



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
1 Congress Street, Suite 1100  
BOSTON, MA 02114-2023

## ***FACSIMILE TRANSMISSION***

### **RESTRICTED INFORMATION**

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**Date: October 16, 2007**

**To: Eurika Durr, Clerk of the Board, EPA Environmental Appeals Board**

**Fax: 202-233-0121**

**Ph: 202-233-0122**

**To: Thomas Irwin, Esq., CLF**

**Fax: 603-225-3059**

**Ph: 603-225-3060**

**To: E. Tupper Kinder, Nelson, Kinder, Mosseau & Saturley**

**Fax: 603-647-1900**

**Ph: 603-647-1800**

**From: Ann Williams, Office of Regional Counsel**

**Fax: 617-918-1029**

**Ph: 617-918-1097**

**Number of pages including cover:**

**Message:** Enclosed please find the Status Report and Motion to Extend the Stay of Proceedings in the matter of City of Portsmouth Peirce Island Wastewater Treatment Facility and Combined Sewer Overflows, NPDES Appeal Number 07-13, with accompanying Certificate of Service and Transmittal Letter.

ENVIR. APPEALS BOARD

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CIVIL APPEALS BOARD

October 16, 2007

Eurika Durr, Clerk of the Board  
Environmental Appeals Board 1103B  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

Re: City of Portsmouth Peirce Island Wastewater Treatment Facility  
and Combined Sewer Overflows  
NPDES Appeal Number 07-13

Dear Ms. Durr:

Enclosed please find one original and five copies of the Status Report and Motion to Extend the Stay of Proceedings in the above referenced NPDES permit appeal.

Thank you for your attention to this matter.

Sincerely,

Ann H. Williams  
Senior Assistant Regional Counsel

Enclosures

cc: Thomas F. Irwin, Esq.  
E. Tupper Kinder, Esq.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C.**

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ENVIR. APPEALS BOARD

\_\_\_\_\_ )  
 In the Matter of: )  
 )  
 City of Portsmouth, New Hampshire )  
 Peirce Island Wastewater Treatment Facility )  
 and Combined Sewer Overflows )  
 )  
 NPDES Permit No. NH0100234 )  
 \_\_\_\_\_ )

NPDES Appeal No. 07-13

**STATUS REPORT AND MOTION TO EXTEND THE STAY OF PROCEEDINGS**

Region 1 of the Environmental Protection Agency ("EPA" or the "Region"), Respondent, respectfully submits to the Environmental Appeals Board ("Board") this status report and motion to extend the stay of proceedings related to the petition for review filed by the Conservation Law Foundation ("CLF") in the above-referenced appeal. The basis for this motion is to allow the parties an additional forty-five (45) days to continue their settlement discussions to resolve the issues raised on appeal, as discussed below. Counsel for CLF and the City of Portsmouth ("City") have assented to this motion.

On April 10, 2007, the Region reissued a National Pollutant Discharge Elimination System ("NPDES") Permit, No. NH0100234 (the "Permit"), to the City authorizing wastewater discharges into the Piscataqua River and combined sewer overflow discharges into South Mill Pond and the Piscataqua River. CLF filed its petition for review with the Board on May 3, 2007,

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and the City filed a letter with the Board stating its desire to participate in the proceedings as a party on June 20, 2007.

The Board issued an order on June 27, 2007 which granted the City's request to intervene as a party, and also granted the Region's motion to stay the proceedings until August 31, 2007 to enable the parties to explore settlement of the issues on appeal. On September 5, 2007, the Board granted a second stay of the proceedings until October 16, 2007, based on the parties' progress in negotiations described in the status report that the Region filed on August 31, 2007. The second order directed the parties to provide to the Board, on or before October 16, 2007, a report describing the status of settlement negotiations and suggesting a future course of action.

The parties have continued to have productive negotiations. On September 14, 2007, the City provided its proposal to address interim pollution control measures, and the parties have made significant progress in developing a final plan related to interim measures that could be employed before the new secondary treatment plant is completed. The parties have also made good progress in identifying an approach for developing future nitrogen limits.

The Region, with the assent of counsel for CLF and the City, requests an extension of the stay of proceedings for an additional forty-five (45) days, until Friday, November 30, 2007, to provide time for the parties to continue the discussions aimed at reaching final resolution of the issues on appeal. On or as soon as possible before that date, the parties will submit a status report to advise the Board whether it is appropriate to continue the stay, dismiss the petitions, or

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establish a schedule for EPA's and the City's responses to the petition.

Respectfully submitted,

United States EPA/Region I

*Ann H. Williams*

Ann H. Williams  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 1 (RAA)  
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Phone: (617) 918-1097

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Dated: October 16 2007

In re: City of Portsmouth Peirce Island Wastewater Treatment Facility  
and Combined Sewer Overflows  
NPDES Appeal Number 07-13

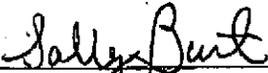
### CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Status Report and Motion to Extend the Stay of Proceedings in the above-captioned matter by facsimile and by mailing one original and five copies by First Class Mail on this \_\_\_ day of October, 2007 to the Environmental Appeals Board (MC 1103B), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-0001; and that a true copy of the foregoing was sent by facsimile and by First Class Mail, postage prepaid, to:

Thomas F. Irwin, Esq.  
Conservation Law Foundation  
27 North Main Street  
Concord, NH 03301

E. Tupper Kinder, Esq.  
Nelson, Kinder, Mosseau & Saturley, P.C.  
99 Middle Street  
Manchester, NH 03101

Date: October 16, 2007

  
\_\_\_\_\_  
Sally Burt  
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