



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1 – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC FILING

February 3, 2021

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

RE: In re NPDES Permit No. NH0001465; NPDES Appeal Nos. 20-05 and 20-06

Dear Ms. Durr:

Please find the attached EPA Region 1 Motion for Continuance of the Date for Oral Argument and Abeyance in NPDES Appeal Nos. 20-05 and 20-06 and accompanying Certificate of Service, in connection with NPDES Appeal Nos. 20-05 and 20-06.

Thank you for your assistance with this matter.

Sincerely,

/s/ Mark A. Stein
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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
Granite Shore Power Merrimack LLC)	NPDES Appeal Nos. 20-05 and 20-06
)	
NPDES Permit No. NH0001465)	
)	

**EPA REGION 1 MOTION FOR CONTINUANCE OF THE DATE FOR ORAL
ARGUMENT AND ABEYANCE**

Respectfully submitted,

Mark A. Stein /s/
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U.S. Environmental Protection Agency
Washington, D.C. 20004

Dated: February 3, 2021

INTRODUCTION

By order dated December 22, 2020, the United States Environmental Protection Agency's ("EPA" or "the Agency") Environmental Appeals Board ("the Board") scheduled oral argument in the two above-referenced National Pollutant Discharge Elimination System ("NPDES") permit appeals to occur consecutively on February 16, 2021. *See* Corrected Order Scheduling Oral Argument and Directing Parties to File Notice of Participation (NPDES Appeal Nos. 20-05 & 20-06), p. 2 (Dec. 22, 2020). Respondent Region 1 of EPA now moves in accordance with 40 C.F.R. § 124.19(f) for continuance of the date for oral argument in these cases and for a 60-day abeyance from that date, for the reasons set forth below.

GROUNDS FOR MOTION

On January 20, 2021, a new Administration took office. Therefore, Region 1 in coordination with EPA Headquarters respectfully requests continuance of the oral argument currently scheduled for February 16, 2021, and a 60-day abeyance from the date for oral argument, so that new Agency leadership can be briefed on the cases and the underlying action to determine the Agency's position going forward in this matter. By the conclusion of the 60-day period, Region 1 in coordination with EPA Headquarters will make a recommendation to the Board as to further proceedings.

The Region further notes that on January 20, 2021, the President issued Executive Order No. 13990, "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis."¹ 86 Fed. Reg. 7037 (Jan. 25, 2021). The Executive Order,

¹ Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/> (January 20, 2021).

at Section 1, states that it is the policy of the new Administration “to improve public health and protect our environment, and ensure access to clean air and water,” among other specific policies. The Executive Order contains a number of directives to federal agencies to further this policy by, among other things, examining whether past Agency actions are consistent with its goals. The requested abeyance will provide an opportunity for the Agency to act in this case in a manner consistent with policies expressed in this Executive Order. In addition, this brief abeyance will also conserve the Board’s judicial resources by avoiding holding oral argument prior to the new Administration having had the opportunity to determine its position in this proceeding.

In accordance with 40 C.F.R. § 124.19(f)(2), the undersigned counsel for movant Region 1, Mark Stein, contacted counsel for Sierra Club and CLF, and counsel for GSP Merrimack LLC (“GSP”), to ask if they would assent to this Motion.² Sierra Club and CLF assented to this Motion, while GSP indicated that “[t]he Permittee takes no position on the motion at this time and reserves the right to file a response in accordance with the Board’s rules after the motion is filed.”

² Region 1 notes that although EPA amended certain aspects of 40 C.F.R. § 124.19 in August 2020, 85 Fed. Reg. 51650, 51657 (Aug. 21, 2020), the instant permit appeals were filed prior to those amendments and are not governed by them. 85 Fed. Reg. at 51654 (“The final rule does not apply to any appeal that was filed before the effective date of this rule.”) That said, the recent amendments made no changes to 40 C.F.R. § 124.19(f)(2).

STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS

I hereby certify that EPA Region 1's EPA Region 1 Motion for Continuance of the Date for Oral Argument and Abeyance in NPDES Appeal Nos. 20-05 and 20-06, contains fewer than 15 pages in accordance with 40 C.F.R. § 124.19(f)(5).

Dated: February 3, 2021

Respectfully submitted,

Mark A. Stein /s/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing EPA Region 1 Motion for Continuance of the Date for Oral Argument and Abeyance in NPDES Appeal Nos. 20-05 and 20-06, was served on the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
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U.S. EPA East Building, Room 3334
Washington, DC 20004

By Electronic Mail, by authorization of the Board:

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Dated: February 3, 2021

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