



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 Region 1  
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 BOSTON, MA 02114-2023

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## ***FACSIMILE TRANSMISSION***

### **RESTRICTED INFORMATION**

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**From: Ann Williams, Office of Regional Counsel**  
**Fax: 617-918-1029**  
**Ph: 617-918-1097**

**Date: August 31, 2007**

**Number of pages including cover:**

**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**

**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.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023**

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ENVIR. APPEALS BOARD

August 31, 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*

Ann H. Williams  
Senior Assistant Regional Counsel

Enclosures

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

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

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ENVIR. APPEALS BOARD

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

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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-six (46) days to continue their settlement discussions to narrow or 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 and combined sewer overflow discharges into the Piscataqua River. In issuing the Permit, the Region denied the City's application for a renewed waiver of secondary treatment requirements under § 301(h) of the Clean Water Act ("CWA"), 33 U.S.C. §1311(h), and established effluent limitations on discharges from the treatment facility based on secondary treatment.

*Page 2 of 3*

CLF filed a petition for review with the Board on May 3, 2007, which contests the Permit's failure to impose permit conditions on total nitrogen and asserts that the Permit amounts to an "unlawful constructive 301(h) waiver" based on CLF's belief that EPA does not intend to require the City to implement secondary treatment within the term of the permit. The Board directed the Region to submit its response to the petition by July 2, 2007.

On June 18, 2007, the Region filed, with CLF's assent, a motion to stay the proceedings until August 31, 2007 to enable the parties to engage in settlement discussions. On June 20, 2007, the City filed a letter with the Board stating its desire to participate in the proceedings as a party. The Board issued an order on June 27, 2007 which granted the Region's motion to stay the proceedings until August 31, 2007 and granted the City's request to intervene as a party. The order directed the parties to provide to the Board, on or before that date, a report describing the status of settlement negotiations and suggesting a future course of action.

The parties have met three times to discuss the issues raised in the appeal and have made meaningful progress towards resolving the issues. Following the most recent meeting on August 28, 2007, the City agreed to provide to CLF, by September 14, 2007, a proposal to address how it would incorporate into its wastewater master planning process an analysis of interim pollution control measures that could be employed before the new secondary treatment plant is completed.

The Region, with the assent of counsel for CLF and the City, requests an extension of the stay of proceedings for forty-six (46) days, until Tuesday, October 16, 2007, to provide time for full evaluation of the City's proposal and for further discussions aimed at reaching final resolution of the issues on appeal. On or as soon as possible before that date, the parties will

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submit a status report to advise the Board whether it is appropriate to continue the stay, dismiss the petitions, or establish a schedule for EPA's and the City's responses to the petition.

Respectfully submitted,

United States EPA/Region I



Ann H. Williams

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency, Region I (RAA)

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Boston, MA 02114-2023

Phone: (617) 918-1097

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Dated: August 31, 2007

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

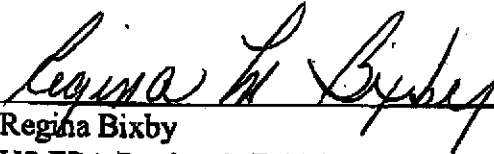
### CERTIFICATE OF SERVICE

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 31<sup>st</sup> day of August, 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: August 31, 2007

  
Regina Bixby  
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