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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

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ENVIR. APPEALS BOARD

**VIA FIRST CLASS MAIL**

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

Re: NPDES Appeal No. 05-17  
NPDES Permit No. MA0000272  
Boston & Maine Corporation  
East Deerfield, Massachusetts

Date: June 5, 2006

Dear Ms. Durr,

Enclosed please find the original and five copies of a Status Report and Motion to Extend Stay of Proceedings in the above-captioned case, as well as a certificate of service. The Status Report and Motion and the certificate of service were sent to you via facsimile earlier today.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fein".

Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114  
617-918-1040  
Fax: 617-918-0040

cc: Jamison E. Colburn, Western New England College School of Law  
John Curtin, Boston & Maine Corporation

In re: Boston & Maine Corporation (East Deerfield, Massachusetts)  
NPDES Appeal No. 05-17

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Status Report and Motion to Extend Stay of Proceedings were sent by both facsimile and first class mail on this 5th day of June 2006 to the following persons:

Copy by facsimile  
Original and five copies by first class mail

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

Fax (202) 233-0121

Copy by facsimile  
Copy by first class mail

Jamison E. Colburn  
Associate Professor of Law  
Western New England College School of Law  
1215 Wilbraham Road  
Springfield, MA 01119

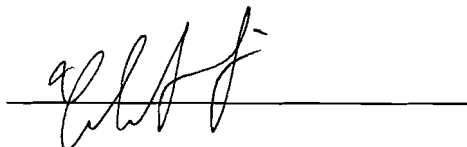
Fax (413) 796-2067

Copy by facsimile  
Copy by first class mail

John P. Curtin  
Boston & Maine Corporation  
Iron Horse Park  
North Billerica, MA 01862

Fax (978) 663-1213

Dated: June 5, 2006



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

NOV -6 PM 2:19  
ENVIR. APPEALS BOARD

\_\_\_\_\_  
In re: \_\_\_\_\_ )  
Boston & Maine Corporation )  
East Deerfield, Massachusetts )  
\_\_\_\_\_) )

NPDES Appeal No. 05-17

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

The New England Region of the Environmental Protection Agency (“Region”), after consultation with the Connecticut River Watershed Council, Inc., and Jamison E. Colburn (“Petitioners”), hereby submits this status report and moves to extend the stay of proceedings by an additional forty-five days.

**BACKGROUND .**

On September 23, 2005, EPA reissued a National Pollutant Discharge Elimination System Permit, No. MA0000272 (“Permit”), to the Boston & Maine Corporation (“Permittee”). On October 27, 2005, Connecticut River Watershed Council, Inc., and Jamison E. Colburn (“Petitioners”) filed a petition for review with the Environmental Appeals Board (“Board”) contesting various aspects of the Permit and the process leading to its issuance. On November 2, 2005, the Board directed the Region to submit a response by December 20, 2005. On December 2, 2005, the Region requested a forty-five day extension of time in light of the fact that the parties had entered into settlement negotiations and anticipated resolving the issues raised by the petition through a permit modification. On December 7, 2005, the Board granted the Region’s request and extended the deadline for the Region’s response to February 3, 2006.

On January 18, 2006, the Region moved for an additional 90-day stay of proceedings. On January 23, 2006, the Board issued an order staying the proceedings in this matter until May 3, 2006. On March 17, 2006, the Region moved for an additional 60-day stay of proceedings to enable the Region to finish consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service ("Services"), and issue a permit modification that would resolve the issues raised by the Petition. On March 29, 2006, the Board issued an order staying the proceedings in this matter until July 3, 2006, and directing the parties to submit a status report on June 5, 2006 to advise the Board whether it is appropriate to continue the stay, dismiss the Petition, or to schedule EPA's response to the Petition.

### **STATUS REPORT**

The Region has made substantial progress towards the preparation of a draft permit modification and consultation with the Services. Unfortunately, the Region was not able to issue the draft permit modification as soon as planned, and will not be able to complete the process of public notice, revision, and final permit issuance by July 3, 2006. The Region plans to submit the draft permit modification for public notice by June 16, 2006. The Region plans to conclude consultations with the Services, receive public comments, and issue the final permit by the end of July 2006.

### **GROUND FOR CONTINUANCE OF STAY**

In light of the above progress, and in the interests of judicial economy and to conserve resources, the Region respectfully requests that these proceedings be stayed for an additional forty-five days beyond July 3, 2006 so that the Region may (1) complete consultation with the Services under Section 7(a)(2) of the Endangered Species Act, and (2) receive public comments on the draft permit modification, make any required changes, and issue a final permit

modification. Absent a continuance of the stay, the parties will be required to divert their time and effort from an ongoing permit modification process to litigation before the Board.

**REQUESTED RELIEF**

Accordingly, the Region requests that the Board extend the stay of proceedings by forty-five days, until August 17, 2006, to allow the Region to resolve the issues raised in the petition through a final permit modification. The Region proposes to submit a status report on August 3, 2006, and, absent unforeseen circumstances, does not anticipate that any further extensions of the stay will be required. The Region represents that its undersigned counsel has discussed this motion with Petitioners' counsel, and that Petitioners concur in this status report and assent to the motion to extend the stay of proceedings.

Respectfully submitted,



Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114  
617-918-1040  
Fax: 617-918-0040

Date: June 5, 2006