

**Date:** June 26, 2019

**From:** The Merrimack Team

**To:** Merrimack Station NPDES Permit File

**Re:** Memorandum Documenting May 21, 2019 Meeting Between EPA and Granite Shore Power Concerning the Merrimack Station NPDES Permit

On May 21, 2019, representatives of EPA Region 1 and Granite Shore Power LLC (GSP) met at EPA's offices in Boston to discuss the Merrimack Station permit. Mark Stein, Sharon DeMeo, and Danielle Gaito prepared this memorandum to document the meeting for the Administrative Record for the permit.

### **I. Meeting Attended By:**

See attendance sign-in sheet (attached).

The Merrimack Team consisting of EPA staff: from the Water Division: Sharon DeMeo, Danielle Gaito, Eric Nelson; from ORC: Mark Stein, Cayleigh Eckhardt and Michael Curley.

Representatives of GSP: Elizabeth (Lynn) Tillotson, Environmental Manager, GSP (previously in the same post with Merrimack Station's prior owner, Public Service of New Hampshire); James Andrews, President of GSP; and Tom DeLawrence and P. Stephen Gidiere, III, of GSP's outside counsel, Balch & Bingham.

### **II. Agenda & Meeting Ground Rules:**

EPA welcomed GSP and noted that the Agency was open to the company's suggestions regarding the agenda for the meeting. Both parties agreed that it would make sense to begin with a discussion regarding limits under the Steam Electric Effluent Limitation Guidelines (ELGs), followed by a discussion of thermal discharge limits, and ending with a brief discussion of progress on the cooling water intake structure requirements under Section 316(b) of the Clean Water Act (CWA). GSP explained that the company remains committed to working with EPA towards final issuance of its permit as soon as possible.

EPA explained that the ground rules were the same as for the previous December 18, 2018 meeting: 1) the meeting was not confidential, 2) EPA would document the meeting for the administrative record for the Merrimack Station (Merrimack) permit, and 3) the meeting would be considered a "brainstorming" session – meaning that participants could offer ideas and comments and still be free to change their minds or positions later on. Again, the stated goal of taking this approach was to encourage a free exchange of ideas that might be more likely to reveal mutually acceptable ways of resolving the existing disputes over the permit that have been reflected in the comments on the permit. GSP expressed its understanding of these points. This meeting was held to follow up and discuss further the ideas and information presented during and since the December 18<sup>th</sup> meeting, including GSP's comments and proposed changes to the draft thermal limits shared with EPA on April 17, 2019.

### **III. Steam Electric Guidelines**

EPA and GSP discussed the current status of the Steam Electric Guidelines (ELGs) and the recent Fifth Circuit Opinion vacating and remanding to the Agency certain provisions of the ELGs, most notably BAT limits established for “legacy wastewater” (*i.e.*, wastewater generated before the rule’s applicability dates come into force). *See Southwestern Elec. Power Co. v. EPA, No. 15-60821*. Merrimack Station generates bottom ash transport water (BATW) and flue gas desulfurization wastewater (FGD). Pursuant to the 2015 ELGs, all BATW and FGD wastewater generated at Merrimack Station prior to the compliance dates for BAT limits for such wastewater is considered legacy wastewater. GSP and EPA, therefore, focused the discussion on potential effects to the Merrimack Station permit from the Fifth Circuit opinion, namely whether EPA would be required to develop site-specific BAT limits based on its “best professional judgment” (BPJ) for Merrimack’s FGD and BATW legacy wastewater, since the Court vacated the BAT limits for such wastewater.

Noting that it had previously opted into the Voluntary Incentives Program (VIP) for its FGD wastewater, GSP questioned whether the Fifth Circuit decision affects the VIP. *See* 40 C.F.R. § 423.13(g)(3). GSP also questioned whether BPJ-based BAT limits are necessary during the legacy wastewater time period since the 2015 ELGs establish BAT limits for BATW and FGD that take effect *in the future* (at the compliance date that, in effect, terminates the legacy wastewater period). EPA indicated that it would consider these questions and consult with the EPA Office of General Counsel (OGC).

Additionally, GSP and EPA outlined potential methods for establishing a BPJ-based BAT limit for Merrimack Station’s legacy wastewater, if a BPJ-based BAT is deemed necessary. The three approaches discussed were: 1) a BPJ determination based on BATW and FGD legacy wastewater that commingles together in the slag settling pond (one commingled legacy wastewater BAT limit); 2) a BPJ determination for each of the BATW legacy wastewater and the FGD legacy wastewater (two specific BAT limits for each separate legacy wastewater source); and 3) interim limits for BATW based on fundamentally different factors. EPA again committed to consulting with OGC to assess which, if any of these approaches were appropriate for Merrimack Station.

Finally, on a related note, GSP provided information about their current practices related to FGD wastewater. GSP explained that it is currently operating vapor compression evaporation (VCE) technology at the facility, that no distillate resulting from such operation is being hauled off-site to POTWs, and that instead, GSP is conditioning fly-ash with VCE wastewater and storing some of the wastewater on-site when fly ash accumulation is low.

#### **IV. Thermal Effluent Limitations**

EPA and GSP focused the discussion of thermal limits on possible temperature requirements proposed for discussion purposes by EPA on April 12, 2019, and alternative requirements proposed for discussion by GSP on April 17, 2019. The discussion addressed how best to implement temperature limits and the challenges of reporting monthly data using the existing NetDMR system. Ideas were exchanged about reconciling weekly average temperature limits with the monthly reporting period and calculating and reporting temperatures in compliance with possible chronic limits. GSP discussed various monitoring challenges resulting from the potential temperature requirements, including the logistical challenges of continuous monitoring in winter.

GSP requested that the Final Permit include a compliance schedule that would allow time for the company to study how best to monitor temperature and resolve logistical challenges prior to the thermal limits becoming effective.

EPA and GSP also discussed at length the chronic and acute temperature limits raised by each party, including how and where to monitor the ambient temperature to determine if the river already exceeds a chronic limit even without contribution from the facility's thermal discharge. GSP and EPA discussed a seasonal limitation on either flow or generating capacity and what an appropriate value should be. Neither party expressed a strong preference for expressing the limit as either flow or capacity. EPA and GSP discussed how a seasonal capacity or flow limitation could be calculated and implemented as a rolling average, and how such a limit might impact the effectiveness of chronic temperature limits early in the season. Finally, GSP and EPA discussed the company's language associated with ISO-New England Operating Procedures for Actions during a Capacity Deficiency.

#### **V. Cooling Water Intake Structure Requirements**

EPA noted that it has been working to review and consider public comments submitted during the various comment periods held in connection with the Merrimack Station permit. EPA indicated that, based on comments received during 2012 and 2017, in combination with the site-specific study in 2017, it continues to think that wedgewire screens may be an appropriate option for the best technology available (BTA) at Merrimack Station. The two parties have discussed a flow-based alternative in the past, and during the meeting discussed the potential challenges with this option for the Final Permit. GSP asked if EPA would provide potential language for discussion that would address Final Permit requirements under § 316(b). EPA indicated that it would consider doing so and that it would look at any permit language that GSP wanted to provide.

#### **VI. Next Steps**

GSP expects it can provide a proposal for compliance with requirements under § 316(b) within the next month. The parties agreed to continue to discuss possible pathways forward for the permit in light of possible re-promulgation of the Steam Electric ELGs. EPA will continue to work on responding to comments related to thermal and § 316(b) requirements.