



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

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BOSTON, MASSACHUSETTS 02114-2023**

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ENVIR. APPEALS BOARD

June 28, 2007

VIA CERTIFIED MAIL

Eurika Durr, Clerk of the Board (MC 1103B)
Environmental Appeals Board
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-001

Thomas F. Irwin, Esq.
Conservation Law Foundation
27 North Main Street
Concord, NH 03301

John P. Bohenko, City Manager
City Hall
One Junkins Avenue
Portsmouth, NH 03801

**Re: Notice of Contested and Uncontested Conditions of NPDES Permit No. NH0100234
City of Portsmouth Peirce Island Wastewater Treatment Plant
NPDES Appeal No. 07-13**

Dear Ms. Durr, Mr. Irwin, and Mr. Bohenko:

On May 3, 2007, the Conservation Law Foundation ("CLF") filed a Petition for Review of NPDES permit No. NH0100234 ("Permit") with the Environmental Appeals Board ("Board") pursuant to 40 C.F.R. § 124.19(a). The Permit had been reissued to the City of Portsmouth, New Hampshire on April 10, 2007 by the New England Regional Office of the U.S. Environmental Protection Agency ("Region"). The Permit superseded the permit issued by the Region on January 18, 1985.

In its Petition, CLF contests the Region's failure to impose permit conditions on the wastewater discharge related to total nitrogen. CLF also objects to what it asserts is the Region's intent,

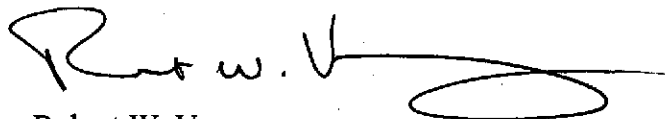
through an enforcement order and/or judicial consent decree, to establish a schedule to construct and implement secondary treatment which extends beyond the term of the permit.

Pursuant to 40 C.F.R. §§ 124.16(a)(2)(ii) and 124.60(b), contested permit conditions, and uncontested conditions that are not severable from contested conditions, are stayed upon the filing of a petition for review until final agency action under 40 C.F.R. § 124.19(f). In this case, I find that none of the conditions in the permit is contested. Rather, CLF is contesting the absence of a condition, in the case of total nitrogen, and is objecting to an enforcement strategy that in its view will give the City too much time to construct and implement secondary treatment.

All conditions of the Permit are uncontested and severable from the issues raised in CLF's petition for review. Therefore, none of the conditions are stayed, and all will become fully effective enforceable obligations of the Permit on August 1, 2007, pursuant to 40 C.F.R. § 124.16(a)(2)(i).

If you have any questions regarding this correspondence, please feel free to contact Ann Williams, the Region's legal counsel in this matter, at 617-918-1097, or Damien Houlihan, in the Region's Office of Ecosystem Protection, at 617-918-1586.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert W. Varney", with a large, stylized flourish at the end.

Robert W. Varney
Regional Administrator

cc: Harry Stewart, NH DES
Peter H. Rice, P.E., City Engineer
E. Tupper Kinder, Esq., Nelson, Kinder, Mosseau & Saturley, PC
Damien Houlihan, EPA
Ann Williams, Esq., EPA
Denny Dart, EPA