate payers. It will build upon success that will lead to future success and garner the public support need to fund future improvements that may be needed over the long term.

The plan will implement significant nitrogen reduction at the WWTP quickly for example a 73% reduction at Dover's WWTP. The plan begins non-point nitrogen reduction. It provides enhanced monitoring and supplements current habitat restoration efforts. It provides significant nitrogen reduction at an affordable cost and most importantly provides the process to determine if additional reduction is necessary. It also saves over 200,000,000 dollars in expenditures that have no proven need or benefit.

Our communities cannot afford to waste financial resources implementing solutions that are based on unsound science. Our technical experts have clearly shown that extreme reductions in nitrogen will not improve water clarity or remove the eelgrass impairments to the estuary. We need an open peer review of the science which includes input from the public to avoid a potentially massive waste of local resources. Our citizens who will be asked to pay for the improvements insist that the nitrogen permit limits imposed are based on sound science.

Chairman ISSA. Thank you.

Mr. Hall?

I will take a moment for the mics to catch up.

STATEMENT OF JOHN HALL

Mr. HALL. To rearrange. Thank you.

Good morning, Chairman Issa, Congressman Guinta, and members of the committee. My name is John Hall. I am a principal of Hall & Associates, an environmental firm that represents the Great Bay Municipal Coalition.

As mentioned in earlier testimony, the Region's actions will needlessly impose restrictive nutrient reduction requirements that will adversely impact these local economies for decades to come, and unfortunately not produce the intended environmental improvements.

In seeking to impose some of the most stringent nutrient limits in the nation, the Region has also violated several mandatory duties under the Clean Water Act, as well as several other EPA rules and policies that are designed to protect due-process rights and ensure that only reliable scientific methods are employed in regulatory decision-making.

As noted earlier, the Region has issued three draft NPDES permits that impose very stringent total nitrogen requirements. These nitrogen limits are based on draft water quality criteria that have never been formally adopted by the State or formally approved by EPA, a practice that is strictly prohibited by the Clean Water Act and EPA's regulation known as the Alaska Rule.

To quote EPA in its "Questions and Answers on the Alaska Rule," I quote: "The CWA Section 303(c)(3) is explicit that all standards must be submitted to EPA for review and must be approved by EPA in order to be the applicable standard. Under actions Section 303(d), the State must base listings on the applicable water quality standard. The State cannot use the new standard for CWA purposes, e.g., in a final permit, until EPA has approved that standard."

However, the Region simply ignored these requirements. It knew it had these mandatory duties, and early on recommended that the State quickly move to adopt the criteria into its standards, which would have then given the public an opportunity for active input. When the State failed to do so, the Region came up with the idea to call the draft numeric criteria something else—a narrative criteria interpretation—as if that changed any procedural requirements or the mandatory duties under the Clean Water Act.

In addition, if not more importantly, the Region knew that there was no cause-and-effect relationship between total nitrogen and the eelgrass loss for the estuary, and this was based on prior federally-funded research specifically directed at this issue. Nonetheless, the Region adopted the position that stringent nitrogen limits were essential to restore eelgrass populations, and limits of technology were mandated which would then also trigger very stringent land use controls in these same areas.

The Region's insistence on using unadopted numeric criteria and permits and impairment listings plainly violates the public notice and town requirements included in the Act in part 131. After cir-

cumventing the required approval process in March 2011, the Region then undertook additional efforts to exclude the public from a peer-review process that was intended to bless the criteria. When the coalition found out about the impending peer review, they specifically requested an opportunity to participate in that action. The coalition submitted comments to the State and Region based on major technical deficiencies in the draft criteria. However, the Region refused to allow the peer reviewers to address any of these points and concerns. This is directly at odds with Section 101(e) of the Clean Water Act, which mandates that the Agency must promote public participation in any review and modification of standard, not prevent it.

Since the peer review, the affected communities have repeatedly submitted detailed, site-specific information clearly showing the proposed permit requirements were fundamentally flawed. To date, all of those submissions have been ignored without comment. It is now apparent that serious regulatory violations, bias, and, in fact, scientific misconduct underlie the Region's actions.

The communities believe that the record is clear that the Region is determined to implement a predefined regulatory agenda of stringent nitrogen limits:

One: Even after a federally-funded Technical Advisory Committee for the Great Bay confirmed there was no cause-and-effect relationship between nitrogen, transparency, and eelgrass loss;

Two: Even after EPA's own Science Advisory Board stated that the type of simplified analysis the Region now wants us to use to support to a more restrictive approach is not scientifically defensible;

Three: Even after the Region itself internally identified major scientific deficiencies and significant conflicts with the Science Advisory Board recommendations.

These are serious issues. What is the point of having a local or federal Science Advisory Board if the agency is simply going to ignore the findings and continually employ methods that are criticized as fundamentally flawed, and, for that reason, will likely misdirect resources?

In closing, it's apparent to the coalition communities that the Region appears to have no intention of conducting a comprehensive, impartial scientific review. For that reason, the coalition submitted a letter to EPA headquarters on May 4th, documenting science misconduct and requesting that the matter be withdrawn from the Region and transferred to an independent panel of scientific experts. The coalition continues to support this request as the only viable means for an objective review that will help ensure the local resources are not squandered on misdirected policy mandates.

We appreciate the committee's investigation into this matter and hope that this can be resolved in the near future.

The details supporting this testimony, including the misconduct letter with numerous attachments are included in the record, Mr. Chairman. I request that they be included.

[Prepared statement of Mr. Hall follows:]

Testimony of:

John C. Hall
Hall & Associates
Washington, DC

On Behalf of the Great Bay Municipal Coalition

"EPA Overreach and the Impact on New Hampshire Communities"

United States House of Representatives
Committee on Oversight and Government Reform

June 4, 2012

Good morning, Chairman Issa, Congressman Guinta, and Members of the Committee:

My name is John Hall. I am a principal at Hall & Associates, an environmental law firm which has been representing the Great Bay Municipal Coalition on Great Bay Estuary nutrient issues for the past two years. I have nearly three decades of experience in the environmental field, both as an attorney and as an environmental engineer, specializing in complex Clean Water Act matters. As mentioned in earlier testimony, the Region's actions will needlessly impose restrictive nutrient reduction requirements that will adversely impact the local economy for decades to come and not produce the intended environmental improvements for the Great Bay Estuary. In seeking to impose some of the most stringent nutrient limits in the nation, the Region has also violated several mandatory duties under the Clean Water Act (CWA), as well as numerous other EPA rules and policies. These statutory and regulatory provisions are designed to protect due process rights and ensure that only reliable scientific methods are employed in regulatory decision-making. In support of my testimony, I have submitted detailed documentation that outlines how EPA's actions have violated these procedural requirements and EPA's science misconduct policies. (*See* Exs. A through D.) The following briefly reviews these procedural and regulatory improprieties.

Region I has issued three draft NPDES permits for Great Bay area communities that impose very stringent total nitrogen limits. These nitrogen limits are based on draft numeric water quality criteria that have never been formally adopted by the state or formally approved by EPA – a practice that is strictly prohibited under the Act. The Clean Water Act and the Agency's regulation known as the "Alaska rule," codified at 40 C.F.R. Section 131.21, require new state water quality standards, including new narrative criteria interpretations, to undergo a public review and adoption process under Section 303(c) BEFORE being applied to generate permits or declare waters impaired. To quote EPA in its "Questions and Answers on the Alaska Rule":

> "CWA section 303(c)(3) is explicit that <u>all standards must be submitted</u> to EPA for review <u>and must be approved</u> by EPA in order to be the 'applicable' standards. .... For actions under Section 303(d), the state ... must base listings on the "applicable" water quality standard. ... A state cannot use the new standard for CWA purposes, e.g., in a final permit, until EPA has approved the standard." (*See* Ex. A – EPA Questions and Answers on the Alaska Rule (September 12, 2000) (emphasis added.))

These regulatory procedures are designed to protect the ability of the public to provide meaningful input on water quality criteria adoption, before such criteria may be used to impose more restrictive requirements.

However, Region I simply ignored these requirements. The Region knew it had these mandatory duties and, early on, emphasized to the state the need to formally adopt the criteria into the state's water quality standards. (*See* Ex. B – A. Basile, EPA Region I, E-mail to P. Trowbridge, NH Department of Environmental Services, dated Nov. 25, 2008.) When the state failed to do so, the Region came up with the idea to call the draft numeric criteria something else – a "narrative criteria interpretation" – as if that changed any procedural requirements or mandatory duties under the Clean Water Act. (*See* Ex. C – A. Williams, EPA Region I, E-mail to A. Basile, EPA Region I, dated Aug. 18, 2009.) The Region then informed the state that it must use the draft criteria immediately in developing the state's 2009 CWA Section 303(d) list of impaired waters. (*See* Ex. D at Letter Ex. 6 – S. Perkins, EPA Region I, Letter to H. Stewart, NHDES, dated Dec. 9, 2009.) Region I then hastily approved the state's radically revised impairment designations before anyone could stop them and without further public participation. In addition, the Region also knew that no cause and effect relationship between total nitrogen

and eelgrass loss was demonstrated for the Estuary, based on federally-funded research. Nonetheless, the Region adopted the position that stringent nitrogen limits were essential in order to restore eelgrass populations. They then proceeded to claim, based on the draft numeric nutrient criteria, that "limits of technology" requirements must be applied to all point sources in the Estuary and stringent stormwater controls implemented.

The Clean Water Act's Section 101(e) mandates that EPA facilitate public participation in the development or revision of any standard or effluent limitation established by EPA or the state. 40 C.F.R. Sections 131.11 and 131.20 require water quality criteria to be publically reviewed to ensure they are scientifically defensible before they may be approved by EPA. The Region's insistence on using unadopted numeric criteria in permits and impairment listings plainly violated the public notice and comment provisions included in 40 C.F.R. Part 131, the requirements of CWA Sections 303(c) and 303(d), and violated the due process rights of the Coalition communities.

After circumventing the required notice and comment process, in March 2011, the Region then undertook additional efforts to exclude the public from involvement in a peer review process that was intended to "bless" the draft criteria. When the Coalition found out about the impending peer review, the Coalition specifically requested an opportunity to participate in that critical action. The Coalition then submitted comments on the major technical deficiencies in the draft numeric nutrient criteria and on the improper scope of the charge questions provided to the peer reviewers. However, the Region refused to allow the peer reviewers to address the Coalition's concerns. This is directly at odds with CWA Section 101(e) mandates and related public participation rules (e.g., 40 C.F.R. Section 131.20).

Unfortunately, this pattern and practice has continued to date. Since the "peer review", the affected communities have repeatedly submitted detailed site-specific information and analyses conducted by independent researchers that clearly show the proposed permit requirements were fundamentally flawed. To date, all of those submissions have been ignored without comment.

EPA's Scientific Integrity Policy and the Federal Policy on Research Misconduct provide that scientific analyses may not be based on fabricated scientific positions and agency bias. It is now apparent that serious regulatory violations, bias, and scientific misconduct underlie the Region's actions. The communities believe that the record is clear that the Region was

determined to implement a predefined regulatory agenda of stringent nitrogen limits:

- even after the federally-funded Technical Advisory Committee for the Great Bay Estuary confirmed there was no cause and effect relationship between nitrogen, transparency, and eelgrass loss;
- even after the EPA's own Science Advisory Board stated that the type of analysis used to support the Region's position was not scientifically defensible; and
- even after the Region itself internally identified major scientific deficiencies and significant conflicts with the Science Advisory Board's recommendations.

These are serious issues that require this Committee's oversight. What is the point of having local or federal Science Advisory Boards if EPA is simply going to ignore their findings and continue to employ methods that are criticized as fundamentally flawed and likely to misdirect environmental restoration efforts?

In closing, it is clear that the Region has no intention of conducting a comprehensive and impartial scientific assessment for Great Bay Estuary or complying with its congressionally-mandated public participation and water quality criteria approval responsibilities. For that reason, the Coalition submitted a letter to EPA Headquarters on May 4, 2012, documenting this misconduct and requesting that the matter be withdrawn from Region I and transferred to an independent panel of experts. (*See* Ex. D – Great Bay Municipal Coalition Letter to EPA Headquarters, dated May 4, 2012.) The Coalition continues to support that request as the only viable means for an objective review that will help to ensure local resources are not squandered based on misdirected policy mandates. The Coalition appreciates the Committee's investigation of this matter, and we hope the situation will be appropriately resolved in the near future. Thank you for your time.

Chairman ISSA. No objection. They will all be included in the record.

Mr. Rice?

STATEMENT OF PETER RICE

Mr. RICE. Thank you, Mr. Chairman, Congressman Guinta.

On behalf of the City of Portsmouth and the Great Bay Municipal Coalition communities, I'd like to thank you for this opportunity to testify today.

My name is Peter Rice. I'm the city engineer for the City of Portsmouth, and I've worked in this position for the last 10 years. Prior to working for the city, I worked as a consulting engineer. I'm a registered professional engineer and I have served in a variety of state wastewater commissions and organizations, and have been involved in the Great Bay nutrient issues since 2002.

A copy of my resume has been included in my testimony.

The City of Portsmouth is a small city, about 21,000 people, but despite our small size, we have big-city infrastructure problems. The city owns and operates two wastewater treatment facilities, has over 120 miles of sewer pipe, and manages 20 pumping stations. Communities such as Portsmouth want predictable, scientifically supported environmental regulations that deliver demonstratable environmental benefits. Within such a regulatory framework, limited municipal resources can be secured, budgeted, and invested wisely to deliver necessary services for the maximum environmental benefit.

In 2002 I assumed my predecessor's position on the State Water Quality Standards Advisory Committee. On this committee I became involved with the Nutrient Technical Advisory Committee for the New Hampshire Estuarine Project, which is currently known as Piscataqua Region Estuarine Partnership, or PREP. The purpose of this technical advisory committee was to provide technical peer view on the science used to develop water quality standards for the estuaries of New Hampshire. A specific focus of this committee was whether and how nitrogen could be affecting the bay ecology, in particular, eelgrass populations.

In 2005 EPA directed the State to develop nutrient standards for the estuary. This was part of a national effort on EPA's part. Up until late 2008, nitrogen, although a concern, was not identified as a source of impacts on the bay. In particular, it was concluded, based on federally-funded studies, that increased nitrogen levels had not caused increased algae growth and had not adversely impacted water transparency in the bay.

I have attached with my comments presentations given by the New Hampshire Department of Environmental Services staff relative to these conclusions.

In 2008 there was an abrupt turnaround. At a State Water Quality Standards Advisory Committee meeting, a simplified data analysis was presented which ignored previous detailed studies and reached an opposite conclusion. This incorrect analysis was supported by EPA and subsequently became the basis for setting standards and declaring virtually all waters in the estuary nutrient-impaired. All of this occurred without any formal adoption in accordance with law or formal approval of the criteria by EPA as

a new water quality standard. Thus, the impacted communities had no opportunity to challenge these changes.

As a result of this about-face, Portsmouth reached out to other communities with wastewater treatment facilities to discuss the State's water quality criteria. The change in the State's conclusions with regard to the role of nutrients spelled trouble for the municipalities discharging into the Great Bay Estuary. The proposed criteria for nitrogen is not achievable and has been used by EPA to claim that nitrogen must be treated to limit of technology at wastewater treatment facilities and that stringent stormwater treatment must also be implemented to improve water transparency.

On March 15, 2010, I attended a Water Environment Federation EPA briefing in Washington, D.C. Mike Hanlon, the EPA director of wastewater management, advised attendees that the EPA didn't have the time or money to do the science and that the EPA was going to apply the Chesapeake Nutrient Criteria Program nationally.

The following day, at a congressional briefing breakfast, I was told by the Regional Administrator Spalding that until Portsmouth and other communities developed their own science, EPA would not consider our communities' concerns.

Complicating EPA's apparent limited time and money were the interest of nongovernmental organizations which appeared to be having a disproportionate impact on the water quality process and setting of permit limits. I was told that the regulators were more worried about possible lawsuits by NGOs than they were afraid of municipalities. This deference to the NGOs is an indication that EPA is more concerned about policy issues than getting science right and implementing cost-effective solutions to protect and improve the environment. This involvement by NGOs may explain why our repeated requests for involvement of our technical experts were either rejected or trivialized.

For example, Portsmouth was given assurances by representatives of the New Hampshire Department of Environmental Services that we could participate in a formal EPA peer review of the draft nutrient criteria. Instead, Portsmouth and other communities were excluded from the peer-review process at an EPA level. This EPA peer review was carefully orchestrated, exercised, designed to provide an appearance of scientific credibility through fundamentally-flawed nutrient criteria that met EPA's policy objectives. I have attached the correspondence relative to that process in my statement.

Rejecting the public's ——

Chairman ISSA. Without objection, that will be placed in the record.

Mr. RICE. Thank you.

Rejecting the public's request for an inclusive, objective, and open process, the regulators have delayed action which would have yielded environmental benefits in the near term. By ignoring good science, the EPA's regulatory process has set up unachievable goals which will misapply scarce public funds while not achieving the intended goals, and force communities to spend their money on lawyers instead of science and solutions.

In summary, the Great Bay Municipal Coalition is committed to protecting and restoring the Great Bay, but we believe the existing

science does not support the regulatory decisions being made and should not be the basis for NPDES permits.

I would like to thank you for this opportunity to let me speak today.

[Prepared statement of Mr. Rice follows:]

Testimony of:

Peter H. Rice, P.E.
City Engineer Water & Sewer
City of Portsmouth

On Behalf of the City of Portsmouth

"EPA Overreach and the Impact on New Hampshire Communities"

United States House of Representatives
Committee on Oversight and Government Reform

June 4, 2012

Mister Chairman, and Members of the Committee, on behalf of the City of Portsmouth and the Great Bay Municipal Coalition Communities, I would like thank you for this opportunity to testify today.

My name is Peter Hamilton Rice. I was born in New Hampshire and I am a twice graduate of the University of New Hampshire with an undergraduate degree in economics and a Masters Degree in Civil Engineering. I am currently the City Engineer for the City of Portsmouth and have been employed in this position for the last ten years. Prior to working for the City I worked as a consulting engineer. I am a registered professional engineer and have served on a variety of State water and wastewater commissions and organizations. I have provided a copy of my curriculum vitae with my testimony. I have been extensively involved in the Great Bay nutrient issues since 2002 representing the City's interests.

The City of Portsmouth is a small city with a population of 21,000. Despite its small size, Portsmouth has "big city" infrastructure challenges. The City owns and operates two wastewater treatment facilities, has over 120 miles of sewer pipe and manages twenty pumping stations.

Communities such as Portsmouth want predictable, scientifically-supported, environmental regulations that deliver demonstrable environmental benefits. Within such a regulatory framework, limited municipal resources can be secured, budgeted and invested wisely to deliver necessary services with the maximum environmental benefit.

The City of Portsmouth has a proven track record of good environmental stewardship. In 2007 the City Council voted to adopt an "Eco-Municipality" designation which committed the City to sustainable development practices. To that end the City has updated its land use ordinances to reflect low impact design requirements, has incorporated Leadership in Energy and Environmental Design (LEED) principals into its municipal buildings and incorporated green infrastructure into its municipal projects. These efforts have been recognized through a number of awards including Gulf of Maine Council on the Marine Environment – Visionary Award 2010; New England Water Works Association Water System of the Year 2011; and an American Society of Civil Engineers (ASCE) Outstanding Civil Engineering Achievement Award in 2010.

In 2002, I assumed my predecessor's position on the State Water Quality Standards Advisory Committee. As the NH Municipal Association's representative on this Committee I became involved in the Nutrient Technical Advisory Committee (TAC) for the New Hampshire Estuary Project which is currently the Piscataqua Regional Estuary Partnership (PREP). The purpose of

the TAC was to provide technical peer review on the science used to develop water quality standards for the estuaries of New Hampshire. .A specific focus of this Committee was whether and how nitrogen could be affecting Bay ecology, in particular eelgrass populations that have varied widely over time.

In 2005, EPA directed the State to develop nutrient standards for the Estuary – this was part of a national effort on EPA's part. Up until late 2008 nitrogen, although a concern, was not identified as the source of impacts on the Great Bay. In particular, it was concluded, based on federally funded studies, that increased nitrogen levels had not caused increased algal growth and had not adversely impacted transparency in the Bay. I have attached with my comments presentations given by DES staff relative to these conclusions. Then in 2008 there was an abrupt turn around. At a Water Quality Standards Advisory Committee meeting a simplified data analysis was presented, ignoring the previous detailed studies and reaching an opposite conclusion. This incorrect analysis was supported by EPA and subsequently became the basis for setting standards and declaring virtually all waters in the estuary nutrient impaired. All of this occurred without any formal adoption in accordance with law or formal approval of the criteria by EPA as new water quality standards. Thus, the impacted communities had no opportunity to challenge these changes.

This about face caused Portsmouth to reach out to other communities with wastewater treatment facilities to discuss the State's water quality criteria. The change in the State's conclusion with regard to role of nutrients spelled trouble for municipalities discharging into the Great Bay Estuary. The proposed criteria for nitrogen is not achievable and has be used by EPA to claim

that nitrogen must be treated to the "limit of technology" at wastewater treatment facilities and that stringent stormwater treatment must also be implemented to improve water transparency.

On March 15, 2010, I attended a Water Environment Federation EPA Staff briefing in Washington DC. Mike Hanlon, the Director of Wastewater Management, advised attendees that EPA didn't have the time or the money for science; and that EPA was going to apply the Chesapeake nutrient criteria program nationally. The following day at the Congressional Briefing breakfast I was told by Regional Administrator Spalding that until Portsmouth and the other communities developed their own science, EPA would not consider communities concerns that millions of dollars would be misspent, delivering little to no environmental benefit.

Complicating EPA's apparent limited "time and money," are the interests of Non-Governmental Organizations (NGOs) which appear to be having a disproportionate impact in the water quality process and the setting of permit limits. I was told that the regulators were worried about the possible lawsuits by NGOs and they were not afraid of the municipalities. This deference to the NGOs is an indication that EPA is more concerned about the policy issues than getting the science right and implementing cost effective solutions to protect and improve the environment.

This involvement by NGOs may explain why the repeated requests for involvement of the Coalition Communities' technical experts were rejected or trivialized.

For example, Portsmouth was given assurances by representatives of NHDES that it would be allowed to participate in a formal peer review of the NHDES draft nutrient criteria to be

organized by EPA. Instead, Portsmouth and the other communities were excluded from the draft criteria peer review process at the EPA level in 2010. This EPA peer review was a carefully orchestrated exercise designed to provide an appearance of scientific credibility to a fundamentally flawed nutrient criteria that met EPA's policy objectives. I have attached for the record correspondence relative to that process.

By rejecting the public's request for an inclusive, objective and open process, the regulators have delayed action which may have yielded environmental benefits in the near term. By ignoring good science, the EPA's regulatory process has set unachievable goals which will misapply scarce public funds while not achieving the intended goal. Communities are forced to spend money on lawyers instead of science and solutions.

These regulatory mandates will have a major impact on the local economy for decades to come. The City's sewer users have seen their sewer rates double in the last ten years. If limits of technology are mandated for Portsmouth permits, the sewer rate could be as high as $22 per 100 cubic feet. That means that for the average home owner their annual sewer bill would be $2,640. To put this in perspective, my sewer bill will be about 40% of my annual property tax bill. These high rates will have the unintended consequence of driving businesses to non-sewered communities. The magnitude of these costs demand that the standards must be based on a proper scientific foundation and not policy directives. Given the 180 degree reversal on the science we need an objective and fair peer review. We cannot afford to have local resources mis-allocated on ineffective and unnecessary measures that will have little beneficial impact on the Estuary.

In summary, the Great Bay Municipal Coalition is committed to protecting and restoring the Great Bay but we believe the existing science does not support the regulatory decisions being made and should not be the basis for NPDES permits.

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Chairman ISSA. Thank you.

I will recognize myself for the first round of questions.

As you may have seen on C–Span from time to time, our questions are not designed to be softballs, and they won't be here today.

Mayor, you spent a lot of time telling us about the money cost and the problems in the community, the unemployment, and the like.

Do any of those provide any legitimate reason to not go forward with whatever is the requirement under the Clean Water Act and whatever would provide a return of health to the estuary?

Mr. JEAN. Well, I can only speak to the point that, right now, if we were to encumber that amount of debt service to meet the nutrient limits, the ratepayers of Rochester would have their sewer bills double, and that would remove basically all disposable income that they might have to help in the business sector.

Chairman ISSA. No, I appreciate that. The question was one that I think in Washington we have to be sensitive to, but hopefully here in New Hampshire, you are sensitive to it, too.

Ultimately, if it is necessary to double the rates in order to clean up the estuary to an acceptable level—in other words, to mitigate the damage being done by human activity—isn't the requirement absolute if it's necessary?

Mr. JEAN. If it's necessary, absolutely, yes.

Chairman ISSA. Okay. And I just want to make that clear, because often we sort of talk about what we can't afford. And in this case, we are the polluters: every home, every runoff and stormwater and so on. And I did not think you were saying that one offset the other, other than we need to be very careful to make sure that in fact it is necessary.

Mr. Peschel, you went a lot into procedure as did Mr. Hall, but particularly, you mentioned the State—I'm sorry, Mr. Hall mentioned that.

Let me ask you a question. You feel that the science of essentially half as expensive a solution is the appropriate science, don't you?

Mr. PESCHEL. I do. And I think, you know, based on the information that our consultants, the technical consultants provided, there is great doubt that what is being proposed by the EPA is necessary.

Chairman ISSA. Well, now, I am a businessman, and for the 20-plus years I was in business, I know that you generally get from your consultants what you seek to get. In other words, they work hard to reach a goal that you ask them to get.

I am presuming that you asked them to get the least expensive way to reach a goal that you thought was reasonable. Is that correct?

Mr. PESCHEL. No, it wasn't correct.

Chairman ISSA. You just gave them a blank slate of what would it take?

Mr. PESCHEL. What we told them when we hired our consultants was that we wanted an honest review of the information that was being presented as being justified by the state nutrient criteria.

Chairman ISSA. What if they are wrong? What if they are wrong? What if the EPA allows you to go forward with your level, the 8 milligrams rather than the 3? What if, in fact, three years, four

years, five years—roughly 2020 you would be at that point—you'd see that it's not working?

Mr. PESCHEL. Then we would have the information that we need to make the additional improvements. That has always been our understanding and our plan.

Chairman ISSA. So you're——

Mr. PESCHEL. What we don't want to do is spend money that is not necessary.

Chairman ISSA. Is that true of—I mean, each of you represents, I guess four of the five cities involved, or at least is affiliated.

If in fact your plan were to be adopted with a measure and renewal period, is it your understanding that, you know, you don't get to do this for 20 years for the life of those bonds; that you might, in fact, by choosing a less expensive solution, if you don't achieve the goals that in fact—in other words, the return of health of the estuary—that in fact you could find yourself back again with a new financial impact? Is that an understanding that you have here today?

Mr. PESCHEL. Absolutely. And any design that we would undertake to meet, you know, say, the 8 milligrams per liter, if we were to be found that it's not sufficient, we haven't lost anything. The actions are supplemental. We would just add on to what we've already done. So——

Chairman ISSA. Sort of when you cut curtains, you want to make sure you cut them but not too short, because you can take more away; you can't add on?

Mr. PESCHEL. Right. That's not the case in this particular situation. We can add on, and it won't have been money lost on the initial.

Chairman ISSA. Mr. Hall, you went into great detail on the violations of procedure. Ultimately, you also, I gather, believe that they reached the wrong conclusion. But even if they reached the right conclusion, do you feel that, in fact, the lack of due process on both sides is part of the fatal flaw of EPA reaching this conclusion?

Mr. HALL. Well, there is a serious error and lack of due process in the manner in which the procedure went forward, and that does need to be corrected. Quite frankly, we wouldn't be sitting here raising just a due-process issue if any of us thought that——

Chairman ISSA. But I'm asking for a reason. We have before us a document that indicates EPA is scared stiff of the sue-and-settle crowd, the NGOs that will sue if they fail to abide by every nuance of the rule.

Ultimately, if they had erred on the side of you, with the same, in other words, if they picked you arbitrarily and quickly, wouldn't they have been in the same boat, except in this case it would have been NGOs suing them?

Mr. HALL. Well, actually, it was the NGOs that originally sued EPA to establish the Alaska Rule. They said, "You are changing water quality criteria without going through the process. You are cutting off our ability to provide the science, the input, the process. You are cutting off our ability."

So they're the ones that originally sued to make this rule——

Chairman ISSA. So all you're really asking for is what the environmentalists demand and have sued to get: an open and fair process with certain comment requirements that you've been denied?

Mr. HALL. That would be a very fair way of stating the position.

Chairman ISSA. Let me just ask—and if I could ask for a couple more minutes. But—and I said this in my opening statement—isn't the EPA also in a box because of inaction by the state legislature? In other words, at some point we in Washington, if a state simply chose not to act, and so far the state legislature has not acted—isn't there a time limit at which at some point we have to allow the EPA to take some action? Regardless of their violating procedure, ultimately they did have a need to act if in fact a state legislature never acted?

Mr. HALL. Oh, most certainly. There is a provision under the procedures of 303(c)(3). If a state refuses to take action or delays in taking action on updating the water quality criteria, the EPA sends them—it's basically a 60-day notice letter.

Chairman ISSA. Has the EPA sent that?

Mr. HALL. No, that letter has not gone out. That was the letter that they sent to the state of Florida that triggered the Florida water quality standards adoption.

Chairman ISSA. So, essentially, they haven't given the state legislature notice to sort of pay rent or quit, to in fact do its job or be bypassed?

Mr. HALL. Correct. That has not happened.

Chairman ISSA. Lastly, Mr. Rice—and I'll be brief—but it sounds like you're describing in this process, and from the conference you attended, a ready-shoot-aim procedure going on by EPA. They tell you they have no time, they tell you they have no money, but they're saying, "Do it anyway."

Is that pretty fair?

Mr. RICE. That is a pretty accurate approach, or statement, yes.

Chairman ISSA. And where is, in any of your understanding, where is in fact the assumption that the science has to be disproved—or has to be established as disproving from the EPA, rather than EPA coming down with science that supports their assertions on water or air? Because it sounds like they're asking you to prove by your science what you want to do, while in fact they say there's no time and no money for them to establish scientific standards in this case.

Mr. RICE. We asked to participate in the scientific process four or five years ago. We said that we would participate financially, contributing to the sampling process as well as with our technical experts. We were told at that time that they had their science and, you know, "You don't need to participate." We felt that our participation would have benefited the process and would have gotten us farther along.

In order to know if a decision—a solution works, you need to have a foundation that's solid, so that a financial decision that's made, you can build and measure if that decision was good. If you don't have a ability to measure if something is good or not, or that does what you think it's going to do, you'll continue to spend money on a solution that may not be a solution.

So what we argued was that we needed to be able to really build and measure, and that's part of this adaptive management approach was that we would be able to say, "We're not going to preclude better decisions in the future by jumping all the way to some foregone conclusion." We would be able to build, see the improvements. If their science is correct, we should see a 40 percent reduction on our incremental step in terms of the nutrients going into the bay. That change should have a marked improvement if their theories are correct.

We do not believe they're correct. We do not believe the science supports the conclusions that they have made.

Chairman ISSA. Let me just close with, in all of your statements, you talked in terms of eelgrass not being affected by this. So your theory is, you will do the reduction for other reasons and that ultimately eelgrass will continue to have a problem that you don't know the source of. Is that roughly correct?

Mr. HALL. Mr. Chairman——

Chairman ISSA. Yes. There's water clarity you mentioned.

Mr. HALL. Actually, more importantly, they actually do know the source of the problem. The research was completed. It concluded—which was kind of obvious when you looked at the data—that nitrogen had not caused the effect that they thought it did.

There's an interesting thing that happens in the watersheds in this area. There's a lot of swamps. When it rains a lot, colored water comes out of the swamps. When colored water comes out of the swamps, it goes into all the tributaries and turns them dim. The light can't penetrate. The federal studies found, yes, in fact, that's the primary cause with why there's poor transparency in various areas. Having found that conclusion, it was then tossed out, because there was this drive for nutrient criteria. I mean, it was as if it was a solution in search of a problem.

So that's the unfortunate part, and that's what Mr. Rice is talking about, about having a——

Chairman ISSA. That you reduce the nutrient, and water clarity will not change therefor?

Mr. HALL. Yeah. It doesn't change it. Yeah. It has no effect on it.

Chairman ISSA. I've exceeded my time.

Mr. Guinta.

Mr. GUINTA. Thank you very much, Mr. Chairman. I want to start with Mayor Jean.

I just want to ask you a simple question. Do you support ensuring that Great Bay remains clean?

Mr. JEAN. Absolutely.

Mr. GUINTA. Okay. During the course of your testimony, you commented that protecting the natural environment for the benefit of its citizens and all the citizens of the New Hampshire is important, but that you were also concerned that the nitrogen and phosphorus discharge limits proposed by the EPA were unnecessarily strict.

As an alternative, in other testimony, the AMP, or the Adaptive Management Plan, has been proposed. Rochester has joined in supporting the Adaptive Management Plan. Can you talk to me a little

bit about why that Adaptive Management Plan is more reasonable from a financial perspective for the City of Rochester?

Mr. JEAN. Certainly.

Right now the City of Rochester is at approximately 30 milligrams per liter of nitrogen, and the Adaptive Management Plan brings us closer to 8. The most important part of the plan is, it will give us some time to collect some hard data that would show whether or not what we're doing for total nitrogen will actually improve the status of Great Bay or not, and we felt that that was probably the most cost-effective and reasonable number to achieve, and that's why the city supports that, from a financial standpoint.

Mr. GUINTA. Now, you talked a lot about the potential cost to taxpayers. Taxpayers in the City of Rochester have a tax bill, but they also have a sewer bill?

Mr. JEAN. Correct. Correct.

Mr. GUINTA. You mentioned a $2 million annual increase in the bond for, I would assume the wastewater treatment?

Mr. JEAN. Correct.

Mr. GUINTA. You said that would double the rate, and you testified to the rates.

Can you give me an idea what the average amount that a family or household is paying currently for——

Mr. JEAN. Sure.

Mr. GUINTA. Is it billed quarterly?

Mr. JEAN. It's billed quarterly, and right now, at the current rates, you're looking at a sewer bill that's probably about, I'd say close to $600 annually.

So if you were to impose the debt service that a wastewater treatment plant upgrade would entail, you're looking at about $1,200. And that's just the sewer side. That doesn't count water. Of course, there's both sides to the water and sewer bill.

Mr. GUINTA. Right.

And that would be just if this mandate——

Mr. JEAN. Correct.

Mr. GUINTA.—was implemented?

Mr. JEAN. That's correct.

And what's important to note is, of course, if this were an upgrade that would be spread between the entire commercial and residential tax base, that would be one thing. But this is focused directly to the ratepayers who subscribe to the wastewater treatment service that we provide. So it's a smaller number, as opposed to the broad width of a residential tax base.

Mr. GUINTA. And you mentioned that the valuation of the city since, I think you said '09, has been declining?

Mr. JEAN. Correct. Has diminished from $2.6 billion to approximately $2 billion.

Mr. GUINTA. Which is not uncommon for economic conditions that the entire country is in.

Mr. JEAN. That's correct.

Mr. GUINTA. There are many other communities that are also—their value is declining.

Mr. JEAN. That's correct.

Mr. GUINTA. Which means that either, just from a mathematical perspective, either you have less tax base to tax. So if you're going

to have the same amount of money, the same amount of services, you've got to increase taxes or you've got to somehow cut back on the expenses of the city to equalize that reduction in value.

Mr. JEAN. That's correct. But there was a reduction in revenue.

Mr. GUINTA. Now, has the tax rate increased over the last several years in the City of Rochester?

Mr. JEAN. It has.

Mr. GUINTA. What's the rough average increase?

Mr. JEAN. You're looking at approximately 3 percent, 2.5 to 3 percent over the last three years.

Mr. GUINTA. Okay. And this issue, this mandate would be in addition to 2.5 to 3 percent annual increase?

Mr. JEAN. Yes.

Mr. GUINTA. So this issue, this mandate would be in addition to the 2.5 to 3 percent annual increase?

Mr. JEAN. That's correct.

Mr. GUINTA. The second point I wanted to make with the mayor is that the Great Bay Municipal Coalition, which includes Rochester, has initiated litigation against the State and the State DES, alleging that it violated the state rule-making process by neglecting to conduct a formal rule-making process.

I don't know if I should ask you this or maybe Mr. Hall or Mr. Rice.

My particular question is, if the State of New Hampshire or the EPA were to follow the procedures that the EPA put in place, and ensured that the state legislature had a proper review, that obviously would take some time. It would happen over either one cycle or maybe two bienniums. That would provide at least some additional time to create different or better science, or maybe more agreed-upon science. But, secondly, it would put you in a position as a city, one of the contiguous communities, to try to identify a means in which you could pay for this, long-term.

Is that a fair statement?

Mr. JEAN. That would be fair, and I could defer to Mr. Hall if there's any—anything that he would like to add about the DES process. But I think that's an accurate assessment.

Mr. GUINTA. Well, in the next round of questioning, maybe I'll get into the specifics on procedure, because I think that is extremely important.

Mr. HALL. The only point being, the chairman raised whether EPA had taken the step of sending the letter to the State, saying, "Why have you not adopted the standard?" Because the regulatory agencies did not do what they were supposed to do, we're now going to court to make them do precisely that.

So, you know, we're the ones that are moving the regulatory process along its proper path. We wish we didn't have to do that, but that's the situation we're stuck in right now.

Mr. GUINTA. And the final question, I guess I want to ask Mayor Jean.

I know that your method of governance is one of inclusion, and I know that one of your focuses has been trying to improve the economic condition of Rochester as an extremely important city to the county and to this region.

If you were to have five businesses that you were courting, and you were to include, as a matter of proper disclosure, that there's a potential that there would be significant increases on this side of the ledger, how would that affect your ability to attract new, smaller businesses, job creators, and how would that put you in a competitive disadvantage—advantage or disadvantage to other communities?

Mr. JEAN. From an economic development standpoint, the increased rates would certainly put us at a disadvantage, not only to the surrounding communities within Strafford County, but really would put the entire Strafford County at a disadvantage and encourage business to settle maybe in Hillsborough County or Merrimack County where there are less stringent regulations that would cause a wastewater——

Mr. GUINTA. Because this is not just affecting Rochester? It's affecting——

Mr. JEAN. No. This is a regional impact. And that's why we're here today.

Mr. GUINTA. Okay. Thank you very much.

I yield back the balance.

Chairman ISSA. Thank you.

We'll do one quick second round, because we do have another panel to get to. And I had a couple questions.

Mr. Rice, you testified that for your first years, 2002 to 2008, essentially the State Water Quality Standards Advisory Committee took one approach as to nutrient from a technical advisory standpoint, and then in 2008 there was an abrupt change.

Can you account for what caused, if you will, what science supports an abrupt change in how nitrogen is looked at?

Mr. RICE. I can't justify the abrupt turnaround based on science.

Chairman ISSA. But you saw——

Mr. RICE. Based on policy, I was told by DES personnel that they were being directed to come up with a strict nutrient limit and that they had to make the numbers work.

Chairman ISSA. So what you saw was a policy change without science that led to essentially science being found to support a policy decision already made?

Mr. RICE. Correct.

Chairman ISSA. That's not uncommon. We see that in Washington.

I guess, Mr. Hall, that sort of brings us to that question of, these procedures that you're alleging, and I think are pretty well documented, these shortcuts that are being taken, aren't they in fact the exact fatal flaws that both sides need to guard against? In other words, even though it's a long and laborious process of comment and inclusion, that, ultimately, that's a requirement—whether it's objections from the left or objections from the right on any particular issue, in order to get to a decision that we all have to live with—if you will, that's the due-process guarantee, even if the outcome is not always what we wanted?

Mr. HALL. Well, that's certainly correct, Mr. Chairman. I mean, we're not trying to dictate an outcome, but we should have our process which then allows us to put in the requisite scientific infor-

mation to show what should or shouldn't be occurring, and that—again, it applies to both sides.

So I agree.

Chairman ISSA. And I guess one follow-up question that I'm particularly interested in.

Isn't it possible that with all the due process, with the legislature acting, with science being re-looked at in an open and transparent way, isn't it possible you'd lose; that in fact we'd end up with less than 8, perhaps as little as 3; that the ultimate standard may not be where your particular experts found it?

Mr. HALL. Well, I would offer the following observation.

Chairman ISSA. I was hoping for a yes or no.

[Laughter.]

Mr. HALL. Actually, the answer is no. The scientific information is so perfectly clear.

Chairman ISSA. In other words, you're comfortable with your science. But let me ask it another way.

The process would at least create the possibility that people of good faith would look at the science and reach a different decision that might not be exactly the same as yours?

Mr. HALL. Yes, Mr. Chairman. And, in fact, when we asked for the independent peer review, our statement going in—and I mean, the coalition's statement—was, "Get three truly independent experts"—and there are top experts in the country that know these issues back and forth—"Get three experts. If they say we're wrong and we need to do it, we will go figure out a way to find the money and get it all done."

But if they say it's, like they did the last time, "It's not correct," we don't expect another policy decision to foist a billion-dollar nutrient-reduction program.

Chairman ISSA. Mr. Rice, you seem to be eager to give an answer.

Mr. RICE. Yeah. Well, it's just for perspective.

Chairman ISSA. And we do this in Washington. We give answers where there are no questions.

[Laughter.]

Mr. RICE. Well, there's points to be made, right?

Chairman ISSA. Yes.

Mr. RICE. As the city engineer, I'm responsible to look at the data that's available and to make recommendations to the decision-makers, our city council, our city manager, based on that information. That information needs to be able to support the decisions and the investments that the city makes. Reviewing this information does not support these significant capital outlays.

Chairman ISSA. I guess as the city engineer, if you needed to build a one-mile-long road that would accommodate a certain amount of traffic per day, and you calculated two lanes, and somebody else said, "But I want four lanes because it looks prettier," that, ultimately, you'd be looking at, "Yes, but why should we pay twice as much for twice as many lanes unless we need them?"

Mr. RICE. Correct.

Chairman ISSA. And so, in a sense, this is what this really is: a decision about what it takes in the way of capacity and mitigation

in order to achieve a goal that is already specified and agreed to by all of you?

Mr. RICE. Absolutely.

Chairman ISSA. Do all—I know there's four—I keep saying four, but I know there's one city that we were not able to get a witness on either side available for.

Would you all agree here—and particularly, Mayor, since you bind the city to a great extent—that if the process is adhered to, that if EPA does what it's supposed to do, if your legislature, if appropriate, does what they are supposed to do with the 60-day notice, if that comes through, that, ultimately, you would recognize and abide by whatever the decision is and whatever the cost is, if the due process is properly run through?

Mr. JEAN. That's correct. We'd have no choice.

Chairman ISSA. You'd have no choice, but——

Mr. JEAN. Yes. Yes. Yes, we would, Mr. Chairman.

Chairman ISSA. I guess I'm asking only—you know, for us, we'd like—we'd all like to have the best outcome. I would like healthcare to cost as much as it does, because I've got to tell you, the healthcare debate in Washington would be a lot easier if it was half the cost. Ultimately, we wouldn't have a crisis in Medicare. If I can't make it half the cost, I at least have to arrive at the least waste and fraud that I can, and then pay the bill.

Mr. JEAN. Yeah.

Chairman ISSA. That's sort of the situation you're in, is that you'd like to protect the citizens of your city by getting them the most accurate and least expensive but effective decision with a legitimate due process?

Mr. JEAN. That's correct.

Chairman ISSA. Well, that's, to a great extent, what Congress has an obligation to do with all the federal agencies. And I will tell you that's my goal when I leave here today is to ensure not that your particular solution win, but that the process be adhered to so that ultimately the best solution, at the lowest cost possible, be achieved.

Thank you.

Mr. Guinta.

Mr. GUINTA. Thank you, Mr. Chairman.

Mr. Rice, you're here on behalf of the City of Portsmouth. Can you tell me what if any votes the City of Portsmouth took relative to this particular issue or the Adaptive Management Plan?

Mr. RICE. I will, and I can. But if I misspeak, my assistant city attorney is here to let me know I'm——

Mr. GUINTA. Sure. To set you straight.

Mr. RICE. Yeah, to set me straight.

Chairman ISSA. So we've got an engineer and an attorney. What a combination.

[Laughter.]

Mr. RICE. Yeah. It's a bad combo.

It's my belief that the city council did vote for the adaptive management approach, and we did budget monies that were passed to move forward with that approach in this year's budget.

Mr. GUINTA. Can you——

Mr. RICE. And then the other question you had was—for the—well, the other votes that they've been taking is, the city is voting and committed to moving forward to build a treatment plant we're upgrading a treatment plant, to build that treatment plant to 8 milligrams per liter, with the ability to treat to 8. So that's another vote that was taken.

Mr. GUINTA. So, just to sort of put this in perspective, right now we're talking about anywhere—of a discharge from 20 to 30 milliliters; correct? I mean, currently, the current discharge?

Mr. RICE. Right. Currently we're around 20.

Mr. GUINTA. And different communities are at different levels, but it's roughly 20 to 30 based on the communities.

So you're at 20; Rochester could go as high as 30 in certain years. But that's where we are today?

Mr. RICE. Yeah.

Mr. GUINTA. The EPA requirement is to get to 3, and the coalition communities would like to get—the goal is to get to 8?

Mr. RICE. As the first step, correct. And, obviously, what we would do is, we would build and measure. You know, the idea is, if it didn't have the results we were hoping for, you know, is it the right step and do we need to do anything beyond that?

Mr. GUINTA. So you don't object to having a plan; you don't object to ensuring that Great Bay is clean; you don't object to reducing nitrogen. What you're objecting to, it sounds like, is the mandate to immediately get to 3?

Mr. RICE. We don't feel the science supports going to 3.

Mr. GUINTA. Okay. And you have offered to the EPA—have you offered to the EPA——

Mr. RICE. Yes.

Mr. GUINTA.—your alternative?

Mr. RICE. Yes.

Mr. GUINTA. And what response have you gotten from the EPA?

Mr. RICE. The request, I think, went through the DES originally, in a letter to the EPA; and the EPA responded that it was not adequate, that you had to go to limits of technology.

Mr. GUINTA. Okay. Can you talk to me a little bit about what you identified in your testimony in regards to your attendance to a Washington event, a Water Environment Federation EPA staff briefing on March 15, 2010? You talked about it a little bit. Can you talk a little more in depth about what you were told?

Mr. RICE. Yeah. I mean, there was a briefing through our New Hampshire Water Pollution Control Association, the New England water environment group. We went down—we go down annually to get updates and have a chance to chat with our representation down there, to bring up concerns and get information.

At a staff EPA briefing to our organization, they were talking about the Chesapeake Bay, and they talked about other estuaries and that they were taking this approach and expanding it nationally. And I pointed out that there were site-specific differences with each estuary and it appears to be a one-size-fits-all, and, you know, why would you do that? You know, our Bay is different than elsewhere.

And they said—and the response was, "You know, we don't have the time or money. We're moving forward. And, you know, that's just the way it is, and you just have to accept it."

Mr. GUINTA. So they don't have the time or money to do the proper——

Mr. RICE. But we do.

Mr. GUINTA. Exactly.

And, Mr. Hall, you did actually mention in some of your comments that there are geographic differences nationally on what would produce the transparency issues or the discoloration of different water bodies?

Mr. HALL. That's correct. Actually, if Chesapeake Bay had the algal level that you have in Great Bay, they would be doing handstands. It is that low. The nutrients——

Mr. GUINTA. Compared to Chesapeake?

Mr. HALL. Compared to the Chesapeake. And it's because——

Chairman ISSA. It's nice to be colder.

Mr. HALL. Colder, and more importantly, I don't know—if you get a chance to go eat some seafood down at Portsmouth Harbor——

Chairman ISSA. My staff has contributed considerably to the economy in the last two days.

[Laughter.]

Mr. RICE. We appreciate that.

Mr. HALL. Ask them to watch the tidal exchange. It is impressive, the amount of water that comes rushing through every day. The detention time, which is a critical controlling factor in any nutrient growth in a bay, is, I think about 13 to 18 days in Great Bay. In Chesapeake Bay it's like nine, ten, twelve months.

So the amount of difference that you can have in algal growth is huge in Chesapeake. In Great Bay, you can put nitrogen in and it actually doesn't affect the algal growth, which is exactly what the data showed.

What we were astounded with—about—was, after the EPA looked at the data, EPA looked at the data and they were shown that the nitrogen went up—the algae did not change—they still kept claiming that nitrogen caused more algae and caused worse transparency. The data confirmed it never happened.

So, yes, there are major differences in this system compared to others. And I might note that your Technical Advisory Committee from 2007 concluded you shouldn't use the data from other estuaries, because this one is so different. And I don't know where that recommendation went, but it certainly got ignored in the end process.

Mr. GUINTA. Mr. Chairman, may I have one additional minute?

Chairman ISSA. Of course.

Mr. GUINTA. Okay. Thank you.

Mr. Hall, we are going to hear in the second panel from the EPA, specifically Mr. Spalding, and I suspect what he, to make the points for the EPA, will talk a little bit about the PREP, the Piscataqua Region Estuaries Partnership, and that report from 2009 and how it justifies the proposed standards by EPA.

Can you talk a little bit about, from your perspective, what PREP states, what that document states?

Mr. HALL. Sure.

Mr. GUINTA. And maybe if you have any concerns or if there are also any legitimate points you want to make about that document.

Mr. HALL. I think the simplest analogy would be the following.

Suppose you went into a doctor and said, "I'm having shortness of breath." And the doctor said, "Well, you know, this could be anything from indigestion to you may need bypass surgery. You know what we need to do? We need to run some very specific tests to figure out what the right diagnosis should be."

The doctor runs those tests; concludes, in fact, it was indigestion.

You go back to meet the doctor again, and then the doctor tells you——

Chairman ISSA. "Time for a heart transplant."

Mr. HALL. "It's time for a heart transplant, because I have an opening on my schedule next week, and I needed to fit somebody in."

That is what happened with the 2009 criteria document. They did the specific studies. When it confirmed that the specific results or conclusions were, transparency was not affected in the way they thought, they then switched to a simplified diagnosis, plotted data in a way—and, by the way, my background is in mathematics and I also have degrees of environmental engineering. If I had handed this assessment in a master's program as a basis for calculating a nutrient limit, I would have gotten an F. The EPA Science Advisory Board specifically said you can't use these kind of simplified methods to predict complex nutrient criteria.

Okay. We brought that to EPA's attention. Now, that SAB report happened, oh, about six months after the State finished their report. So we thought, well, we'll bring this forward. Obviously, they've make a mistake and they'll just fix it.

But, no. Since that date, the Science Advisory Board position that you can't do these kind of analyses was ignored, as was the specific diagnosis that this wasn't a transparency issue.

So, yeah, we've got a few problems with the 2009 documents, and that's why we've been asking for an independent scientific review from day one, because I cannot imagine any credible set of knowledgeable scientists looking at the evaluation and saying anything else other than "You need to change that."

Mr. GUINTA. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

I'm going to just follow up, because there was one thing that I didn't get in the last round.

One of you talked about the 1997 water treatment plant, which gets you only to 30 milligrams per liter; right? Currently.

Mr. JEAN. Yes. Yes.

Chairman ISSA. So in 1997, in the Year of Our Lord 1997, way back then, 30 was good enough.

As an engineer, how long has 3 been technically possible? How long has 8 milligrams per liter cost what it costs now in your study? Is this a science where every year, if you—you know, a little bit like trying to have the greatest computer. The greatest computer 25 years ago, for millions of dollars, I have in my pocket behind me—it's an iPad—you know, in my briefcase. But a $20 mil-

lion computer in the '70s was not as powerful as an iPad, nor did it have as much memory.

How is the science going relative to being able to make those kinds of removals, if 3 is technically possible but expensive today, 8 is cheaper, and in 1997 you were at 30? Has it progressed that quickly?

Mr. RICE. There have been improvements in the science and the understanding of these systems. The big difference between a computer and a biological system—a wastewater system is a natural biological system. We take what naturally occurs in the river and we condense it down into a treatment plant, so we get more bang for the space available.

Chairman ISSA. Right. But, for example, reverse osmosis is in the order of 10 times less costly to do water purification in that system than it was a few decades ago.

Mr. RICE. Sure.

Chairman ISSA. My reason for asking is, if in fact the EPA were to arrive at a decision that 8 looked good enough today, 10 years from now, 15 years from now, just as 15 years ago, if they come back and there's a reason to go to 4, is it likely to cost less or more because of technology breakthroughs?

Mr. RICE. It really depends on a number of different things. The operation costs of these technologies are not insignificant. Reverse osmosis is energy-intensive. A lot of these low-limit biological systems require additional chemicals, methanol, which is dependent upon energy prices. So it may be cheaper on a——

Chairman ISSA. The last time I checked, you don't have a lot of natural gas coming into New England yet.

Mr. RICE. No. Right.

But if you look at in a capital cost, it may be cheaper in terms of the capital, but the operation and maintenance costs will offset the cost.

So, you know, it's crystal ball to a certain extent. Our understanding of the biology and how the bacteria work has significantly improved, and we're doing the best—you know, we're really milking a lot out of what they do naturally. But when you start adding chemicals——

Chairman ISSA. I guess let's leave the dollars out for a moment.

Could you have gotten to 3 milligrams per liter with the existing science in 1997?

Mr. HALL. Not easily.

Mr. RICE. Probably not easily. I mean, even today, 3 is a seasonal type thing. During colder temperatures, it's going to challenging to meet the 3, if not—if not——

Chairman ISSA. So it's a developing standard. It's also a developing technology. And finding the right mix today doesn't preclude the fact that you could do potentially better, even for a small difference, and do it a few years from now?

Mr. RICE. Absolutely. And that is really why we say this build-and-measure approach doesn't preclude doing better things in the future. However, going to 3 today does preclude, because it takes away resources.

And you had asked the mayor, you know, what type of impacts this could be having, negative other than just financial. The unin-

tended consequence of raising sewer rates in all the sewered communities will drive development into the non-sewered areas. And as we've seen, non-sewered areas are really the source—the runoff is really the source of the problems. And, granted, some of the cities have runoff problems, but you'd be expanding sprawl and moving more runoff issues out of the sewered areas.

Chairman ISSA. And that is one of the interesting challenges, is that when your project is complete at 3 or 8 or whatever level, I'm sure the vast majority of the State will still be and its residents will be at a level higher; thus, you'll be the good actor, but some of that waste will still be going into the same estuary.

Mr. RICE. Correct.

Chairman ISSA. Okay. Well, I want to thank you all for your multi-panel answers. If you possibly can remain for the next panel, we'd appreciate it. If you have comments or additional items that occur as a result of Mr. Spalding's testimony, please understand we're going to leave the record open for five days for your additional comments, in addition to outside organizations.

So thank you. And if we could reset for the next panel.

[Recess.]

Chairman ISSA. This hearing will come back to order.

We are now joined by Mr. Curtis, or Curt, Spalding. He is the administrator of the Environmental Protection Agency's New York—I'm sorry—New England Region.

And pursuant to the committee rules, if you also would rise to take the oath.

[Witness sworn.]

Chairman ISSA. Let the record indicate the witness answered in the affirmative.

Just as at the last panel, although you do probably have a prepared statement that's been approved, try to limit it as close as you can to five minutes, summarize, or skip over a little bit. Your entire statement is going to be placed as a matter of record.

Mr. SPALDING. I will.

Chairman ISSA. With that, you're recognized.

STATEMENT OF H. CURTIS "CURT" SPALDING

Mr. SPALDING. Thank you.

Well, thank you, Mr. Chairman. My name is Curt Spalding. I'm the administrator of EPA's New England Region. I appreciate the opportunity to describe the agency's approaches to the challenges facing Great Bay.

I think we all start from a common understanding. The Great Bay estuaries are a real treasure. I've been on the water there with scientists and state officials, and it's easy to see what all who live in the Seacoast Region already know: Great Bay is a real jewel. It is one of only 28 estuaries in the nation to be included in the Clean Water Act's National Estuaries Program. And thanks to the Piscataqua Region Estuaries Partnership—or PREP, as was referred to earlier—and many other scientific experts, the estuary has been studied extensively for many years. And also, thanks to the stewardship of Senator Gregg, the Federal Government has made significant investments in research and land conservation in this watershed.

Another point of agreement is that Great Bay is in serious decline. In the 19—in the 2009 PREP study that was referred to, the State of the Estuaries Report showing environmental quality of the estuary was indeed declining. Of the 12 indicators measured, 11 showed negative or cautionary trends. The most pressing problems include discharges from sewage treatment plants, increased stormwater runoff, and non-point source pollution. With mounting evidence of serious decline across the watershed in 2009, the New Hampshire Department of Environmental Services designated Great Bay waters as impaired for failure to meet applicable water quality standards.

The panel before me discussed in detail the scientific uncertainty. What you haven't heard about is the actual weight of evidence. When EPA weighs all the lines of evidence, particularly in the tributary waters where most of the treatment plants discharge, we conclude that there is an abundant evidence of impairment. In New Hampshire, unlike most states, EPA is the Clean Water Act permitting authority. That makes it our responsibility to ensure discharges of pollutants to Great Bay do not cause or contribute to violations of water quality standards. The discharge of nitrogen to Great Bay and its tributaries comes from a variety of sources, including 18 sewage treatment plants in New Hampshire and Maine that discharge close to 20 million gallons a day of wastewater, with little or no removal of nitrogen. Beginning to control this resource of nitrogen represents the single-most cost-effective and predictable step that could be taken towards meeting water quality standards. Sources other than the sewage treatment plants are also important to Great Bay's nutrient problem, and we will continue to take steps to address these sectors, including the development of a general permit to address stormwater discharges.

EPA's initial focus has been on the small number of facilities that discharge the bulk of the nitrogen load coming from sewage treatment plants. The plants in Exeter, Newmarket, Dover, and Rochester account for over 80 percent of the nitrogen released to the Great Bay from treatment plants.

And as true in every permit we issue, EPA has provided an analysis for the public to examine and critique. In Exeter, Newmarket, and Dover, we've have lengthy public comment periods and heard from proponents and opponents of the proposed nutrient limits. We will document our responses to all comments received and provide a detailed record of our decisions. I anticipate we will make decisions on the permits later this summer.

We are very sensitive to the fact that it will take significant public investments to clean up Great Bay. We recognize significant economic impacts facing municipalities for treatment plant upgrades, stormwater requirements, and other municipal needs. We are more than willing to work with communities on implementation schedules designed to minimize the impact to ratepayers. You've heard the coalition propose that EPA take an adaptive management approach to control nitrogen in the estuary that would allow treatment plans to be upgraded on phased schedules. These are the discussions we're having with Newmarket and Exeter now.

For 18 years prior to my current position, I was executive director of Save the Bay in Rhode Island. I witnessed the nearly com-

plete crash of Narragansett Bay to nitrogen pollution problems, and we struggled to find solutions, just as the struggle is starting here.

I know how hard it is to build a consensus to make the investments in public infrastructure necessary to begin the very long path towards restoring Great Bay. There is still time, but probably not much time, to arrest the decline in Great Bay before it bottoms out. The longer we wait, the harder and more expensive the path back. EPA stands willing to work with each community to find an affordable path to restoring the treasure that is Great Bay.

I thank you for the opportunity to testify today. I'm happy to take your questions.

[Prepared statement of Mr. Spalding follows:]

TESTIMONY OF
CURT SPALDING
REGION 1 ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 4, 2012

Thank you Mr. Chairman. My name is Curt Spalding. I am the Administrator of the EPA's New England Region, known also as Region 1. I appreciate the opportunity to describe the agency's approaches to the challenges facing Great Bay.

Efforts to Protect Great Bay

I think we all start from a common understanding – the Great Bay estuaries are a treasure. Congress, as part of the 1987 amendments to the Clean Water Act, established the National Estuary Program to protect and restore estuaries of national significance. In 1995, Great Bay joined the National Estuary Program, one of only 28 estuaries so designated across the country. To all who live in the seacoast region and to others who have spent time exploring these estuaries, Great Bay is a real jewel.

Since the founding in 1995 of the New Hampshire Estuaries Project, the Great Bay estuary has been studied extensively, and estuary partners have written and executed comprehensive management plans for Great Bay. Originally administered through New Hampshire state agencies, the program was renamed as the Piscataqua Region Estuaries Partnership (or PREP as it is often called). The program moved to the University of New Hampshire in 2005 and shortly thereafter expanded its focus area to include the Maine portion of the watershed. The PREP's Environmental Monitoring Program involves a comprehensive data collection, analysis and reporting plan to provide information on over 30

environmental indicators. Through the National Estuary Program, the EPA helps to provide financial and in-kind support to the PREP.

Great Bay's Challenges

In 2009, PREP published its fourth State of the Estuaries Report, showing that the environmental quality of the Piscataqua Region estuaries was declining. Of the twelve primary environmental indicators established by PREP, eleven show negative or cautionary trends. In the previous State of the Estuaries Report released in 2006, only seven of the twelve indicators were classified this way. The most pressing problems for the estuaries relate to an increase in nutrient loads associated with a range of pollution sources. This problem of nutrients in the environment is not unique to Great Bay. Approximately 75 percent of the assessed estuaries in New England are impaired and about 40 percent of these waters are impaired for nutrients. Today, nutrient levels in waters nationwide threaten drinking water supplies, inland waters and estuaries across the country.

With mounting evidence of decline across the Great Bay watershed, in 2009 the New Hampshire Department of Environmental Services designated the Great Bay waters as impaired for failure to meet applicable water quality standards including the aquatic life designated use based on chlorophyll-a, dissolved oxygen, water clarity, eelgrass habitat and total nitrogen.

In addition to the EPA's critical role in supporting the PREP, the EPA has another important role in the watershed – we are the Clean Water Act permitting authority in New Hampshire. New Hampshire is one of only four states (including Massachusetts) in the country that is not authorized to administer the Act's National Pollutant Discharge Elimination System permit program. In such cases, it falls to the EPA to issue permits that, in conjunction with other pollution control actions, ensure compliance with state water quality standards and other requirements of the Clean Water Act.

As part of this responsibility, the EPA must ensure that the permits it writes for discharges to Great Bay do not cause or contribute to violations of water quality standards. Discharges of nutrients to Great Bay come from a variety of sources, but one of the significant sources of nutrients is sewage treatment plants.

In light of its Clean Water Act permitting responsibilities and the State's designation of Great Bay waters as impaired, the EPA began to take a closer look at discharges of nutrients to Great Bay, with the goal of reducing these discharges and improving the health of the Bay. As I will describe further below, the EPA is working with the State of New Hampshire and with local governments to renew permits associated with 14 New Hampshire wastewater treatment facilities that discharge either to the Bay or its tributaries. These sewage treatment plants discharge close to 20 million gallons a day into the Bay or its tributaries. Reducing nutrient levels in these discharges can help restore and protect water quality in Great Bay.

Before discussing our work to reduce nitrogen pollution from these plants, I would like to note that sources other than sewage treatment plans are also major contributors to Great Bay's nutrient pollution problem and the EPA continues to take steps to implement a coordinated approach relying on a range of pollution control actions to address these other sectors as needed to meet water quality standards. For example, the EPA is developing a general permit to address stormwater discharges from the urbanized areas of the larger cities and towns in the watershed, which will help reduce stormwater discharges of nitrogen. We have been working with the state as part of the Great Bay Initiative, the effort facilitated by PREP, focused on a comprehensive approach, including nonpoint source reductions, to address what is a complex problem.

Reducing Nutrients from Sewage Treatment Plants

The EPA's initial focus has been on the small number of facilities that discharge the bulk of the nitrogen load coming from sewage treatment plants. For example, treatment plants in Exeter, Newmarket, Dover and Rochester account for over 80% of the nitrogen released to Great Bay from sewage treatment plants.

Last spring, EPA issued a draft permit for the Exeter wastewater treatment facility and last fall we issued a draft permit for the facility in Newmarket. Even without the new, nitrogen limits proposed for these communities, these treatment plants are long overdue for basic upgrades that will require significant capital investments. The total cost of the upgrade will include much more than nitrogen control, and will avoid more costly retrofits later. The EPA has gone to great lengths to ensure the public has had an opportunity to inform the permitting process. In both Exeter and Newmarket, we had lengthy public comment periods, granted extensions when requested, and held public hearings.

As is true for every permit we issue, the EPA has provided its analysis for the public to examine and critique. We have received a wide range of public comments, both for and against the proposed nutrient limits in the draft permits. The EPA is now reviewing the record and preparing responses to all the comments we received to inform the agency's final decision. We will document our responses to all comments received and provide a detailed record for our ultimate decisions. I anticipate we will make decisions on the Exeter and Newmarket permits sometime this summer. A third permit for Dover, proposed in February of this year, will likely be issued in final form shortly after Exeter and Newmarket.

We are fully aware that it will take public investment to clean up Great Bay. We have indicated from the outset that we will be responsive to communities' concerns about cost. My colleagues and I in Region 1 have issued many permits over the last decade that required municipal investments without imposing an undue burden upon any community. We are equally committed to doing so here. Although the Clean

Water Act prevents us from authorizing discharges that would violate water quality standards, we have consistently recognized issues related to technical feasibility and the economic impacts facing municipalities for treatment plant upgrades, stormwater requirements, and other municipal needs. We are willing to work with communities to minimize the impact to rate payers.

Many estuary stakeholders, such as the Great Bay Municipal Coalition, have proposed that the EPA and others take an adaptive management approach to control nitrogen in the estuary. They have asked the EPA to allow treatment plants to be upgraded under phased schedules, giving municipalities the opportunity to assess and address other sources of pollution contributing to the problem, and monitor the response of the system before going to more expensive controls. We are interested to work with affected communities on an approach to reducing their nutrient pollution in a way that helps restore Great Bay and minimize impact on ratepayers.

Conclusion

For 18 years prior to my current position, I was the Executive Director of Save the Bay in Rhode Island. In that position, I witnessed the struggle to find solutions that would address Narragansett Bay's challenges in an environmentally protective and cost-effective way. I know how hard it was to build a consensus to make the investments in public infrastructure necessary to begin the long path toward restoring Narragansett Bay. There is still time, though probably not much time, to arrest the decline in Great Bay. The longer we wait, the harder and more expensive the path back. I and my colleagues at the EPA stand willing to work with the State of New Hampshire, each community, and stakeholders to find an affordable path to restoring the treasure that is Great Bay.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.

Chairman ISSA. Thank you.

Mr. Spalding, from your CV, your previous employment, what was the discharge typical in Rhode Island in parts per mililiter, or million?

Mr. SPALDING. Million?

Chairman ISSA. Million, yes.

Mr. SPALDING. Well, the discharges are essentially uncontrolled.

Chairman ISSA. So they were hundreds or thousands per?

Mr. SPALDING. The total——

Chairman ISSA. In other words, where we're trying to achieve 3 or 8——

Mr. SPALDING. Right.

Chairman ISSA.—and we're presently at 20 or 30——

Mr. SPALDING. Yes.

Chairman ISSA. A decade or two ago, uncontrolled could be 10 or 20 times that?

Mr. SPALDING. Well, 40, 50 is not uncommon. I mean, that's basically a fully functional secondary wastewater plant.

Chairman ISSA. Plus whatever is running off people's lawns?

Mr. SPALDING. Plus what's running off people's lawns, the nonpoint runoff.

The Bay I was charged with trying to restore was——

Chairman ISSA. And what did you achieve—what did the water discharge turn into, at least from the sewage plants? What was it when you left?

Mr. SPALDING. Well, there's a set of controls now being implemented on nitrogen.

Chairman ISSA. No. What was it when you left? 18 years ago, what had they, quote, gotten it to?

Mr. SPALDING. On nitrogen?

Chairman ISSA. Yes, sir.

Mr. SPALDING. On nitrogen. They're still not controlled. So at this point, the bay still deals with——

Chairman ISSA. So in Rhode Island, they just put as much crap down as they want?

Mr. SPALDING. No, they do not. They now have controls coming online in their wastewater plants——

Chairman ISSA. Okay. But I asked you specifically, because——

Mr. SPALDING.—and permits in place.

Chairman ISSA. I want to try to understand, because the people who are here want to be as clean as necessary.

Mr. SPALDING. Right.

Chairman ISSA. And they also want to be comparatively taxed, so to speak, along with the rest of the country.

Mr. SPALDING. Right.

Chairman ISSA. So, using Rhode Island, you're telling me it wasn't 20 or 30 per, or certainly 8 or certainly 3 when you left, and it isn't today?

Mr. SPALDING. There are permit limits in most of the Upper Bay Rhode Island plants today.

Chairman ISSA. That are higher than being proposed here?

Mr. SPALDING. There is a limit of 5 in Providence, a limit of 3 in Woonsocket, a limit of 5 in East Providence.

Chairman ISSA. Okay.

Mr. SPALDING. So these limits are very much in the ballpark of what's being proposed here.

Chairman ISSA. Well, let's talk about the 5 versus 3. This came out of the earlier panel. Environmental groups like the Conservation Law Foundation, or CLF, have pressed the EPA for stricter nitrogen limits in the estuary. Internal EPA Region 1 e-mail correspondence obtained through FOIA reveals the EPA considered a 5-milligrams-per-liter nitrogen limit, with CLF, basically an environmental group—not a neutral, just as your previous group was not a neutral—apparently in this e-mail did not agree.

Are you familiar with this e-mail that was delivered by——

Mr. SPALDING. I'm not, but I'm familiar with the point that proponents send e-mails and make input.

Chairman ISSA. Well, do you know Stephen Sylva?

Mr. SPALDING. I do know Steve Sylva, yes.

Chairman ISSA. And do you know Carl Deloy?

Mr. SPALDING. I do know Carl Deloy, yes. Both work for me.

Chairman ISSA. Okay. So they're having a discussion about what the standards should be to not get sued; right?

Mr. SPALDING. Yeah.

Chairman ISSA. So not getting sued is one of your considerations for setting a standard?

Mr. SPALDING. A standard is that the permit needs to be legal. We get sued on both sides quite frequently. It's a consideration, but not a determination.

Chairman ISSA. But you wouldn't be having these kinds of e-mail discussions if it wasn't trying to get groups to agree that if you meet their standard—their standard you won't get sued. That's what this e-mail shows. It isn't referring to defendable science, a particular study, norms in other areas. It's talking about getting sued.

Mr. SPALDING. I think it's important to note that the permit is still under consideration. There's been no final determination. This is a back-and-forth communication. We again have not made a final call whether it's 3 or 5 or any other number. We propose 3 at this point.

Chairman ISSA. Okay. But is this really boiling down to the story of the pound of ground beef, and the way you determine a pound is, the butcher has got his thumb on the top and he is pushing down as hard as he can, and the purchaser has to put his or her thumb on the bottom and push equally hard to get a fair one pound of beef? Is it really about who can sue to get the middle ground?

Mr. SPALDING. No. No, it's not.

Chairman ISSA. It certainly looks that way from this e-mail.

Mr. SPALDING. The determination by all involved, looking at the weight of evidence, was that 3 was the standard we should propose in the draft.

Chairman ISSA. Well, isn't 3, though, the limit of technology? Isn't that it, essentially, you couldn't propose 2, because you couldn't mandate it based on achievable standards?

Mr. SPALDING. 3, in combination with other factors of non-point and stormwater control, as we all discussed, or as was discussed earlier, the problem in the watershed and the equity, we believe if

these plants do achieve 3 in the future and other actions are taken, you could meet the water quality standard.

Chairman ISSA. So if they're at 30 and they're willing to go to 8 in a matter of just a few years, why is that not a dramatic improvement where you can make the change, and if I understand correctly from the earlier testimony, in a matter of days, a matter of days after you reach that level of output, you reach that level in the estuary, and then, over a season, you see the effected change? In other words, isn't it a few days to lower the level, and then essentially a season or two in order to see the effect?

Mr. SPALDING. I wish it was that simple. No.

If they go to 8—and, in fact, we've had conversations with Exeter and Newmarket about a phased approach that would bring them to 8 and then, in years follow, go to the next level. So, in fact, what I was interested in hearing was basic agreement on the phased approach and adaptive management.

If you go to 8, you'll start to see improvement, yes. There's a lot—in these systems, the nitrogen tends to be in the system. It takes some time for it to work its way through.

Chairman ISSA. You know I'm a native of Cleveland, even though I represent California.

Mr. SPALDING. Yes. Yes.

Chairman ISSA. I remember when the Great Lakes were dead.

Mr. SPALDING. Yes.

Chairman ISSA. And they found out they weren't lakes; they were rivers.

Mr. SPALDING. Right.

Chairman ISSA. Because it took a very short period of time, after we quit putting chromate and all these other terrible metals in, for it to flush out.

Mr. SPALDING. Yes.

Chairman ISSA. Now, in the soils deep beneath Lake Superior and Lake Erie, I'm sure you can still measure some levels that were left over from decades and decades ago.

Mr. SPALDING. Right.

Chairman ISSA. But it sounds like this is an area in which you get a fairly quick change.

And I guess my question is, a phased approach, why wouldn't you, if you will, look for something that is a threefold reduction, or however, you want to talk about going from 20 to 30 down to 8? Let's just call it an average of 24 down to an average of 8. Why wouldn't you take that and then measure it, and recognize that there's no bargain?

And I'm not trying to——

Mr. SPALDING. No, I understand.

Chairman ISSA.—pledge a position. I'm trying to——

Mr. SPALDING. I understand what you're saying.

Chairman ISSA. Why wouldn't you say, "Look. We don't have a bargain. We have a point that we agree to go to and then measure." Why wouldn't be that the first 5 to 10? Recognizing that even though there would be a substantial investment, everybody understands, as I asked the mayor on the first panel, if it doesn't get the job done and science says you have to go further, then, in fact, there's another round and another round of expense, but you've es-

sentially probably saved a couple hundred million over that 6-, 7-, 8-year period that ultimately you're going to use to make the next round of investment if you need to.

Mr. SPALDING. Yeah. Yeah. It's interesting you bring up the phased approach, because, indeed, what you've just described is a lot of what we've been talking about with Exeter. The only difference is, to make a permit based on the science we see today—and there's been a lot of conversation about science from their consultant, but what we see in the science——

Chairman ISSA. And if you noticed, when they were telling me how confident they were, I said "What if?"

Mr. SPALDING. Yes.

Chairman ISSA. Because we're always confident in our science, and the other side is always confident.

Mr. SPALDING. Absolutely.

Chairman ISSA. I've been in trials and both sides have experts that absolutely agree with them and disagree with each other.

Mr. SPALDING. Absolutely, sure. And we have a process for arbitrating that through our Environmental Appeals Board.

But the fact is, writing a permit today, we think 3 is what's required; but in discussions about a compliance schedule, we've talked about several years doing exactly what you talked about: Let's put 8 in, let's look at how it's achieving, and then we would look at the science at that time, with the idea that we all need to know how this resource is responding, the issue you just raised.

Chairman ISSA. So let me try to feed back your words, because I think they're very important today. Because there may be some misunderstanding of your goal, your likely rule, and, in fact, what people understand.

Mr. SPALDING. Right.

Chairman ISSA. If in fact their study happens to be right, and yet your belief is the one that ultimately is written on the permit, do we have a situation in which you go to their 8; you measure it. If they appear to be right in hindsight, you don't go to 3 even though you still believe that you should go to 3, but you see that they've achieved?

Mr. SPALDING. Well, we have——

Chairman ISSA. Or is this one of the things where they're guaranteed to have to go to 3 and it's just a question of when?

Mr. SPALDING. There are probably two permit cycles in play before—again, talking about the compliance schedule that was being discussed—where we could reconsider that 3 if their science proves right, if other science proves right, or if somebody—and you talked to Peter about the innovation that might be out there, and believe it or not, there is a lot of innovation around this water issue.

Chairman ISSA. I suspected there was, although I didn't get the answer I hoped for.

Mr. SPALDING. No, there's a lot of innovation. The State of Massachusetts just launched a very significant effort that way.

But the point is, yes, there is opportunity for reevaluation in the compliance schedule we discussed—I've been discussing with Exeter and Newmarket.

Chairman ISSA. Well, I'm not envisioning a second round, but as you saw in the last round, things come to me.

Mr. SPALDING. Yes.

Chairman ISSA. But Mr. Guinta has prepared very much for this. I'll recognize the gentleman.

Mr. GUINTA. Thank you, Mr. Chairman.

Thank you, Mr. Spalding, for working with me personally and my office and the communities in trying to find what I hope is a reasonable resolution. We've talked about this over the course of the last year, and I want to try to get as much information from this hearing to the public. I want to continue to digest some additional information that I've heard, as you know that I have filed legislation to try to find a middle ground in getting to 8 as opposed to 3.

But some of the testimony I heard from the first panel did concern me, because it does seem as though some of the communities—I won't say all, but maybe some feel their voices aren't being heard as much as maybe you would like or you feel they're being heard. And you were in the audience; you heard some of the testimony, particularly from Mr. Rice, on that subject matter.

Can you maybe talk a little bit about that? Because I suspect that there is maybe a difference of opinion that you have, or a different approach that you have as the regional director versus the EPA. I mean, I've gotten the sense over the years that you want to try to find common ground, and I appreciate that. But it does seem from some of the testimony that that's not the opinion or it's not what the contiguous communities have been feeling.

So can you just talk about that a little bit? And then I'll get into more specific questions.

Mr. SPALDING. Well, you make a good point. I took the position or came in 2009, and this was well underway before I got here. And we have been trying to open up paths of dialogue. I've had regional staff in these communities, especially Exeter and Newmarket, the first two permits, many hours of dialogue with those communities on thinking about a compliance schedule that would phase the approach and include this adaptive management that they have proposed.

So we have been—and that was something I discussed in depth with my staff: the need to get with the communities and do that. And that's what I used to do running an NGO in Rhode Island, have those kind of discussions. And, indeed, 3, 5, other limits were put in without appeals in those—in that place in Rhode Island.

So, yes, I think the need for dialogue is incredibly important, because things will change, new technology will come forth. Will the population in these towns continue to grow? The real reason this is happening is population growth in this region. So we need to continue to do that.

Mr. GUINTA. On that, are you concerned at all about the point that Mr. Rice brought up toward the end of his testimony, about sprawl? I mean, fixing, from the EPA's perspective, one problem and almost creating another?

Mr. SPALDING. Yes. The idea that the costs in the cities would go up and the people would go elsewhere.

Mr. GUINTA. Is that a legitimate issue?

Mr. SPALDING. It is a legitimate issue. I think the chairman pointed out that a solution for this region needs to include all the communities.

One thing that's very important——

Mr. GUINTA. When you say "all," what do you mean?

Mr. SPALDING. All the communities that are in the Great Bay Estuary watershed, that may be making an impact. So if you have, for example——

Mr. GUINTA. So does that go as far west as Candia, New Hampshire?

Mr. SPALDING. It can. I mean, there needs to be a conversation about that. Those with septic systems and individual systems need to be brought into this. And you might find, as you go up these rivers, that some folks, their septic system may not be working so well anymore. And those problems need to be addressed. What's coming off of farms and lawns needs to be addressed.

We are very eager to see a whole watershed solution found. Unfortunately, we don't have that authority, that state and local authority. So they need to put that program together. If that program comes together and it shows real progress, there could be a reconsideration of everything we've talked about here.

Mr. GUINTA. Well, staying on that point for a minute, it seems like the first panel—and I think you would agree, but I don't want to put words in your mouth, so tell me if I'm wrong—but it seems like there's general understanding that roughly 70 percent of the nitrogen in the estuary does not come from wastewater treatment plant.

Mr. SPALDING. That's right.

Mr. GUINTA. So you've alluded to that.

Mr. SPALDING. There's no disagreement there.

Mr. GUINTA. Okay. So should I be concerned with what the communities are bringing to me in terms of their financial concern? If wastewater treatment plant is 30 percent or 28 percent of the problem, why is the first phase of modifying or improving this being such a significant financial impact, you know, greater than the 30 percent that maybe they feel they're responsible for?

Because I have to say, I'm hearing from the communities, from day one, they want to fix this problem. They don't want to be in a fight with the EPA. They've encouraged me and asked me to be in this process to try to find that common ground solution. And that's the role that I've tried to play from day one, and that's the role I want to continue to play.

Mr. SPALDING. Well, you should be concerned, like I'm concerned. We both should be concerned about impact to ratepayers and how this goes in place, and it needs to be phased. We're working with communities with limits all over—and I mean financial limits all over New England, places like Holyoke and Fitchburg and other places with income levels far below these communities. And we work very hard to phase the work so it does not create undue burden.

But the other thing you point out is, that I think is very important, is should the burden be borne by just these communities? In other states in my region, states put forth some bond-issue support and other things. There used to be a grant program that was fund-

ed here. I think that's the case in most states. They provide some help for a resource that's a state asset like this.

I do regret, I think like we all do, that the Federal Government can't do more in terms of granting and that sort of thing. But, all said, I think we all need to be concerned. Nobody wants to put a community at an unfair disadvantage.

Mr. GUINTA. Two final points I'd like to make, if I could.

Chairman ISSA. Of course.

Mr. GUINTA. So, on that note, the Clean Water Act does allow for state legislatures to engage in these particular issues. The first panel, I think it's been identified that the state legislature has not.

Mr. SPALDING. Yes.

Mr. GUINTA. So, to your point about a greater area, shouldn't the legislature be more engaged, number one? And, number two, if the upwards of—you know, it could be 75 million, could be 164 million, could be 250 million, depending on the requirement of the 3 for the contiguous communities—I mean, we probably differ in the cost, but they're telling me anywhere from 160 to 250. You know, long term it could be a billion when you include the other communities. Why wouldn't the—why wouldn't the Adaptive Management Plan of 8 be sufficient?

I keep hearing—I hear you say that you want to work with them, but it sounds like you're saying at the end of the day, you are saying they have to get to 3.

Mr. SPALDING. What I'm saying is two things.

Mr. GUINTA. So there's two points there.

Mr. SPALDING. Two things. Looking at the science today, the decline we see in the habitat health of the Great Bay Estuary today, we have proposed 3 milligrams per liter as ultimately necessary to see the Great Bay and its estuaries recover. That said——

Mr. GUINTA. However, you've also said that it could change over time.

Mr. SPALDING. That said, we have discussed with the communities a compliance schedule that does a phasing approach using the adaptive management approach; that if other means are found to get that nitrogen reduction that all feel is necessary done, that 3 could get reconsidered. We have two, at least two, more permit cycles.

One thing that is unfortunate——

Chairman ISSA. When you say "permit cycles," how long are they?

Mr. SPALDING. They are five years, and these permits are overdue. It's one of the issues that is not a good thing, that your permits are overdue. I guess it makes us vulnerable to 60-day notices anytime.

Mr. GUINTA. No, I know. But—so the 3—and the chairman was trying to make this point, and I think it's important for the record.

Mr. SPALDING. Right.

Mr. GUINTA. Because a lot of people in New Hampshire feel very, very strongly about Great Bay. Some want it cleaned up, you know, quicker than others. Some people are more concerned about the financial component.

Mr. SPALDING. Right.

Mr. GUINTA. But I think most people would agree we have to get it cleaned up.

Getting to that requirement of 3, the e-mail exchange between two EPA employer——

Mr. SPALDING. Yes.

Mr. GUINTA. Excuse me, employees, does concern me. I mean, tell me if I should not be concerned.

When two EPA employees specifically state that either 5 mg per liter, with CLF's agreement not to appeal, or 3—that's what concerns me. What is driving, you know, this standard? Is it an agreement with CLF not to sue? Or is it what people in my state and these contiguous communities ultimately want to try to come to an agreement with, that it's in the best interest of their community?

Mr. SPALDING. Well, I think what you're seeing here is, we do look at legal risk related to permits from all sides. Obviously, we're concerned about the communities and their appeals, potentially. That's why we've been meeting with them at length. And then we need to be concerned about appeals from the other side.

Mr. GUINTA. So you also meet with CLF?

Mr. SPALDING. We from time to time meet with CLF. Not specifically on a permit like we would with a community.

Mr. GUINTA. Have you met with CLF on this?

Mr. SPALDING. I have not.

Mr. GUINTA. Have any EPA employees?

Mr. SPALDING. I'd have to check with staff. I don't think they have had a specific conversation about this. I think they've expected CLF to participate like everyone else, through the public comment period.

Mr. GUINTA. Could you within the five-day period after today's hearing include an answer to that question?

Mr. SPALDING. I'll ascertain that. Absolutely. Absolutely.

Mr. GUINTA. Well, my time has expired. I appreciate the chairman's willingness to yield, and I yield back.

Chairman ISSA. Well, you gave us this hearing, so if you need more time, you certainly can have it.

As I promised, there will be something else.

Mr. SPALDING. Good.

Chairman ISSA. I've worked in engineering for most of my career, but I'm a trained businessman. And so, thinking about Sister Peggy's accounting class in college, if I did my math right, if we went from 30 parts to 3 parts, but we're only affecting 30 percent of the discharge and the other 70 percent remains where it is, my arithmetic says that whatever level of discharge you have today, even after they go down by tenfold in some cases, you're still going to have 76 percent as much flowing into the estuary as you have today. Isn't that roughly right?

Mr. SPALDING. I think you're definitely right, knowing your skills.

Chairman ISSA. So as we're trying to balance what share is borne by five communities and what is necessary to clean this up, if I read correctly, basically you're going to get 70 percent as much pollution if all five communities just ship their water to Tacoma, Washington.

So one of our problems here is, at 70 percent the amount of phosphates and nitrogen going into the water, you may still not have a clean estuary. Isn't that true?

Mr. SPALDING. Yeah. If no other action is taken, I think your conclusion is correct.

Chairman ISSA. Okay. So as we try to look at our guidance, if you will, for future legislation, including Mr. Guinta's, what I see here is, fingers in the dike are good if there's only a few holes. In this case, it looks a little bit like the thing I get my spaghetti dried with; that if these cities comply fully at 8 percent, then 5, then 3, you may still have an estuary that's not able to support what the people in this community and the surrounding 40-some communities want.

Mr. SPALDING. That's right. And I'd add to your concern. If population keeps growing as it has been, this action would perhaps have less effect.

Chairman ISSA. So as we're looking at guidance to ourselves and, quite frankly, Senator Shaheen, all of the elected officials that go to Washington, possible guidance to the State for their share, you said that, if you will, these are the folks that are under—and I don't want to say your thumb in an unfair way, but they're under your jurisdiction. The others are effectively not. And would it be fair to say that we need to look to New Hampshire's legislature and ask, and to other communities, "What are you going to do to help us with the other 70 percent?"

Mr. SPALDING. Absolutely. Absolutely.

Chairman ISSA. Well, let me ask you a rhetorical question.

If all of 100 percent suddenly went to 8—in other words, all the—you know, we all know that septics sometimes leak conveniently, and no one addresses them because they're not giving them a problem, but they're flowing right into the water.

Mr. SPALDING. Exactly.

Chairman ISSA. If all of that was cleaned up, you might, in fact, have a very healthy estuary at 8 or 10, because you're, of course, now dealing with 100 percent of the problem, not just 30. Is that true?

Mr. SPALDING. You might well—I think there has been a conversation about further study. I would presume that would be a good thing to do to sort that out.

Chairman ISSA. Okay. Because part of what we were hoping to do, and Mr. Guinta as somebody who has served here as a city mayor and obviously knows the state, you know, we're looking at providing guidance both ways: guidance to ourselves in our federal role, but also to the state.

And you mentioned the cycles. Let me ask just one last question, or last type of question.

Mr. Hall, and to a certain extent Mr. Rice, but Mr. Hall particularly, he basically said that your process bypassed an awful lot of requirements of notice and hearings and so on. If that's the case, are you concerned that no matter what number you reach, if you reach a number that one side or the other doesn't have, that it's not defensible under federal law? In other words, you're going to end up in a suit either way?

Mr. SPALDING. He was talking about two processes: the process to establish a state water quality standard and our process to establish a permit on the 3, on communities we've issued draft permits for. These are distinct. Most of his criticism was at the state water quality standard process.

We feel we followed the procedures to the letter for putting forth these permits. We looked at the narrative water quality standard. Not the numeric, the narrative. We looked at the preponderance of evidence and came forth with a judgment.

Am I concerned? I'm always concerned when someone raises those issues. I think there's ways to arbitrate those issues. He's written a letter to my program, the water program, of course, the Inspector General, who we pay very close attention to EPA. I think——

Chairman ISSA. Our committee does, too. There are fingers and tentacles.

Mr. SPALDING. We stay very—as I said, pay very close attention.

So those will be, I think, fairly considered about this issue of state water quality standard-setting. But on the permit, which is what I'm responsible for, I think we're in a process where public comment is being sought, and then we're going to have to look at it all and issue a response to all these comments, and we need to be accountable for the comments we give forth and make a judgment. But, again, I have not waited for that. We've been in conversation with community on how to stretch this out to protect their financial health, and we want to continue doing that.

At the end of the day, you made the great point. This has to be a whole watershed approach. These permits are just one piece. If that whole watershed approach comes into place, clearly these permits can be looked at again, 5 years, 10 years down the line.

Chairman ISSA. Let me ask you one final question. Do you have the authority to work with a schedule that is somewhat closer to what each of these individuals, particularly the mayor, talked about?

In other words, they put out bonds for 20 years. They want to amortize all or part of a facility for at least 10 before they tear it down and do it again, recognizing the 1997 facility could potentially become abandoned——

Mr. SPALDING. Yeah. Absolutely.

Chairman ISSA. Unless they're able to use it as a base for upgrade.

Do you have the authority to work with schedules that would be 10 years before the next step, 5 years before the next step, and so on?

Mr. SPALDING. We do. We have schedules like that underway. The most difficult issue, as you can appreciate, coming from the Midwest—combined sewer problems. Very challenging. We spread those out. We need to make incremental progress.

I think what we're trying to say right now is we have to do something in the short term, or move forward on Great Bay. And that's what we're trying to do.

Chairman ISSA. Well, thank you.

Mr. Guinta, do you have anything else?

Mr. GUINTA. If I could have one final comment to that end.

Chairman ISSA. Of course.

Mr. GUINTA. I just want to reiterate for the record that Senator Shaheen, Senator Ayotte, Governor Lynch, and myself have all submitted letters essentially saying the same thing: that we want to support the communities; we hear their concerns; we hear the EPA's concerns. I hear, and we've all heard the other groups', regional local groups' concerns. But the four elected people that I mentioned have all asked for and recommended additional time. And my hope would be that the AMP is something that is looked at with great optimism and opportunity to find that common ground.

There are other communities that are affected, who I think support the AMP as well. And if there is some opportunity to try to find a way to get to the AMP without the implicit mandate, that at some point, without empirical data, getting to that 3, I mean, give them some time to try to assess.

Mr. SPALDING. Yeah.

Mr. GUINTA. If they do the 8, you know, what that would accomplish.

Mr. SPALDING. Right. We will look at ways to do that. I appreciate the input. Honestly, the input has led us to connect with Portsmouth, and we've discussed actually a final permit there at a—well, a draft, but a draft permit there at the 8-milligram-per-liter level, because they are in a different situation.

I want to make sure everyone understands. Every facility is different——

Mr. GUINTA. Oh, yeah, they are.

Mr. SPALDING. In the context of this.

So we're trying hard to be as flexible as we can. So I will—we will look at that very closely.

Mr. GUINTA. And I think there's bipartisan support amongst the delegation and the governor, you know, for that. And I think everyone is trying to balance that——

Mr. SPALDING. I hear that.

Mr. GUINTA.—the mitigation needs, as the community does support, but also the costs approach as well.

Mr. SPALDING. Right. I hear that.

Mr. GUINTA. So I appreciate that consideration.

Mr. SPALDING. Thank you.

Chairman ISSA. Thank you.

Thank you, Mr. Guinta. I appreciate your bringing this to our attention and bringing us up here. I want to note that the food, the accommodations were excellent. The weather, so-so.

Mr. SPALDING. Not so good today.

Well, thank you for visiting the region. I appreciate it.

Chairman ISSA. Well, that's what field hearings are for. If we stay in Washington and ask you to come, we get one selection. For all the men and women who came here, hopefully this was an opportunity for you to see what you would otherwise not necessarily have been able to see in Washington.

So I want to thank you for your patience and for your participation. We stand adjourned.

[Whereupon, at 11:02 a.m., the committee was adjourned.]

LAMPREY RIVER WATERSHED ASSOC.

Congressman Frank Guinta **4 June 2012**
House Oversight and Congressional Reform Committee
Local Oversight Hearing on June 6 2012

The Lamprey River Watershed Association (LRWA) has been an advocate of water conservation and clean water in the Lamprey River Watershed and Great Bay for over three decades. The Lamprey River, Great Bay, and the estuary as a whole are national treasures that are vital not only for their natural resource values, but for the role they play in the economy and the culture of the Lamprey Watershed and the Seacoast regions.

The LRWA supports the EPA's draft permit's provisions addressing nitrogen pollution. We recognize that EPA must, by law, take this essential step toward restoring the estuary's health, as the New Hampshire Department of Environmental Services (NHDES) and EPA have designated waters throughout the Great Bay estuary as violating water quality standards as a result of elevated nitrogen concentrations, eelgrass loss, and low dissolved oxygen.

It is well understood that the elevated nitrogen levels in the estuary are due to both Non-Point Sources (NPS) as well as the Waste-Water Treatment Facilities (WWTF) identified by NHDES and EPA. Both sources must be addressed if water quality is to be improved and health restored to Great Bay. The LRWA is committed to working with communities to identify and remediate practices resulting in NPS pollution.

We would also like to observe that this hearing, given the speakers chosen and the ban on public input, is a charade and of little value. It would make more sense to take the funds expended for this event and give them to the towns needing money for WWTF upgrades.

The LRWA supports the EPA goal WWTF discharge of 3 mg/l or less, and recognizes that this improvement will come at a cost that towns, especially those who have not invested in WWTF maintenance and upgrades for many years, will find difficult to manage. At issue is not the goal itself, but the cost of attaining that goal. We therefore urge the EPA and the State of NH's Congressional Delegation to look for ways to help towns make these improvements in a timely fashion and at a reasonable cost.

"Preservation of our environment is not a liberal or conservative challenge, it's common sense."

RONALD REAGAN, State of the Union address, Jan. 25, 1984

Carl Spang

Carl Spang, President

ATTORNEY / CLIENT

Stephen Silva/R1/USEPA/US
02/11/2010 03:59 PM

To Carl Deloi/R1/USEPA/US@EPA
cc Brian Pitt/R1/USEPA/US@EPA, David Pincumbe/R1/USEPA/US@EPA, Ken Moraff/R1/USEPA/US@EPA, Lynne
bcc
Subject Re: Great Bay SWA legislation

Hi Carl,

Thanks, this is very interesting.

A few initial thoughts based on the meeting this morning. For Great Bay we need the following one way or the other:

1) TN WQBELs for the WWTPs, - either 5 mg/l (with CLFs agreement not to appeal) or 3 mg/l (likely with a longer implementation schedule)
2) A detailed phased and quantified Watershed Management Plan covering how necessary N reductions will occur:
   - septic system N load reduction
   - regulated and unregulated urban stormwater runoff N load reduction[1]
   - agriculture N load reduction
3) A reliable N load reduction implementation funding source for each N source component:
   - WWTPs, schedule for projected user charge increases and SRF support
   - regulated and nonregulated urban runoff and septic systems, a utility district of sorts with an annual charge based on estimated annual N load of each municipal and private property owner (to provide a steady income base to support urban stormwater BMPs and septic system N load abatement)
   - agriculture, 319 and EQUIP funding or equivalent, possibly include ag in any utility district and assess a charge based on estimate N load
4) Items 1 through 3 could be incorporated in a baywide TMDL with loading capacity estimates based on the state's current salinity model, if desired. We could also do mini segment specific impervious cover TMDLs for urban stormwater or segment specific agricultural TMDLs for more local coverage, if desired.

[1]For urban stormwater we need about 1 year's monitoring on SW N BMP effectiveness and optimization from the UNH Stormwater Center or another source to calibrate our BMP performance analysis model. http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/BMP-Performance-Analysis-Report.pdf

Steve

Carl Deloi — I recommend reading this, it's short. Keep in min... — 02/11/2010 10:32:59 AM

Carl Deloi/R1/USEPA/US
02/11/2010 10:32 AM

To Stephen Silva/R1/USEPA/US@EPA, Ken Moraff/R1/USEPA/US@EPA, Mel Cote/R1/USEPA/US@EPA, Lynne Hamjian/R1/USEPA/US@EPA, Brian Pitt/R1/USEPA/US@EPA, David Pincumbe/R1/USEPA/US@EPA
cc
Subject Great Bay SWA legislation

I recommend reading this, it's short. Keep in mind that, despite what the legislation says, a majority of the municipal energy is still focused on fighting EPA permit limits.

To: Rep. Guinta and the House Oversight and Government Reform Committee:

RE: "EPA Overreach and the Impact on New Hampshire Communities" Hearing

Date: June 4, 2012

Although this event is billed as a "hearing", apparently it is the goal of the Committee to give the complainants the lion's share of the Committee's time and attention , to the exclusion of the larger constituencies.

We the undersigned are here as affected members of the Great Bay region to bear witness to our opposition to the approach being taken by these five municipalities. We instead support the approach of the town of Durham in working with EPA to find affordable and diverse ways to meet this challenge, rather than dodging it by attacking EPA and the peer-reviewed science. By law, EPA Region I must adhere to federal standards regarding the discharge of nitrogen by area municipal wastewater treatment plants. We therefore call upon our federal congressional delegation to support, not undermine, EPA's affirmed commitment to *working with these municipalities* toward meeting the water quality standards essential to protecting a resource critical to its Seacoast constituency.

State Representative Judith Spang, Strafford 7
State Representative Phil Ginsburg, Strafford 7

(and 27 attendees, including 2 other state representatives)

State Representative Mindy Kaen

State Representative Donna Schlachman EXETER

Helen Schwenstein

Town Manager

David Cedarholm (Durham Town Engineer)

DURHAM SWA

Doug Bogen (Director, Seacoast Anti-Pollution League Exeter)

Kyle McAlder

Eileen H. Glang

Barry Berrien

James Schlough, Stratham

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State Representative Judith Spang, Strafford 7,

State Representative Phil Ginsburg, Strafford 7

Brian Giles, Sr.

Ratchi White Rye N.H.

J. O'Brien

Portsmouth NH

Arthur B. Cunningham. Atty. Alexander Barrett St.

David W. Ellis, Newmarket

Michael R. Lauber Epsom

Pete Richardson Exeter

Patricia de Beer Fremont

JD Zmuller

T. Wilhelm

J. Mott

Tom Irwin