

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

	)	
In re:	)	
	)	
Granite Shore Power Merrimack LLC	)	NPDES Appeal Nos. 20-05, 20-06
	)	
NPDES Permit No. NH0001465	)	
	)	

**ORDER GRANTING IN PART MOTION FOR CONTINUANCE OF ABEYANCE**

Nearly eleven months ago, two petitions were filed with the Environmental Appeals Board (“Board”) seeking review of a National Pollution Discharge Elimination System (“NPDES”) permit granted to GSP Merrimack LLC by the U.S. EPA Region 1 (“Region”). That permit governs discharges to the Merrimack River by GSP Merrimack from a coal-fired power plant it operates in Bow, New Hampshire. In NPDES Appeal Number 20-05, the Sierra Club and the Conservation Law Foundation challenge the permit as insufficient to protect humans and aquatic organisms from the pollutants discharged to the River, among other things. In NPDES Appeal Number 20-06, GSP Merrimack asserts, among other things, that certain requirements in the permit are unnecessary to protect aquatic organisms.

Following extensions of time granted to all parties for the filing of briefs in these two appeals, briefing was completed on December 4, 2020, and the appeals were set for oral argument on February 16, 2021. *See* Corrected Order Scheduling Oral Argument and Directing Parties to File Notice of Participation (EAB Dec. 22, 2020); Order Granting Consent Motion for Extensions of Time to Reply to Responses to Petition for Review and to Respond to Motion to Strike and to Reply to Response (EAB Oct. 23, 2020); Order Granting Consent Motion for

Extension of Time (EAB June 16, 2020). However, on February 3, 2021, the Region requested, and the Board granted, an abeyance of the appeals for 60 days so that the new Administration, which took office on January 20, 2021, could be briefed on the pending appeals and determine its position going forward. Order Granting Consent Motion for Continuance of Oral Argument Date and Abeyance (EAB Feb. 9, 2021) (“Abeyance Order”).

In accordance with the Abeyance Order, the Region timely filed a motion for an extension of the abeyance until June 18, 2021, citing “the large number of matters on which the new Administration is being briefed.” EPA Region 1 Motion for Further Abeyance 2 (Apr. 14, 2021). The Sierra Club and the Conservation Law Foundation have assented to this extension. *Id.* at 2. GSP Merrimack, however, filed a response, characterizing the Region’s request as seeking “an open-ended abeyance of this appeal.” Permittee GSP Merrimack LLC’s Response to EPA’s Motion for Further Abeyance 2 (Apr. 21, 2021). In GSP Merrimack’s view, an “indefinite[]” abeyance “prevents environmentally-beneficial permit provisions from going into effect and leaves in place outdated provisions of the prior permit.” *Id.* at 1. According to GSP Merrimack, “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.” *Id.* at 2. In a reply brief, the Region agreed with GSP Merrimack that it was important to move forward expeditiously and stated it did not anticipate needing additional time beyond June 18, 2021. Nonetheless, citing the complexity of these appeals and the many issues before the new Administration, the Region argued against setting “a deadline that might arbitrarily truncate internal deliberations and prevent adequate consideration of the issues at hand.” EPA Region 1 Reply to GSP Merrimack LLC’s Response to the Region’s Motion for Further Abeyance 3 (Apr. 26, 2021).

Having reviewed the filings from the parties, the Board **GRANTS IN PART** the Region's motion. It is ordered that these two appeals are held in abeyance until June 18, 2021, but we agree that an indefinite abeyance is not warranted or appropriate in these circumstances. It is therefore further ordered that, on or before **Friday, June 4, 2021**, the Region file with the Board:


1. A motion to remove the litigation from abeyance and re-calendar the oral argument;
2. A motion requesting a voluntary remand, *see* 40 C.F.R. § 124.19(j); *In re W. Bay Exploration Co.*, UIC Appeal Nos. 13-01 & 13-02, at 1-2 (Apr. 16, 2013) (Order Dismissing Petitions for Review as Moot); or
3. A motion requesting a further abeyance, including the basis for the request and the length of the abeyance being sought. Any further request must explain in detail the reasons why prior abeyances were insufficient to enable the new Administration to determine its position going forward.

Any responses to the Region's motion must be filed on or before **Friday, June 11, 2021**, and any replies to those responses must be filed on or before **Wednesday, June 16, 2021**.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: April 28, 2021

By:   
Aaron P. Avila  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing **ORDER GRANTING IN PART MOTION FOR CONTINUANCE OF ABEYANCE** in the matter of Granite Shore Power Merrimack LLC, NPDES Appeal Nos. 20-05 and 20-06, were sent to the following persons by email:

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Dated: April 28, 2021



Eurika Durr  
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