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For a thriving New England

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Lee Zeldin, Administrator
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Mark Sanborn, Regional Administrator
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100, Boston, MA 02109-3912

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. Washington, DC 20460

Via Certified Mail

November 19, 2026

RE: Notice of Intent to File Suit Under the Clean Water Act

Dear Administrator Zeldin, Regional Administrator Sanborn, and EPA,

Please take notice that Conservation Law Foundation, Inc. ("CLF") intends to file a civil action in the United States District Court for the District of New Hampshire, seeking relief under section 505 of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(2) ("CWA") and section 706 of the Administrative Procedure Act ("APA"), 5 U.S.C. §§701-06, against Lee Zeldin, in his official capacity as Administrator of the U.S. Environmental Protection Agency, Mark Sanborn, in his official capacity as Regional Administrator of EPA, Region 1, and the U.S. Environmental Protection Agency (collectively "EPA"), for past and continuing violations of the CWA and APA, as set out below. CLF will seek all appropriate equitable and other relief no earlier than sixty days from the postmark of this letter, which serves as notice pursuant to 33 U.S.C. § 1365(b) and 40 C.F.R. §§ 135.1–.3.

CLF will bring an action pursuant to 33 U.S.C. § 1365(a)(2) and 5 U.S.C. §§701-06 to seek judicial remedies for EPA's failure to exercise its non-discretionary duty to address profound environmental deterioration of the Great Bay estuary with a comprehensive permitting regimen. The estuary is a critically important and irreplaceable national resource experiencing serious degradation due to excessive nitrogen pollution. EPA has long recognized that the entire estuary is suffering from significant and pervasive nitrogen-related impacts that threaten a collapse of the estuarine ecosystem, yet EPA has failed to act. Most of the nitrogen in the estuary comes from stormwater runoff, which must be regulated to protect and restore this vital ecosystem.

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In February 2023, CLF petitioned EPA to exercise its residual designation authority ("RDA") under 40 C.F.R. § 122.26(a)(9)(i)(D) to regulate certain unpermitted discharges from commercial, industrial, and institutional ("CII") properties contributing to violations of water quality standards in the Great Bay estuary.[1] Despite the Clean Water Act's requirement that EPA must issue a final decision on an RDA petition within 90 days of receipt and overwhelming evidence, EPA has failed to act, over three years have passed, and EPA has not issued a decision on CLF's pending RDA petition.

Background

CLF. CLF is a nonprofit, member-supported regional environmental advocacy organization dedicated to the protection of New England's environment. CLF has a long history of working to protect the health of New England's and New Hampshire's waterways. CLF has worked for more than two decades to restore and protect the health of the Great Bay estuary, particularly from excessive nitrogen levels that are a significant cause of the estuary's declining health. Among CLF's members are persons who live in or near the Great Bay, rely on the health of the estuary for their livelihoods, and/or use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. CLF and CLF members have been and continue to be harmed by unregulated discharges of stormwater pollution to the receiving waters in violation of the Clean Water Act. A grant of relief under the suit would cause EPA to act to protect this vital resource and provide redress to those members and to CLF.

The Great Bay Estuary. The Great Bay estuary is a unique and irreplaceable natural resource. It is one of twenty eight estuaries of national significance established under EPA's National Estuary Program. It is a network of tidal rivers, inland bays, and coastal harbors in New Hampshire and Maine, extending inland from the mouth of the Piscataqua River at the Atlantic Ocean, covering approximately 21 square miles and bounded by 144 miles of shoreline. It comprises Great Bay proper and Little Bay, the Winnicut, Squamscott, Lamprey, Oyster, Bellamy, Upper Piscataqua, Cocheco, Salmon Falls, Great Works, and Lower Piscataqua Rivers, Portsmouth Harbor, and Little Harbor/Back Channel. The estuary is an invaluable environmental, social, and economic resource.

Severe Decline of the Estuary Due to Excessive Nitrogen. The Great Bay estuary is suffering from eutrophication caused by excessive nitrogen. The estuary exhibits all of the characteristics of eutrophication, including increasing nitrogen concentrations, low dissolved oxygen, macroalgae blooms, and disappearing eelgrass habitat. Impairments in the estuary, including the collapse of eelgrass, a key indicator of estuarine health and critical component of the ecosystem, are well documented. The estuary is burdened by nitrogen levels as high as three times the levels

[1] CLF Petition to the U.S. Environmental Protection Agency to Exercise Residual Designation Authority Over Stormwater Discharges Contributing to Violations of Water Quality Standards in the Great Bay Estuary Watershed, February 15, 2023 (attached as Exhibit 1); CLF Statement of Undisputed Facts in Support of RDA Petition, February 15, 2023 (attached as Exhibit 2).

acceptable for eelgrass health. Other environmental indicators reveal the declining health of the estuary. As a result of excess nitrogen, waters in the Great Bay estuary are impaired and violate state water quality standards. The New Hampshire Department of Environmental Services ("NHDES") has designated waters in the Great Bay estuary as impaired for nitrogen or eelgrass loss and placed those waters on New Hampshire's 303(d) List, explaining that eutrophication from excess nutrients causes violations of state water quality standards.

EPA has itself determined that nitrogen is causing or contributing to water quality impairments throughout the estuary and has recognized since at least 2020 that the estuary is on the verge of collapse. In 2026, new evidence emerged exposing the most severe ecological decline in the Great Bay estuary in decades.[2] A 2026 report from the Piscataqua Region Estuaries Partnership revealed that eelgrass coverage in the estuary fell by 80 percent, dropping from more than 1,000 acres in 2024 to just 211 acres in 2025. Within Great Bay itself, the loss was even more severe, reaching 98 percent eelgrass loss in that same period.

Most of the nitrogen in the Great Bay estuary comes from stormwater point sources and non-point sources. Over sixty percent of the nitrogen originates from sources other than wastewater treatment facilities. As described by NHDES, nitrogen reaches the estuary "from atmospheric deposition, chemical fertilizers, human waste through septic systems, and animal wastes. These sources are then routed through surface waters, stormwater, and groundwater to the estuary as a delivered load of nitrogen."[3] Discharges of nitrogen from stormwater point sources are causing and contributing to violations of water quality standards in the Great Bay estuary. To protect and restore the estuary and achieve acceptable nitrogen loads, nitrogen discharges from stormwater point sources must be reduced.

EPA's Failure to Exercise RDA to Implement Stormwater Permitting in the Great Bay Estuary Watershed. The subject of the action to be filed is EPA's failure to perform an act or duty that is not discretionary under Section 402(p)(2)(E), 33 U.S.C. § 1342(p)(2)(E). *See also* 40 C.F.R. §§ 122.26(a)(1)(v), (a)(9)(i)(C)–(D), (f). Once an RDA petition is submitted to EPA, a final decision on the petition must be made within 90 days of its receipt. 40 C.F.R. § 122.26(f)(5). On or about February 15, 2023, CLF petitioned EPA, requesting that it exercise its statutory residual designation authority ("RDA") to regulate certain stormwater discharges to the Great Bay estuary, on the ground that they are contributing to violations of applicable water quality standards (the "Petition"). Copies of the Petition and the accompanying Statement of Undisputed Facts are attached as Exhibits 1 and 2, and all of their contents are incorporated by reference in this notice. In response to CLF's Petition, EPA produced a detailed parcel analysis of the Great

[2] Eelgrass Distribution in the Great Bay Estuary and Piscataqua River for 2025: Final Project Report, Piscataqua Region Estuaries Partnership, 2026, available at https://scholars.unh.edu/prep/502/.

[3] New Hampshire Department of Environmental Services, Great Bay Nitrogen Non-Point Source Study, 2014, at 1, available at https://scholars.unh.edu/prep/381/.

Bay estuary watershed.[4] EPA's parcel analysis makes many significant determinations and provides a roadmap for permitting under RDA. Among other things, the analysis finds:

- "The Great Bay Watershed is experiencing rapid land development which is increasing pollutant loads to the nationally significant Great Bay estuary and further degrading water quality from nutrient enrichment. Land development in the Great Bay Watershed, which consists of 42 municipalities in New Hampshire and 10 in Maine, is primarily characterized by the conversion of forested or undeveloped land to impervious cover. Between 2010 and 2015, the watershed's population increased by 6% and 1,257 acres were converted to impervious cover. This kind of land conversion is increasing pollutant loads to the Great Bay estuary, with an additional estimated 2,350 pounds of total phosphorus (TP) and 18,226 pounds of total nitrogen (TN) per year entering the estuary from new development (USEPA, 2023). This nutrient enrichment leads to eutrophication which is characterized by degradation of water quality through toxic algal blooms, declining eelgrass biomass, increased turbidity, and low dissolved oxygen."[5]

- Although many Great Bay communities are committed to reducing nutrient loads and some nitrogen is addressed through existing MS4 permits and the Great Bay Total Nitrogen General Permit, these efforts are not enough to achieve water quality targets. "[A]dditional effort is necessary to address the increasing load from development in order to achieve water quality targets and improve the health of the Great Bay estuary."[6]

- "To respond to [CLF's] RDA petition, EPA R1 needs to conduct a parcel analysis to quantify the nutrient load from private parcels within the watershed."[7]

- The parcel analysis "examin[es] the potential water quality impacts at the property level, assisting EPA R1 in responding to the RDA petition to designate certain private property in the watershed as needing permit coverage . . . ."[8]

- "This report presents a methodology to develop and analyze parcel-level stormwater TN and TP loading within the Great Bay Watershed that may be used by EPA R1 to support decision making regarding the RDA petition. Key

[4] Great Bay Watershed Parcel Analysis, U.S. EPA Region 1, September 27, 2024, available at https://www.epa.gov/system/files/documents/2024-11/final-2024-09-27-great-bay-task-3b-4-parcel-analysis.pdf.
[5] Great Bay Watershed Parcel Analysis, at 5.
[6] *Id.*
[7] *Id.*
[8] *Id.*

> information presented in this report includes an analysis of CII [commercial, industrial, and institutional] parcels, their characteristics such as the amount of impervious cover (IC), and their estimated stormwater nutrient loads."[9]

Following receipt of CLF's Petition, and despite its conclusions that nitrogen is causing or contributing to water quality impairments throughout the estuary, and subsequent comprehensive parcel analysis, EPA made no final determination on the Petition within the statutorily mandated, nondiscretionary 90-day period, failed to grant CLF's Petition, and failed to implement NPDES permitting for the contributing discharges in the Great Bay estuary as described in CLF's Petition, all in violation of its obligations. 33 U.S.C. § 1342(p)(2)(E); 40 C.F.R. §§ 122.26(a)(1)(v), (a)(9)(i)(C)–(D), (f).

The Legal Framework

The Clean Water Act. The purpose of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Among EPA's many duties thereunder is to pursue attainment of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water . . . ." 33 U.S.C. §§ 1251(a)(1), (2).

The CWA Prohibits Stormwater Discharges that Contribute to a Violation of State Water Quality Standards or that Significantly Contribute Pollutants Without a Permit. Under the National Pollutant Discharge Elimination System ("NPDES"), the CWA prohibits the discharge of pollutants from a point source without a permit. 33 U.S.C. § 1311(a). Although the Act exempts certain stormwater discharges from this prohibition, *id*. § 1342(p)(1), that exemption does not cover "[a] discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." 33 U.S.C. § 1342(p)(2)(E); *see also* 40 C.F.R. §§ 122.26(a)(1)(v), (a)(9)(i)(D) ("residual designation authority"). Where, as here, such a determination is made, then the CWA mandates that such stormwater discharges obtain a NPDES permit.

New Hampshire's Water Quality Standards and Determinations as to the Great Bay Estuary. As required by the CWA, 33 U.S.C. § 1313; 40 C.F.R. § 131.10, New Hampshire law establishes water quality standards for surface waters. *See* Surface Water Quality Standards, Env-Wq 1700 et seq. Their purpose is to "protect public health and welfare, enhance the quality of water and serve the purpose of the [CWA]." Env-Wq 1701.01 (internal citations omitted). New Hampshire has classified the waters of the Great Bay as Class B surface waters, which must maintain a quality acceptable for fishing, swimming, and other recreational uses. RSA 485-A:8, I, II; *see also* Env-Wq 1703.01(a), (b), (c) (requiring such surface waters to provide, wherever attainable,

[9] *Id.*

for the protection and propagation of fish, shellfish, and wildlife, for recreation in and on the surface waters.).

All waters in the Great Bay estuary are classified as Class B waters. As such, they must meet the numeric water quality criterion for dissolved oxygen and satisfy the following narrative water quality criteria:

- "All surface waters shall support and maintain a balanced, integrated, and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region." Env-Wq 1703.19(a).
- "Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring. Existing discharges containing phosphorus or nitrogen, or both, which encourage cultural eutrophication shall be treated to remove the nutrient(s) to ensure attainment and maintenance of water quality standards." Env-Wq 1703.14(b) & (c).

New Hampshire's Surface Water Quality Standards define "cultural eutrophication" as "the human-induced addition of wastes that contain nutrients to surface waters, resulting in excessive plant growth or a decrease in dissolved oxygen, or both." Env-Wq 1702.14.

Pursuant to the CWA, NHDES evaluates the quality of New Hampshire's surface waters biannually and produces New Hampshire's 303(d) List of impaired waters that do not meet water quality standards. *See* 33 U.S.C. § 1313(d). NHDES has designated waters in the Great Bay estuary as impaired for nitrogen or eelgrass loss and placed those waters on New Hampshire's 303(d) List of impaired waters.

EPA's Failure to Exercise its Non-Discretionary Duty. In light of the circumstances set out above, following receipt of the Petition, EPA was obliged under 40 C.F.R. § 122.26(f)(5) to exercise its duty to rule on the Petition within 90 days. In light of its own findings, and those of NHDES, it was obliged to grant that Petition and implement a permitting regime as set out in the Petition. EPA's failure to do so is actionable under 33 U.S.C. § 1365(a)(2) and the APA.

EPA Must Exercise RDA and Engage in NPDES Permitting for the Stormwater Discharges in the Great Bay Estuary Watershed Identified in CLF's Petition.

Stormwater pollution identified in CLF's Petition contributes to ongoing violations of water quality standards in the Great Bay estuary and requires immediate attention. The Great Bay estuary is suffering from eutrophication caused by excessive nitrogen, which is well documented and recognized by both EPA and NHDES.

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As a result of excess nitrogen, waters in the Great Bay estuary are impaired and violate state water quality standards. NHDES has designated waters in the Great Bay estuary as impaired for nitrogen and eelgrass loss and placed those waters on New Hampshire's 303(d) List.

Following CLF's Petition, EPA's own investigation showed that there was no question that a permitting regime is necessary under the CWA for certain stormwater discharges into the Great Bay estuary.

EPA must grant CLF's Petition, exercise RDA, and implement a NPDES permitting regime for contributing stormwater discharges from certain commercial, industrial, and institutional properties into the Great Bay estuary as set forth in CLF's Petition.

Relief Requested

CLF intends to seek all available equitable and other relief under the cited statutes and regulations. *Inter alia*, and without limitation of its remedies, it will seek a declaration that EPA violated its duties under the CWA and the APA by failing to grant the Petition within 90 days, and a mandatory injunction requiring EPA to promptly (i) make a final determination on the Petition, (ii) grant the Petition, and (iii) impose an NPDES permitting regime on categories of discharges set out in the Petition.

This letter is provided pursuant to Section 505(b) of the CWA, 33 U.S.C. § 1365(b), and 40 C.F.R. §§ 135.1–.3. It constitutes notice of the violations explicitly described above and in the Petition, attached, and of all other related violations that further investigation uncovers.

CLF would welcome the opportunity to discuss this matter with you. If you are interested in discussing the matter, or if you believe any of the above information is incorrect, if you take steps to permanently correct the CWA violations, if you believe you are currently in compliance with the CWA, or if you have any questions concerning this notice, please contact me as soon as possible at (603) 573-9140 or at the address listed below.

Sincerely,



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Encl: CLF Petition to U.S. EPA and Statement of Undisputed Facts, February 15, 2023

cc:

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