THE STATE OF NEW HAMPSHIRE
WATER COUNCIL

NOTICE OF APPEAL

Final Clean Water Act § 401 Water Quality Certification, WQC 2025-NH0100447
Manchester Wastewater Treatment Facility National Pollutant Discharge Elimination System Permit Renewal

Conservation Law Foundation (CLF) submits this Notice of Appeal of the above-referenced Water Quality Certification, issued by the New Hampshire Department of Environmental Services (NHDES) on May 13, 2025 in connection with the National Pollutant Discharge Elimination System (NPDES) permit renewal for the Manchester Wastewater Treatment Facility (WWTF) (hereinafter "Certification"). CLF provides the following information in accordance with the requirements of Ec-Wtr 203.01(b):

I. Appellant

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II. Appellant's Representatives

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III. Permittee / Applicant

The owner and operator of the Manchester WWTF, and the applicant for the renewed NPDES permit, is the City of Manchester.

IV. Clear and Concise Statement of Facts and Law that Explains Why the Department Decision was Unlawful or Unreasonable

CLF requests that the Water Council rule that the Certification that is the subject of this appeal is unlawful and/or unreasonable on three grounds. First, NHDES unlawfully and unreasonably issued the Certification without evaluating or determining whether, in light of discharges and emissions of per- and polyfluoroalkyl substances (PFAS) from the Manchester WWTF, the WWTF's permitted activities will comply with New Hampshire's narrative water quality standard for toxic substances and the Merrimack River's designated use for fish consumption. Second, NHDES unlawfully issued the Certification without developing an independent record to support its determination and unlawfully shifted to commenters, EPA, and the City of Manchester its burden of evaluation established under 40 C.F.R. section 121.3(a). Third, the Certification unlawfully and unreasonably proposes to weaken important benthic monitoring requirements in the associated NPDES permit.

A. Concise Statement of Facts

The Manchester WWTF is the largest WWTF in Northern New England and the only WWTF in New Hampshire that burns sewage sludge in an onsite incinerator. The WWTF discharges "treated" effluent into the Merrimack River, but the WWTF's treatment process does not address or remove PFAS. The WWTF has detected PFAS in its influent and "treated" effluent on a monthly basis since at least 2019. In addition to discharging PFAS into the Merrimack River

through wastewater discharges, the WWTF releases PFAS into the air through sludge incineration, as confirmed by data published in a peer-reviewed study in 2023 (the Seay Study).[1]

PFAS are toxic substances that persist in the environment for up to several thousands of years and remain in the human body for decades. PFAS are linked with human health impacts including cancer, organ damage, high cholesterol, reproductive and fertility issues, and developmental delays. The Manchester WWTF receives wastewater from at least 88 industrial users, fourteen of which, including the City's closed landfill, are classified as Significant Industrial Users under EPA and local rules. The City has documented PFAS in the leachate that the closed landfill sends to the WWTF; eleven other Significant Industrial Users operate in PFAS-related sectors and likely discharge PFAS to the WWTF.

The Manchester WWTF requires an EPA-issued NPDES permit to operate. The City of Manchester applied for a new NPDES permit in 2019 and, in that application, did not disclose that its discharges contain PFAS.

On April 10, 2024, EPA issued a Draft Permit for the Manchester WWTF (the Original Draft Permit). The Original Draft Permit contained monitoring requirements for 40 PFAS chemicals and included a narrative requirement that the WWTF's discharges not "cause a violation of the water quality standards of the receiving water." EPA, Original Draft Permit No. NH010044, Part I.A.2, Footnote 13, Part I.A.3, Part I.E.6, (April 2024).

On June 6, 2024, NHDES issued a one-page water quality certification which included a statement that "no conditions" in the Original Draft Permit "can be made less stringent[.]" Letter from Rene Pelletier, NHDES, to Lynne Jennings, EPA Region 1, regarding Manchester WWTF Certification of NPDES Permit No. NH0100447 (June 6, 2024) (on file with NHDES).

On December 18, 2024, EPA issued a Revised Draft Permit. In anticipation of the U.S. Supreme Court's decision in *San Francisco v. EPA*, 604 U.S. __, 145 S. Ct. 704 (2025), the Revised Draft Permit removed the Original Draft Permit's narrative permit condition that the WWTF's discharges not cause a violation of the water quality standards of the receiving water. It also included a new benthic survey requirement, mandating that "[d]uring the third calendar quarter (i.e., July through September) that begins at least 12 months after the effective date of the permit, a benthic survey shall be conducted once per permit term to assess impacts from the discharge on aquatic life in the benthic environment." EPA, Revised Draft Permit No. NH0100447, Part I.A.2, n. 23 (Dec. 2024). Like the Original Draft Permit, the Revised Draft Permit contained monitoring requirements for 40 PFAS chemicals but established no effluent limitations for PFAS.

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[1] Brannon A. Seay et al., *Per- and Polyfluoroalkyl Substances Fate and Transport at a Wastewater Treatment Plant with a Collocated Sewage Sludge Incinerator*, 847 Sci. Total Env't (2023), available at https://www.sciencedirect.com/science/article/pii/S0048969723009737.

On January 9, 2025, in connection with the Revised Draft Permit, NHDES issued a draft water quality certification. The January 9 draft certification relied upon outdated regulatory language; lacked any reference to, or condition for, PFAS; and stated that the Revised Draft Permit's benthic monitoring requirement could be made less stringent by imposing a prerequisite notice requirement to the otherwise-automatic benthic survey requirement.

On February 7, 2025, CLF timely submitted comments on the January 9 draft water quality certification. CLF's comments (provided herewith) and exhibits identified the Certification's reliance on an outdated regulatory standard and highlighted: (1) the City's PFAS monthly monitoring data, which shows the WWTF discharges PFAS into the Merrimack River; (2) the Seay Study and its corresponding data, which shows the WWTF emits PFAS into the air in Manchester, and (3) a peer-reviewed study (the Pickard Study) and its corresponding data, which show that fish in the Merrimack River have contained PFAS at levels that would be harmful to humans if consumed. CLF's comments argued that, in light of these data, and absent PFAS effluent limitations, the WWTF's activities would likely not comply with New Hampshire's narrative water quality standard for toxic substances and the Merrimack River's designated use for fish consumption. CLF's comments also argued that NHDES's proposed revision and weakening of the Revised Draft Permit's benthic survey requirement conflicts with the purpose of Clean Water Act section 401 and would render the benthic survey requirement valueless.

On May 13, 2025, NHDES issued the Certification that is the subject of this appeal. The Certification replaced the January 9 draft certification's outdated regulatory language with current regulatory language yet failed to add any conditions related to PFAS. It also retained the less-stringent benthic monitoring proposal.

The Certification was accompanied by a Response to Comments in which DES described consideration of the City's PFAS monthly monitoring data submitted by CLF and an analysis of whether the WWTF had the reasonable potential to violate state water quality standards (a so-called "reasonable potential evaluation"). NHDES Response to Comments, Water Quality Certification 2025-NH0100447 at 5–7 (May 13, 2025) (hereinafter "Response to Comments"). As described in the Response to Comments, NHDES's reasonable potential evaluation was limited to whether the WWTF's discharges of four PFAS compounds may cause or contribute to a violation of recently-adopted state *numeric* PFAS surface water quality criteria. It failed to address whether the WWTF's activities – including discharging PFAS-containing effluent and emitting PFAS through its incinerator – likely cause or contribute to a violation of the state's *narrative* water quality standard for toxics and the state's designation of the Merrimack River as supporting fish consumption. The Response to Comments failed to engage in any analysis of PFAS beyond the four PFAS chemicals enumerated in the state's numeric criteria.

The Response to Comments also contained several statements indicating that NHDES expected commenters, EPA, and the City of Manchester to contribute data to the record supporting or refuting the water quality certification, rather than NHDES developing its own record or conducting an independent evaluation and determination to support its Certification decision.

B. Concise Statement of Law

Section 401 of the Clean Water Act provides that federal agencies cannot issue permits to applicants to engage in activities that may cause water discharges unless the state certifies that the applicant "*will* comply" with enumerated Clean Water Act provisions and "any other appropriate requirement of State law," including state water quality standards. 33 U.S.C. §1341(a)(1), (d) (emphasis added); *see also S.D. Warren Co. v. Maine Bd. of Env't Prot*., 547 U.S. 370, 374 (2006). New Hampshire state law also prohibits activities requiring 401 certification unless NHDES "certifies that any such discharge complies with the state surface water quality standards applicable to the classification for the receiving surface water body." *See* RSA 485-A:12, III.

Federal 401 certification rules require the certifying state to first "evaluate whether the activity will comply with applicable water quality requirements." 40 C.F.R. § 121.3(a). EPA has explained that states must support their 401 certification evaluations, and ultimate decisions, with record evidence, stating: "It is incumbent on the certifying authority to develop a record to support its determination that an activity will or will not comply with applicable water quality requirements." 88 Fed. Reg. 66558, 66592, 66600 (Sept. 27, 2023).

After evaluation, a certifying state must determine whether the permitted activity "will comply" with Clean Water Act provisions and water quality requirements. 33 U.S.C. § 1341(a)(1); 40 C.F.R. § 121.7(c)(3), (d)(3), (e)(3). To grant certification with conditions, the conditions must ensure that the permittee "will comply" with Clean Water Act provisions and state law requirements. 33 U.S.C. § 1341(d); 40 C.F.R. § 121.7(d)(3). EPA added this "will comply" language to its current rules in 2023, replacing less-stringent regulatory language from prior rules and establishing a higher burden for certifying states to evaluate the adverse water quality impacts of permitted activities and deny or condition certification accordingly. *See* 88 Fed. Reg. 66558, 66612–13 (Sept. 27, 2023) ("While the 1971 Rule required a statement that there was 'reasonable assurance,' . . . the 2020 Rule and this final rule use the term 'will comply' which is more consistent with the 1972 statutory language used in sections 401(a)(1) and 401(d).")

The state water quality standards with which NHDES must certify compliance include New Hampshire's narrative standard for toxic substances, which states:

> [A]ll surface waters shall be free from toxic substances or chemical constituents in concentrations or combinations that . . . [i]njure or are inimical to plants, animals, humans or aquatic life; or . . . [p]ersist in the environment or accumulate in aquatic

organisms to levels that result in harmful concentrations in . . . [e]dible portions of fish, shellfish, or other aquatic life[.]

Env-Wq 1703.21(a).

The state water quality standards with which NHDES must certify compliance also includes the state's designated use standard, which states: "All surface waters shall be restored to meet the water quality criteria for their designated classification including existing and designated uses, and to maintain the chemical, physical, and biological integrity of surface waters." *Id.* 1703.01(b). One of the important designated uses of the Merrimack River is fish consumption, meaning that the river is required to "support a population of fish free from toxicants and pathogens that could pose a human health risk to consumers[.]" *Id.* 1702.16(b); NHDES, Sections 305(B) and 303(D) Consolidated Assessment and Listing Methodology (R-WD-20-20) at 10 (2022), available at https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/r-wd-20-20.pdf.

The New Hampshire Supreme Court requires agencies to support their decisions with "findings of fact" and will vacate an agency decision that ignores evidence contrary to the determination. *See In re Town of Newington*, 149 N.H. 347, 354–55 (2003) (vacating a DES decision when the agency "did not address" contrary evidence and rendered a decision "devoid of findings of fact that would permit meaningful review[.]")

A person aggrieved by an NHDES certification decision may appeal the decision to the Water Council. *See* Ec-Wtr 203.01. The appellant must "set forth fully in a notice of appeal every ground upon which it is claimed that the decision complained of is unlawful or unreasonable." RSA 21-O:14, I-a(a). The party asserting a proposition in a Water Council appeal must prove the proposition by a preponderance of the evidence. Ec-Wtr 203.16(f).

C. Concise Explanation of Why the Department's Certification is Unlawful and Unreasonable

NHDES's decision to certify that the WWTF will comply with water quality requirements, including state water quality standards, is unlawful and/or unreasonable for the following reasons.

1. The Certification is unlawful and unreasonable because, contrary to the requirements of Clean Water Act section 401(a) and 40 C.F.R. section 121.3(a), NHDES failed to evaluate and address whether the WWTF's discharges and emissions of PFAS will comply with the state's narrative standard for toxics (Env-Wq 1703.21(a)) and the Merrimack River's designated use for fish consumption (Env-Wq 1703.01(b); Env Wq 1702.16(b)).

As discussed in Part IV.A., above, the Manchester WWTF receives PFAS chemicals, does not treat for those chemicals, and as a result discharges PFAS into the Merrimack River through its wastewater effluent and into the air through its sewage sludge incinerator. While the Revised Draft Permit requires monitoring of 40 PFAS chemicals, it fails to include effluent limitations for PFAS. As a result of the recent *San Francisco v. EPA* decision, *see* 604 U.S. __, 145 S. Ct. 704 (2025), the Revised Draft Permit also fails to include the requirement that discharges shall not cause a violation of water quality standards – a requirement that until recently has been a standard requirement in EPA Region 1 NPDES permits, the removal of which heightens the importance of DES's section 401 Water Quality Certification review and determination.

Despite the presence of PFAS at the WWTF, NHDES rendered its Certification without having determined whether the WWTF's discharges and emissions of PFAS will comply with the state narrative water quality standard pertaining to toxics and the Merrimack River's designated use for fish consumption. Rather, NHDES rendered its Certification solely on the basis of a reasonable potential evaluation constrained to analyzing just four PFAS chemicals under New Hampshire's recently-established *numeric* water quality standards for those four chemicals.

In its Response to Comments, NHDES stated that the reasonable potential analysis results "show that no revisions are needed to the final Certification, and the Manchester WWTF individual NPDES permit will ensure compliance with water quality standards." Response to Comments at 7. That conclusion is unlawful and unreasonable, as it is contrary to Clean Water Act section 401(a) and 40 C.F.R. section 121.3(a) and unsupported by the record, as the reasonable potential evaluation for the *numeric* PFAS criteria cannot lawfully or reasonably serve as a proxy to determine compliance with the *narrative* water quality standards for toxics and the river's designated use for fish consumption. The reasonable potential analysis and the numeric criteria cover only four PFAS compounds out of a class of more than 14,000 PFAS chemicals. They also fail to account for bioaccumulation of PFAS in aquatic life – a consideration that is essential to determining whether PFAS from the WWTF will violate narrative standards for toxics and the river's use for fish consumption. *See* Env-Wq 1703.21(a)(2)(a) (prohibiting toxic substances from being present in surface waters in "concentrations or combinations" that "accumulate in aquatic organisms to levels that result in harmful concentrations in . . . [e]dible portions of fish, shellfish, or other aquatic life[.]"; *see also id.* 1702.16(b) (defining the designated use of "Fish consumption" as "meaning the surface water can support a population of fish free from toxicants and pathogens that could pose a human health risk to consumers[.]").

PFAS chemicals—particularly PFOS, which is consistently present in the WWTF's influent and effluent—are known to bioaccumulate in edible fish and pose a human health risk. Research cited in CLF's comments shows that eating just one standard serving of fish with 8.41 parts per billion (ppb) PFOS is equivalent to drinking water at 2,400 times EPA's health advisory level for

that chemical for an entire month.[2] The Pickard Study, highlighted in CLF's comments but not acknowledged in NHDES's Response to Comments, shows that PFOS concentrations in fish in the Merrimack River downstream of the Manchester WWTF have reached 7.914 ppb PFOS, closely approaching the 8.41 ppb level mentioned above.[3] That study also calculated a daily fish consumption health-based threshold for adults as 1.06 ppb PFOS, based on NHDES's own reference doses for that chemical, and found that most fish in the Merrimack River exceeded that health-based fish consumption threshold for PFOS.[4]

In light of the foregoing and as set forth in CLF's comments, the WWTF's activities likely violate the state narrative standard for toxics and the Merrimack River's designated use for fish consumption. NHDES's failure to address CLF's argument that the WWTF's activities likely violate that narrative standard and designated use – and NHDES's failure to specifically certify that the EPA permit ensures compliance with those two standards – is unlawful and unreasonable because it demonstrates that NHDES did not determine that the WWTF "will comply" with those standards, as required by Clean Water Act section 401(a)(1). *See* 33 U.S.C. § 1341(a)(1). Moreover, NHDES's Response to Comments demonstrates that the agency's decision is unlawful because NHDES did not address contrary evidence of the PFAS data from fish in the Merrimack River, rendering the final decision "devoid of findings of fact that would permit meaningful review" and warranting vacatur. *See In re Town of Newington*, 149 N.H. 347, 354–55 (2003).

2. The Certification is unlawful because NHDES unlawfully shifted to *commenters* its burden to affirmatively evaluate and determine whether the WWTF's activities will comply with state water quality standards.

As discussed in Part IV.B, above, NHDES has an affirmative duty to determine whether the WWTF's permitted activities will comply with water quality requirements, including state water

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[2] Nadia Barbo et al., *Locally caught freshwater fish across the United States are likely a significant source of exposure to PFOS and other perfluorinated compounds*, 220 ENV'T RSCH. 1, at 6 (2023), available at https://www.sciencedirect.com/science/article/pii/S0013935122024926.

[3] *See* Heidi M. Pickard et al., *PFAS and Precursor Bioaccumulation in Freshwater Recreational Fish: Implications for Fish Advisories*, 56 ENV'T SCI. & TECH 15573 (2022), available at https://pubs.acs.org/doi/10.1021/acs.est.2c03734. The Pickard Study's Fish Concentrations Table shows that researchers detected 7.914 ppb ΣPFOS in Largemouth Bass at Location 5. Heidi M. Pickard et al., *Supporting Information: Fish Concentrations Table S16*, available at https://pubs.acs.org/doi/10.1021/acs.est.2c03734. The Supporting Information document describes Location 5 as a sampling site on the Merrimack River at a location that is downstream from the Manchester WWTF. *See* Heidi M. Pickard et al., *Supporting Information for PFAS and Precursor Bioaccumulation in Freshwater Recreational Fish: Implications for Fish Advisories* at S-2–S-3 (2022), available at https://pubs.acs.org/doi/suppl/10.1021/acs.est.2c03734/suppl_file/es2c03734_si_001.pdf.

[4] *See See* Heidi M. Pickard et al., *Supporting Information for PFAS and Precursor Bioaccumulation in Freshwater Recreational Fish: Implications for Fish Advisories* at S-22–S23 (2022), available at https://pubs.acs.org/doi/suppl/10.1021/acs.est.2c03734/suppl_file/es2c03734_si_001.pdf.

quality standards. *See* 33 U.S.C. §1341(a)(1); 40 C.F.R. § 121.3(a). To fulfill this duty, EPA has clearly stated that under federal certification rules, "[i]t is incumbent on the certifying authority to develop a record to support its determination that an activity will or will not comply with applicable water quality requirements." *See* 88 Fed. Reg. 66558, 66592 (Sept. 27, 2023).

Despite this clear requirement – a requirement that takes on even greater importance following the *San Francisco v. EPA* decision and EPA's elimination of its standard narrative permit provision requiring that discharges shall not cause a violation of state water quality standards – NHDES failed to affirmatively evaluate and determine whether PFAS discharges from the Manchester WWTF will violate the state narrative water quality standard for toxics or the designated use for fish consumption.[5] Nor did NHDES investigate the water quality impacts of the WWTF's incineration activities (which are covered in Part F of the WWTF's current NPDES permit and Part F of the Revised Draft Permit). Nor did it conduct monitoring, research, or any investigation to support its determination that EPA's draft benthic monitoring requirement should be made less stringent. Rather, as demonstrated by statements in the Response to Comments[6] and the absence of independent evaluation, NHDES unlawfully shifted to commenters, EPA, and the City of Manchester the burden of determining whether the WWTF's activities will comply with state water quality standards.

3. The Certification's proposed weakening of important benthic monitoring requirements in the Revised Draft Permit renders it unlawful and unreasonable.

As discussed above, Statement E.2 of the Certification contains a statement of the extent to which the benthic survey in the Revised Draft Permit can be made less stringent "without violating state water quality standards[.]" Certification at 4. That provision proposes language adding a notice prerequisite to an otherwise-automatic benthic survey. Rather than requiring one benthic survey per permit term, as set forth in the Revised Draft Permit, the Certification's

[5] DES explicitly relied on pages 33 to 35 of EPA's Fact Sheet for the Revised Draft Permit as the "record" to support its determination regarding water quality standards compliance with respect to PFAS. Response to Comments at 2. DES did not independently review those EPA pages. Even if DES had engaged in that review, an analysis of the Fact Sheet pages 33 through 35 demonstrates that EPA did not analyze whether PFAS discharges from the WWTF violate state narrative water quality standards.

[6] *See, e.g.,* Response to Comments at 4 ("The information provided by permittee, EPA, and the commenters did not indicate water quality impacts from the Fluidized Bed Incinerator (FBI) emissions."); *id.* at 4 ("The commenters did not provide any additional information or data supporting the need for certification conditions, or separate permit coverage, related to water quality impacts from the FBI emissions."); *id.* at 9 ("NHDES has not received any evidence to date that the cumulative effect of all effluent limitations and monitoring requirements is not sufficiently protective of the benthic environment. The commenter has not provided specific concerns regarding benthic community health in the vicinity of the WWTF outfall, or data or observational evidence to support those concerns.").

proposal would require a benthic survey only upon a notification in writing "by NHDES or EPA that benthic deposits from the discharge are known or suspected to have a detrimental impact on downstream benthic communities." *Id.* The Certification specifies that "[v]isual observations, benthic sample results, or long-term permit limit exceedances could indicate a potential change in either the sediments or settleable solids downstream of the outfall as compared to upstream of the outfall. Such a change could indicate that the facility's effluent is having a detrimental impact on the downstream benthic community health." *Id.*

As set forth in CLF's comments, the proposed weakening of the benthic survey requirement conflicts with the purpose of Clean Water Act section 401; total suspended solids and metals effluent limitations in the permit do not suffice to protect the benthic community; and "[w]ithout an automatically-required benthic survey, the Department and EPA cannot make the requisite identification of harmful benthic deposits, rendering the proposed revision valueless for ensuring water quality standard compliance." CLF Comments at 12. The Response to Comments countered by stating that the revised language "requiring a triggering event . . . is as protective" as current permit language that incorporates narrative standards related to the benthic community; that "monthly aesthetics monitoring" provides "further protection," and that "NHDES has not received any evidence to date that the cumulative effect of all effluent limitations and monitoring requirements is not sufficiently protective of the benthic environment." Response to Comments at 9. In addition to unlawfully shifting to commenters the burden of evaluating and determining that the WWTF will or will not comply with water quality standards (as discussed above), NHDES's approach illogically assumes that aesthetically viewing "sediments or settleable solids" *after* the permit has been issued suffices to determine that the WWTF's activities "will comply" with water quality standards protecting the benthic community. *See id.* at 9, 12.

For example, NHDES's proposed approach does not protect the benthic community from toxic PFAS deposits. PFAS are invisible pollutants, they are found in benthic organisms,[7] and monitoring of PFAS in the benthic environment is not explicitly included in the Revised Draft Permit's benthic survey requirement. *See* Revised Draft Permit Part I.A.1, Footnote 23, Part I.G.5. Thus, without an automatically-required benthic survey that includes provisions for PFAS, NHDES has no lawful or reasonable basis to determine that the WWTF's activities will comply with water quality standards protecting the benthic community with respect to PFAS. NHDES's proposal to weaken EPA's benthic survey – which is already insufficient because it lacks clear PFAS requirements – renders its Certification unlawful and unreasonable.

[7] Xiaoyan Yun et al., *Bioaccumulation of per- and polyfluoroalkyl substances by freshwater benthic macroinvertebrates: Impact of species and sediment organic carbon content*, 866 SCIENCE OF THE TOTAL ENV'T 10 (2023), https://www.sciencedirect.com/science/article/pii/S0048969722083127 ("Since many regulatory agencies collect benthic macroinvertebrates as a component of a water quality assessment, it is practical to modify their sampling strategies to routinely monitor PFAS and expand the knowledge base for understanding PFAS occurrence in aquatic environment.")

V. Standing

CLF has members who are directly and adversely affected by the WWTF's activities and will be directly and adversely affected by the Certification at issue in this appeal. More specifically, CLF has members who reside in Manchester, who use and enjoy the Merrimack River in proximity to the WWTF, and who have actively participated in the Clean Water Act permitting process associated with the Manchester WWTF. The Merrimack River's water quality, and Manchester's air quality, are integral to the health, recreational, and aesthetic interests of members of CLF. The WWTF's discharges of PFAS into the Merrimack River and emissions of PFAS into Manchester's air, including but not limited to the bioaccumulation of PFAS in the aquatic environment, will directly and adversely affect members of CLF and their interests.

CLF's members include, but are not limited to:

An individual who resides in Manchester, New Hampshire approximately two miles from the WWTF who has used and enjoyed the Merrimack River for much of his life, engaging in activities that include kayaking, rowing, and fishing, including fishing in close proximity to the WWTF. The WWTF's release of PFAS into the Merrimack River detracts from his use and enjoyment of the river and causes him not to consume fish he catches. The WWTF's release of PFAS into the air causes him concern for his personal health and for the environment, including the Merrimack River.

An individual who resides in Concord, New Hampshire who for years has made frequent recreational use of the Merrimack River. His uses over the years have included duck hunting, canoeing, hiking, and collecting trash. He considers the Merrimack River to be a valuable natural asset that contributes to his quality of life and has used and enjoyed various segments of the Merrimack River, including downriver of the WWTF. The WWTF's release of PFAS into the Merrimack River and the air detracts from his use and enjoyment of the river.

Two individuals who reside in Manchester (one of whom resides less than 400 feet from the Merrimack River) and who appreciate the Merrimack River for its recreational, ecological, and aesthetic value; who personally enjoy the river as an aesthetic asset; and who desire clean air and water, unpolluted with toxic chemicals. Their use and enjoyment of the river for aesthetic purposes is adversely affected by the WWTF's continued operations without PFAS reduction measures for its wastewater discharges and its air emissions, as are the river's recreational and ecological values which they appreciate.

VI. Copy of the Department Decision Being Appealed

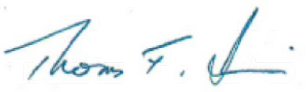
A copy of the Certification that is the subject of this appeal (WQC 2025-NH0100447) is attached. Also attached for the Council's convenience is a copy of CLF's February 7, 2025 comments on the draft certification (without exhibits).

WHEREFORE, Conservation Law Foundation respectfully requests that the Council:

A. Accept this appeal;
B. Rule that the Certification that is the subject of this appeal is unlawful;
C. Rule that the Certification that is the subject of this appeal was unreasonably granted;
D. Vacate the Certification;
E. Remand the Certification to the NHDES Water Division with instructions to
   (1) Evaluate and determine, with respect to PFAS discharges and PFAS emissions from the WWTF, whether, under the Revised Draft Permit, the WWTF will comply with Env-Wq 1703.21(a) and Env 1703.01(b) and, if it will not comply, deny certification or establish PFAS-related conditions necessary to ensure that it *will* comply, and
   (2) Remove from any certification granted in connection with the WWTF NHDES's proposed language in Certification Statement E.2 regarding benthic monitoring; and
F. Grant such further relief as it deems just and reasonable.

Respectfully Submitted,

CONSERVATION LAW FOUNDATION
By its Attorneys



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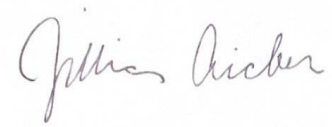

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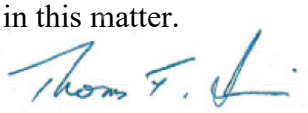
Dated: June 12, 2025

Certificate of Authorization to Represent Appellant

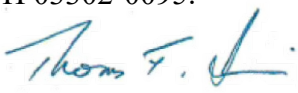
I hereby certify that on this 12th day of June, 2025, Conservation Law Foundation authorizes Jillian Aicher to act on its behalf as a representative in this matter.



Thomas F. Irwin

Certificate of Service

I hereby certify that on this 12th day of June, 2025, the notice of appeal has been served in accordance with Ec-Wtr 201.03 and Ec-Wtr 203.01(d), on the service list, with names and electronic mail addresses specified in the cover letter attached to this notice of appeal. Pursuant to Ec-Wtr 201.01, the notice of appeal has also been submitted to appeals@des.nh.gov. Pursuant to Ec-Wtr 203.01(a) and Ec-Wtr 201.01(a)(2), an original and one copy will on this day be hand delivered to "Water Council, Attention: Appeals Clerk" at the Department of Environmental Services, 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095.



Thomas F. Irwin