

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

_____)	
In the Matter of:)	
)	
Granite Shore Power Merrimack LLC)	
)	NPDES Appeal Nos. 20-05 & 20-06
)	
NPDES Permit No. NH0001465)	
_____)	

**EPA REGION 1 REPLY TO GSP MERRIMACK LLC’S RESPONSE TO THE
REGION’S MOTION FOR FURTHER ABEYANCE**

Pursuant to the Environmental Appeals Board’s “Order Setting Deadline for Reply to Response on Motion For Further Abeyance” (Apr. 21, 2021), the Region 1 office (“Region 1” or the “Region”) of the United States Environmental Protection Agency (“EPA”) respectfully submits this Reply to GSP Merrimack LLC’s (“GSP”) Response to the Region’s Motion for Further Abeyance (the “GSP Response”).

On February 3, 2021, Region 1 filed its “Motion for Continuance of the Date for Oral Argument and Abeyance.” By Order dated February 9, 2021 (“Feb. 9, 2021, Order), the Board granted the motion, explaining that a continuance and abeyance to allow time for staff to brief new EPA leadership is both consistent with EPA procedures and “reasonable so that the Region and EPA Headquarters can provide the Board a coordinated legal position for these appeals.” Feb. 9, 2021, Order at 2. The Board also noted that the Region had appropriately cited to Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*,

Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 25, 2021), which “reflects that the new Administration plans to undertake a broad review of the prior Administration’s environmental actions and ‘consider suspending, revising, or rescinding’ those actions.” Feb. 9, 2021, Order at 2. The Board directed Region 1 by no later than April 19, 2021, to file a motion seeking either 1) to remove the litigation from abeyance and re-calendar the oral argument; 2) a voluntary remand; 3) further abeyance, including the basis for the request and the length of the abeyance being sought; or 4) other appropriate relief or next steps. *Id.* at 3.

On April 14, 2021, Region 1 filed its Motion for Further Abeyance requesting that the Board extend the current abeyance and direct the Region to file by June 18, 2021, a motion seeking one of the four above-mentioned types of relief. In support of its Motion, the Region reported that it had been “diligently working with the Office of General Counsel and the Office of Water at EPA Headquarters to prepare briefings on this matter for senior leadership.” The Region also explained, however, that “as a result of the large number of matters on which the new Administration is being briefed, additional time is needed to allow for senior level briefings on this matter” The Region concluded that “the requested extension of the abeyance will ultimately allow EPA to file a motion in compliance with the Board’s order that reflects the views of the new Administration.”

On April 21, 2021, GSP responded to Region 1’s Motion, expressing concern that EPA “apparently has not even begun to brief agency management and has no timeline for doing so.” GSP Response at 1. GSP expressed further concern that the Region “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.* GSP also stated that delay in this permit appeal

proceeding could delay the effective date of the new, more environmentally protective requirements of the NPDES permit that are currently under appeal. *Id.* at 1-2. Thus, GSP asked the Board not to grant an “open-ended abeyance” and instead “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 1.

To be clear, as stated in its Motion for Further Abeyance, Region 1 has been working diligently with EPA’s Office of General Counsel (“OGC”) and Office of Water (“OW”) to address the issues at hand. Briefings with senior level management have, in fact, occurred, and additional briefings are, in fact, scheduled. Furthermore, although not mentioned in the Motion for Further Abeyance, Region 1 also, in coordination with OGC and OW, made an effort to explore with GSP, the Sierra Club and the Conservation Law Foundation, the possibility of settling certain issues in the appeal. While this effort required some time to pursue and did not ultimately bear fruit, it was a responsible effort to resolve issues without litigation. Finally, EPA entirely agrees with GSP that it is important to move the permit proceeding forward expeditiously. At the same time, the issues presented by the permit are complicated and have a lengthy history, and new leadership also have many other new issues before them for consideration. They need adequate time to be briefed, consider the issues, ask follow-up questions, if necessary, and receive answers to those questions. Thus, while Region 1 does not currently anticipate seeking additional time beyond June 18, 2021, EPA also did not want to set a deadline that might arbitrarily truncate internal deliberations and prevent adequate consideration of the issues at hand.

Therefore, Region 1 respectfully requests that that the Board grant the Region's Motion for Further Abeyance as it was presented by Region 1.

Respectfully submitted,

Mark A. Stein /s/

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Dated: April 26, 2021

STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS

I hereby certify that this **EPA Region 1 Reply to GSP Merrimack LLC's Response to the Region's Motion for Further Abeyance** in NPDES Appeal Nos. 20-05 and 20-06, contains fewer than 15 pages in accordance with 40 C.F.R. § 124.19(f)(5).

Dated: April 26, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **EPA Region 1 Reply to GSP Merrimack LLC's Response to the Region's Motion for Further Abeyance**, in connection with In re Granite Shore Power Merrimack LLC, NPDES Appeal Nos. 20-05 and 20-06, was sent to the following persons in the manner indicated:

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