



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

**VIA ELECTRONIC FILING**

April 14, 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 Further Abeyance,” 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  
Mark A. Stein  
US EPA – Region 1  
Office of Regional Counsel  
5 Post Office Square  
Mail Code: ORC 04-6  
Boston, MA 02109-3912  
Tel: (617) 918-1077  
Fax: (617) 918-0077  
Email: [stein.mark@epa.gov](mailto:stein.mark@epa.gov)

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

_____ )	
In the Matter of: )	
Granite Shore Power Merrimack LLC )	
NPDES Permit No. NH0001465 )	NPDES Appeal Nos. 20-05 & 20-06
_____ )	

**EPA REGION 1 MOTION FOR FURTHER ABEYANCE**

The Environmental Appeals Board’s Order dated February 9, 2021 (“Order”), granted EPA Region 1’s (“Region 1” or “the Region”) Motion for Continuance of the Date for Oral Argument and Abeyance. In the Order, the Board explained that a continuance and abeyance to allow time to brief new EPA leadership is both consistent with EPA procedures and “reasonable so that the Region and EPA Headquarters can provide the Board a coordinated legal position for these appeals.” Order at 2. The Board also noted that the Region appropriately cited to Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 25, 2021), which “reflects that the new Administration plans to undertake a broad review of the prior Administration’s environmental actions and ‘consider suspending, revising, or rescinding’ those actions.” *Id.*

On these bases, the Board granted Region 1’s motion and ordered that on or before April 19, 2021, the Region submit to the Board either 1) a motion to remove the

litigation from abeyance and re-calendar the oral argument; 2) a motion requesting a voluntary remand; 3) a motion requesting further abeyance, including the basis for the request and the length of the abeyance being sought; or 4) a motion seeking other appropriate relief or next steps. Order at 3.

Pursuant to the Board's Order, Region 1, after consultation with the Office of General Counsel and the Office of Water, files this motion to request that the Board extend the current abeyance by an additional sixty (60) days (i.e., until Friday, June 18, 2021). At or before the end of that period, Region 1 would file a motion regarding next steps. The Region requests that the same four options identified in the Board's Order of February 9 also be available to EPA in the motion due by June 18. *See* Order at 3.

In support of this Motion, the Region reports that it has been diligently working with the Office of General Counsel and the Office of Water at EPA Headquarters to prepare briefings on this matter for senior leadership. As a result of the large number of matters on which the new Administration is being briefed, additional time is needed to allow for senior level briefings on this matter. The requested extension of the abeyance will ultimately allow EPA to file a motion in compliance with the Board's order that reflects the views of the new Administration. Given the above considerations, the Region respectfully submits that extending the abeyance until June 18, 2021, is appropriate.

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. Sierra Club and CLF assented to the 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."

For the foregoing reasons, the Region respectfully requests that this Motion for Further Abeyance be granted.

Respectfully submitted,

Mark A. Stein /s/

Mark A. Stein, Sr. Assistant Regional Counsel  
Cayleigh Eckhardt, Assistant Regional Counsel  
Michael Curley, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Boston, MA 02109  
Tel: (617) 918-1077 or (617) 918-1044  
Email: Stein.Mark@epa.gov  
Eckhardt.Cayleigh@epa.gov  
Curley.Michael@epa.gov

Of Counsel:

James Curtin, Attorney  
Pooja Parikh, Attorney  
Jessica Zomer, Attorney  
Richard T. Witt, Attorney  
Water Law Office, Office of General Counsel  
U.S. Environmental Protection Agency  
Washington, D.C. 20004

**Dated: April 14, 2021**

**STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS**

I hereby certify that this **EPA Region 1 Motion for Further 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: April 14, 2021

Respectfully submitted,

Mark A. Stein /s/

Mark A. Stein

Senior Assistant Regional Counsel

US Environmental Protection Agency

Office of Regional Counsel, Region I

5 Post Office Square - Suite 100

Boston, MA 02109-3912

Tel: (617) 918-1077

Fax: (617) 918-0077

E-mail: [stein.mark@epa.gov](mailto:stein.mark@epa.gov)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **EPA Region 1 Motion for Further Abeyance**, in connection with In re Granite Shore Power Merrimack LLC, NPDES Appeal Nos. 20-05 and 20-06, was sent to 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  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

**By Electronic Filing and Electronic Mail:**

Reed W. Super, Esq., Edan Rotenberg, Esq., and Julia Muench, Esq.  
Super Law Group, LLC  
180 Maiden Lane, Suite 603  
New York, NY 10038  
reed@superlawgroup.com  
edan@superlawgroup.com  
julia@superlawgroup.com

P. Stephen Gidiere III, Esq., Thomas G. DeLawrence, Esq., and Julia B. Barber, Esq.  
Balch & Bingham LLP  
1901 6th Avenue North, Suite 1500  
Birmingham, Alabama 35203  
sgidiere@balch.com  
tdelawrence@balch.com  
jbarber@balch.com

K. Allen Brooks  
Senior Assistant Attorney General  
New Hampshire Department of Justice  
33 Capitol Street Concord, NH 03301  
Allen.brooks@doj.nh.gov

Dated: April 14, 2021

Mark A. Stein /s/  
Mark A. Stein, Esq.  
US Environmental Protection Agency  
Office of Regional Counsel, Region I  
5 Post Office Square - Suite 100  
Boston, MA 02109-3912  
E-mail: [stein.mark@epa.gov](mailto:stein.mark@epa.gov)  
Tel.: (617) 918-1077