EXHIBIT S

## ENVIRONMENTAL APPEALS BOARD UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C.

In re:	City of Portsmouth, New Hampshire )	) )
	Peirce Island Wastewater Treatment Facility) and Combined Sewer Overflows	) NPDES Appeal No
	NPDES Permit No. NH0100234	) ) )

## **AFFIDAVIT OF THOMAS F. IRWIN**

- I, Thomas F. Irwin, having been duly sworn, do, upon my oath, state:
- 1. I am an attorney for the Conservation Law Foundation.
- 2. On May 3, 2007, I conducted a review of files at the New Hampshire Department of Environmental Services (NHDES) relative to the issuance of a new NPDES permit for the City of Portsmouth's Peirce Island Wastewater Treatment Facility (WWTF). The files were assembled and provided by Mr. Dan Dudley of the NHDES Wastewater Engineering Bureau, in response to an oral request to review files pertaining to recent permitting decisions for the WWTF. The files provided for my review included, *inter alia*, materials associated with the Environmental Protection Agency, Region 1's ("Region 1") tentative decision to grant a Section 301(h) waiver for the WWTF, Region 1's subsequent tentative decision to deny a Section 301(h) waiver for the WWTF, and associated draft and final NPDES permit documents. Such materials included analyses associated with the above tentative decisions and draft NPDES permits, and NHDES' letter granting Section 401 water quality certification for the WWTF.

3. The files provided for my review contained no evidence that NHDES, in its Section 401 water quality certificate review, or in other evaluations with respect to the issuance of the NPDES permit for the WWTF, assessed whether the WWTF would violate state water quality standard Env-Ws 1703.19 (pertaining to biological and aquatic community integrity) or the antidegradation provisions codified at Env-Ws Part 1708.

Affiant saith further naught.

State of New Hampshire Merrimack County, ss.

Thomas F. Irwin

Sworn to and subscribed before me this 10th

\_ day of May, 2007.

Justice of the Peace/Notary Public

My Commission Expires: 3/24/09