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ENVIR. APPEALS BOARD**FACSIMILE TRANSMISSION****RESTRICTED INFORMATION**

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From: Ann Williams, Office of Regional Counsel**Ph: 617-918-1097****Fax: 617-918-1029****Date: June 15, 2007****Number of pages including cover: 5****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**

Message: Enclosed please find the Motion to Stay the 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.



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BOSTON, MASSACHUSETTS 02114-2023**

ENVIR. APPEALS BOARD

June 15, 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 Motion to Stay the Proceedings in the above referenced NPDES permit appeal.

Thank you for your attention to this matter.

Sincerely,

Ann H. Williams
Senior Assistant Regional Counsel

Enclosures

cc: Thomas F. Irwin, 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

In the Matter of:)
)
)

City of Portsmouth, New Hampshire)
Peirce Island Wastewater Treatment Facility))
and Combined Sewer Overflows)
)

NPDES Appeal No. 07-13

NPDES Permit No. NH0100234)
_____)

MOTION TO STAY THE PROCEEDINGS

Region 1 of the Environmental Protection Agency ("EPA" or the "Region"), Respondent, respectfully submits to the Environmental Appeals Board ("Board") this motion to stay the 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 to engage in settlement discussions to narrow or resolve the issues raised on appeal, as discussed below. Counsel for CLF has 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.

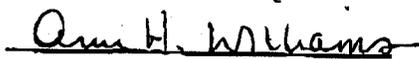
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CLF filed a petition for review with the Board on May 3, 2007, which contests the Permit's failure to impose permit conditions on total nitrogen and asserts that the Permit amounts to an "unlawful constructive 301(h) waiver" based on CLF's belief that 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.

The parties intend to enter into settlement negotiations in an effort to resolve some or all of the issues on appeal. Settlement of some or all of the issues will simplify or resolve the issues before the Board and thus conserve the Board's resources. Therefore, the Region, with the consent of counsel for CLF, requests a sixty (60) day stay of the proceedings before the Board in this case, until August 31, 2007. On or as soon as possible before that date, the parties will 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 response to the petition.

Respectfully submitted,

United States EPA/Region I



Ann H. Williams
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U.S. Environmental Protection Agency, Region 1 (RAA)
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Phone: (617) 918-1097

Fax: (617) 918-1029

Dated: June 15, 2005

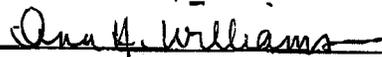
In re: City of Portsmouth Peirce Island Wastewater Treatment Facility
and Combined Sewer Overflows
NPDES Appeal Number 07-13

CERTIFICATE OF SERVICE

I hereby certify that I served the Motion to Stay the Proceedings in the above-captioned matter by facsimile and by mailing one original and five copies by First Class Mail on this 15th day of June, 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

Date: June 15, 2007


Ann H. Williams
Senior Assistant Regional Counsel
US EPA Region 1 (RAA)
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