

5-22-2020

From: Mark Stein  
To: Merrimack Station NPDES Permit File  
Re: Memo to File regarding 5/20/2020 EPA Region 1 Conference Call with GSP

EPA Region 1 Team (Damien Houlihan, Eric Nelson, Danielle Gaito and Mark Stein) had conference call with GSP team consisting of Jim Andrews and Lynn Tillotson of GSP and Stephen Gidiere, GSP's outside counsel.

The issues needing discussion related to the Facility needing time to install, test and determine operating practices and parameters to facilitate the Facility meeting the permit's thermal limits.

The company explained that it wants to make sure that it complies with its permit limits and it doesn't want to have a problem just because it is figuring out to do that given the complexities of how the new permit will work in the frequently changing conditions in the Hooksett Pool. The company had been interested in a permit compliance schedule for that reason.

EPA agreed that there was some work to be done to develop those operational practices to ensure that future operations result in compliance with permit limits in the summer and winter. EPA felt that it had legal authority to grant a reasonable compliance schedule, but did not necessarily think one was needed or preferable in this case because (1) given the timing of the now anticipated permit issuance date (i.e., around Memorial Day), the permit's effective date would be far enough in the future that the company should have time to work out how to comply with the permit in the summer (and certainly for the winter), and (2) if the permit includes a schedule pushing the compliance due date into the future, then EPA would need to devise some sort of "interim limits" to cap thermal discharges in the meantime, which would open up a whole new set of issues to work through. (EPA noted in this context that in light of the new Final Permit limits under CWA § 316(a), it expected to drop the narrative thermal discharge conditions from the Final Permit (that had been in the 1992 Permit and in the 2011 Draft Permit).) With regard to the winter, EPA also reminded the company that if monitoring equipment fails in the river due to icing conditions, for example, that does not have to be reported as a "violation" and is instead reported as a data collection problem along with indication that the company is working to remedy the problem.

The company expressed understanding of EPA's concerns but was still concerned that given the uncertain and unpredictable amount of operations during the summer – and it would not want to operate and discharge waste heat just to facilitate planning for future compliance – that it might not run enough to gain the needed experience to develop the operating plans to ensure compliance.

EPA indicated that it has some flexibility under the regulations with regard to setting a new permit's effective date and we discussed possible effective dates of 8/1/20, 9/1/20, or 10/1/20. EPA indicated that it thought 9/1/20 would be reasonable in light of all of the considerations.

GSP indicated that it would consider that idea and let EPA know tomorrow (i.e., on 5/21/20).

He'd called on 3/23/2020; I returned call and left message on 3/24/20, he left me a return message later on 3/24/2020, and I called him back and reached him on 3/25/20

In his 3/23 voicemail, he'd asked about AR 184 from Merrimack record

He noted that in the AR online, for AR184, only the cover page and Table of Contents was available. It's a 1996 Normandeau report. The AR indicates that the full report is available at EPA and does not indicate that the report is CBI.

In 3/25 call, I told him that I had asked both Eric Nelson and Danielle Gaito about AR184 and while neither was in the office to look at it, they both said they assumed we had not scanned the full document because it was too long and that when we are able to get back into our offices, they can come in and see it or we can talk about getting a copy made

He otherwise asked about the status of the permit and I told him that we were working on it as fast as we can and are considering their letters to us, including the request for Renotice, as we work on things

He asked if I had heard anything about developments in the Four Corners case, and I told him I had not

He also said he wanted to send in some material about the latest capacity auction for the New England ISO; I told him to feel free and that I am always interested to learn about those proceedings