

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

In re:)

Granite Shore Power Merrimack LLC)

NPDES Permit No. NH0001465)

NPDES Appeals No. 20-05, 20-06

**PERMITTEE GSP MERRIMACK LLC'S RESPONSE TO
EPA'S MOTION FOR FURTHER ABEYANCE**

GSP Merrimack LLC (“GSP”), permittee for Permit No. NH0001465 (the “Permit”), respectfully files this response to the U.S. Environmental Protection Agency’s (“EPA”) Motion for Further Abeyance, filed with the Board on April 14, 2021 (“Apr. Motion”).

In its February 3, 2021 motion requesting an abeyance (“Feb. Motion”), EPA stated that “[b]y the conclusion of the 60-day period, Region 1 in coordination with EPA Headquarters will make a recommendation to the Board as to further proceedings.” Feb. Motion at 1. Now, over two months later, it appears that—not only is EPA not prepared to make a “recommendation”—it apparently has not even begun to brief agency management and has no timeline for doing so. Instead, EPA requests 60 additional days “to allow for senior level briefings on this matter.” Apr. Motion at 2. And it requests that the Board allow the agency to ask for even more time for its briefing at the end of this additional 60-day period. *Id.*

The Board should not allow this appeal to be delayed indefinitely for EPA to schedule internal briefings at some unspecified point in the future. The pendency of this appeal prevents environmentally-beneficial permit provisions from going into effect and leaves in place outdated provisions of the prior permit. As EPA staff explained in the agency’s Response to Comments, the new permit “sets instream thermal limits for the Hooksett Pool that will assure the protection and

propagation of the balanced indigenous population of the shellfish, fish, and wildlife in the Merrimack River and that reflect Merrimack Station’s current mode of operation similar to a peaking facility.” AR-1885 at I-9 to I-10. The prior permit—the thermal portions of which remain effective only because of this appeal—did not contain any instream temperature limits. GSP, as the new owner of the Merrimack Station, supported these new instream limitations. *Id.* at II-12 (“Unlike PSNH [the prior owner], which maintained its request for permit conditions based on the possibility of future baseload operations, GSP indicated a willingness to have a permit with appropriate permit conditions reflecting the Facility’s current, and planned future, pattern of operations like a peaking plant that helps the region to meet intermittent periods of high demand for electricity.”). Yet, the delay in resolving this appeal only postpones the effective date of those new limitations.

For these reasons, the Board should not grant EPA’s request for an open-ended abeyance of this appeal. Instead, the Board should set a firm 60-day deadline for EPA to conduct its internal briefing and report the results of its review to the Board.

Dated: April 21, 2021

Respectfully submitted,

s/ P. Stephen Gidiere III

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STATEMENT OF COMPLIANCE WITH WORD LIMITATION

I hereby certify that this Response, including all relevant portions, contains fewer than 7,000 words, in accordance with 40 C.F.R. §124.19(f)(5). Not including the caption, signature block, statement of compliance with the word limitation, and certification of service, this Response contains 437 words.

s/ P. Stephen Gidiere III
Counsel for Permittee GSP Merrimack LLC

Date: April 21, 2021

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response were served by email on the following persons, this 21st day of April, 2021:

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