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# PFAS/Clean Water Act: U.S. EPA Environmental Appeals Board Addresses Conservation Law Foundation Petition for Review of Manchester, New Hampshire NPDES Permit

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The United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) addressed in an August 12th decision a Petition for Review by the Conservation Law Foundation (“CLF”) of Region 1’s renewal of a Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) Permit for the City of Manchester, New Hampshire.

The NPDES Permit renewal authorizes discharge from a wastewater treatment facility to the Merrimack River.

The City of Manchester, New Hampshire operates the referenced wastewater treatment facility which collects and treats domestic, commercial, and industrial wastewater from the City and three surrounding towns.

CLF submitted comments on the draft permit raising a number of issues. The NPDES permit was subsequently revised and CLF again submitted comments. Additional CLF comments were submitted addressing the State of New Hampshire’s draft water quality certification.

EPA Region 1 issued the final permit on November 3, 2025.

CLF subsequently filed a Petition for Review before the EAB raising three issues:

1. Whether changing the language of the permit’s benthic survey requirement without reopening the comment period was clear error or an abuse of discretion;
2. Whether the EPA’s failure to conduct an environmental justice analysis when making the permitting decision was clear error or otherwise warrants review; and
3. Whether the EPA’s failure to conduct an analysis to determine whether PFAS are or may be discharged at a level that will cause, have a reasonable potential to cause, or contribute to an excursion of narrative water quality standards is clear error or otherwise warrants review.

EAB denied the Petition for Review on issues 1 and 2. However, as to issue 3 addressing PFAS, the EAB remanded to EPA.

EAB concluded that the record did not reflect EPA's considered judgment in evaluating whether effluent limits for PFAS are necessary to achieve compliance with New Hampshire's narrative water quality standards.

The Clean Water Act requires that NPDES permits include limitations on pollutants that:

... are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. See 40 C.F.R. § 122.44(d)(1)(i).

EAB stated that under the relevant Clean Water Act regulations and its precedent that the absence of an approved pollutant-specific numeric criteria is not an impediment to conducting a reasonable potential analysis. It disagreed with EPA's response to CLF comments in which it stated that the agency could not conduct a reasonable potential analysis in the absence of approved numeric criteria for PFAS.

EPA is noted to have concurred with New Hampshire's reasonable potential analysis and EAB deemed it to have been undertaken without a reasoned explanation of how the NPDES permit achieves compliance with applicable water quality narrative criteria or designated uses. Further, EPA's inclusion of the whole effluent toxicity ("WET") limits in the permit was held to not alleviate the failure to conduct a reasonable potential analysis.

EAB's rationale was that the WET limits were included to satisfy a different portion of the regulations, and the record did not explain how the WET limits achieve the narrative criteria or designated uses.

EAB remands the permitting decision to EPA to:

- Correct erroneous statements in the response to comments document.
- Evaluate whether PFAS "are or may be discharged a level which will cause, have the reasonable potential to cause, or contribute to an excursion" of New Hampshire's narrative water quality standards, including the narrative criteria and designated use.

A copy of the decision can be found [here](#).