



Notice of Lodging of Proposed Consent Decree under the Clean Water Act

On December 29, 2023, the United States lodged a proposed modified consent decree with the United States District Court for the District of New Hampshire for public notice and comment, in a lawsuit entitled *United States v. State of New Hampshire and New Hampshire Fish and Game Department*, Civil Action No. 1:18-cv-00996-PB.

The United States filed a complaint in this action under sections 301(a), 309(b), and 504 of the Clean Water Act (“CWA”), 33 U.S.C. 1311(a), 1319(b), 1364, against the State of New Hampshire and the New Hampshire Fish and Game Department (“NHF&G”), in connection with discharges of pollutants from the Powder Mill State Fish Hatchery, in New Durham, New Hampshire (the “Hatchery”). The Hatchery is owned by the State and operated by NHF&G. The Complaint asserts two claims for injunctive relief. The first claim alleges that the State and NHF&G violated a National Pollutant Discharge Elimination System permit (Permit No. NH0000710; the “Permit”), issued by EPA under section 402 of the CWA, 33 U.S.C. 1342, by exceeding its narrative and numeric discharge limits for total phosphorus and pH, in violation of CWA section 309(b), 33 U.S.C. 1319(b). The second claim alleges that such discharges have caused or contributed to contamination, eutrophication, and the growth of toxic cyanobacteria in the Merrymeeting River and its impoundments, known as Marsh, Jones, and Downing Ponds, which poses an imminent and substantial endangerment to human health and welfare, in violation of CWA section 504, 33 U.S.C. 1364. The United States filed its complaint as Plaintiff-Intervenor in an action initiated by CLF against Defendants NHF&G, the Executive Director of NHF&G, and Commissioners of the New Hampshire Fish and Game Commission. CLF’s complaint asserts claims similar to those of the United States, under the citizen-suit provision of the CWA, 33 U.S.C. 1365(a).

The original consent decree resolved the claims in CLF’s and the United States’ complaints. The modified Decree retains most of the original decree’s provisions, including the

requirement that NHF&G achieve compliance with the CWA and its Permit by the end of 2025, but allows NHF&G to do so through means other than those required by the original decree, based on a study showing that such other means could be more technically feasible and cost effective. All parties to the original decree have signed the modified Decree.

Publication of this notice opens a period for public comment on the proposed modified Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. State of New Hampshire and New Hampshire Fish and Game Department*, D.J. Ref. No. 90-5-1-1-12466. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. Paper copies of the consent decree are available upon written request and payment of reproduction costs. Such requests and payments should be addressed to:

Consent Decree Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

With each such request, please enclose a check or money order for \$12.50 (25 cents per page reproduction cost) per paper copy, payable to the United States Treasury.

Henry S. Friedman,
*Assistant Section Chief,
Environmental Enforcement Section,
Environment and Natural Resources Division.*

