



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

September 11, 2007

Mr. William H. Smagula, P.E.
Director-Generation
Public Service of New Hampshire
P.O. Box 330
Manchester, NH 03305-0330

Re: Supplemental Information Request dated December 30, 2004 pursuant to Section 308 of the Clean Water Act for Merrimack Station NPDES Permit Reissuance - [NPDES Permit No: NH0001465]

Dear Mr. Smagula:

The United States Environmental Protection Agency's office for the New England Region (EPA or the Region) is sending this letter to clarify and update certain information submission requirements for Public Service of New Hampshire (PSNH) related to the Merrimack Station electrical generating facility's (Merrimack Station) application for reissuance of its National Pollutant Discharge Elimination System (NPDES) permit (NPDES Permit No. NH0001465). The information requirements in question pertain to your facility's cooling water intake structures (CWISs) regulated under section 316(b) of the Clean Water Act (CWA). See 33 U.S.C. § 1326(b).

On December 30, 2004 EPA issued PSNH Merrimack Station an information request letter under CWA § 308 (the December 30, 2004 § 308 Letter). CWA § 308(a), 33 U.S.C. §1318(a), authorizes EPA to require the owner or operator of any point source to make reports and provide information as may reasonably be required to:

... carry out the objectives of ... [the CWA], including but not limited to: (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition ... or standard of performance under [the CWA] ...; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, ... or standard of performance; (3) any requirement established under this section; or (4) carrying out section ... 1342 ... of [the CWA] ...

The December 30, 2004 § 308 Letter required the company to submit certain information to EPA by no later than January 7, 2008 for the purpose of developing and CWIS-related limits under CWA § 316(b) for Merrimack Station's permit re-issuance. EPA's Phase II Rule for CWISs

under CWA § 316(b), 40 C.F.R. Part 125, Subpart J (the Phase II Rule) set national performance standards for, and information submission requirements regarding, CWISs at large, existing power plants. Because Merrimack Station was subject to the Phase II Rule, EPA's December 30, 2004 § 308 Letter required the submission of information consistent with the requirements of the Rule, including:

1. a Proposal for Information Collection (PIC) satisfying 40 C.F.R. § 125.95(b)(1) by no later than October 7, 2006;
2. a Comprehensive Demonstration Study (CDS) satisfying 40 C.F.R. § 125.95 by no later than January 7, 2008; and
3. the information required by 40 C.F.R. §§ 122.21(r)(2), (3), and (5) by no later than January 7, 2008.

On January 25, 2007, the United States Court of Appeals for the Second Circuit issued its decision in a law suit challenging the Phase II Rule. See *Riverkeeper, Inc. v. EPA*, 475 F.3d 83 (2d Cir. 2007). The court struck down certain provisions of the Phase II Rule and remanded several others to the Agency for reevaluation. On March 20, 2007, Benjamin Grumbles, EPA Assistant Administrator for Water, sent a memorandum to EPA's Regional Administrators dictating that the Phase II Rule should be considered suspended because so many of its provisions are affected by the court decision. In addition, the March 20, 2007, memorandum directed that "[i]n the meantime, all permits for Phase II facilities should include conditions under section 316(b) of the Clean Water Act developed on a Best Professional Judgment (BPJ) basis. See 40 C.F.R. § 401.14."

More recently, on July 9, 2007, EPA formally suspended the Phase II Rule, with the exception of 40 C.F.R. § 125.90(b), by publishing a notice of suspension in the Federal Register (*see* 72 Fed. Reg. 37107 (July 9, 2007)). Under 40 C.F.R. § 125.90(b), permitting authorities are directed to establish section 316(b) requirements on a BPJ basis for existing facilities not subject to categorical standards contained in EPA regulations. As the Federal Register notice states, the BPJ requirement is consistent with the CWA, case law, and the March 20, 2007 memorandum's direction to do so. See 72 Fed. Reg. at 37108.

In light of these developments, combined with the issuance of a second information request under CWA § 308 dated June 26, 2007, EPA is withdrawing the information submission requirements of the December 30, 2004 § 308 Letter. The June 26, 2007 § 308 Letter supersedes the December 30, 2004 § 308 Letter and seeks information to assist EPA in developing new CWIS limits under CWA § 316(b) on a BPJ basis, consistent with 40 C.F.R. § 125.90(b). EPA understands that PSNH will execute any on-going entrainment monitoring to completion, as stated in the PIC. Please be aware that any failure to comply with the requirements of the June 26, 2007 § 308 Letter could, depending on the circumstances, subject PSNH to enforcement action pursuant to § 309 of the CWA, 33 U.S.C. § 1319.

With regard to the information that must be submitted under the June 26, 2007 § 308 Letter, PSNH may assert a business confidentiality claim with respect to part or all of the information

submitted to EPA in the manner described at 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to PSNH. Please note that "effluent data" under 40 C.F.R. § 2.302 may not be regarded as confidential business information.

To the extent you have already submitted any of the requested information to EPA as part of another submission, it is sufficient for you simply to reference where in the other submission the pertinent information is provided.

Please address your information submittals to:

John Paul King
Environmental Scientist
U.S. EPA Region 1
One Congress Street
Suite 1100, Mail Code CIP
Boston, MA 02114-2023

EPA looks forward to working with you on your new permit. If you have any questions concerning the information in this letter, please contact John Paul King at (617) 918-1295. If you have any legal questions, please direct them to Mark Stein at (617) 918-1077.

Sincerely,



Stephen S. Perkins, Director
Office of Ecosystem Protection

cc. ✓ Permit File;

Stergios Spanos, New Hampshire Department of Environmental Sciences, Water Division
Wastewater Engineering Bureau, P.O. Box 95, Concord, NH 03302-0095



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July 13, 2007

William H. Smagula, P.E., Director-Generation
Public Service of New Hampshire
P.O. Box 330
Manchester, NH 03305-0330

Re: Information Request for NPDES Permit Re-issuance, NPDES Permit No: NH0001465

Dear Mr. Smagula:

EPA has received Public Service of New Hampshire's letter dated July 11, 2007. That letter requested an extension of the time to respond to EPA's information request dated July 3, 2007 from 75 days to 120 days.

EPA has agreed to Public Service of New Hampshire's request. Public Service of New Hampshire now has 120 days to respond from the original receipt date of EPA's information request.

If you have any technical questions regarding this information request, please contact John Paul King at (617) 918-1295. If you have any legal questions, please direct them to Mark Stein at (617) 918-1077.

Sincerely,

A handwritten signature in cursive script that reads "David M. Webster".

David Webster
Chief, Industrial Permits Branch
Office of Ecosystem Protection

cc: Permit File;

Stergios Spanos, New Hampshire Department of Environmental Services, Water Division
Wastewater Engineering Bureau, P.O. Box 95, Concord, NH 03302-0095

