



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 11, 2010

Linda Landis, Esq.
 Senior Counsel
 Public Service of New Hampshire
 780 N. Commercial St.
 Manchester, NH 03105-0330

Re: Confidentiality of documents related construction of flue gas desulfurization system

Dear Ms. Landis:

I am in receipt of your letter, dated February 17, 2010 submitted in response to my request for more specific explanation supporting PSNH's claim that the December 23, 2009 flue gas desulfurization report submitted to Harry Stewart, Director of the Department of Environmental Services (DES), is confidential. Specifically, PSNH had asserted that the report should not be released in response to the January 5, 2010 request by the Conservation Law Foundation (CLF) submitted pursuant to the New Hampshire Right-to-Know Law, RSA 91-A, "to review all DES files related to the installation of a wastewater treatment system in connection with the construction of the wet flue gas desulphurization system by Public Service Company of New Hampshire at Merrimack Station in Bow, New Hampshire."

In your most recent correspondence you have narrowed your confidentiality claim to the Executive Summary and Attachment 1 thereto. You also assert that some of the information contained in the rest of the report is preliminary, submitted to DES as a working document as part of an ongoing iterative process, and that some of the data was prepared in such a way as to produce possibly incorrect values.

After review, we have determined that PSNH has satisfactorily demonstrated that the information contained in the Executive Summary and Attachment 1 is protected pursuant to RSA 485-A:18, III, which provides:

...upon a showing satisfactory to the department by any person that any record, report, or information or any particular part thereof, to which the department has access, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the department shall consider such record, report, information or particular part thereof confidential, and it shall thereafter not be disclosed to the public.

Therefore, those portions of the report will not be disclosed in response to requests filed pursuant to RSA 91-A.

As for any information in the report that may be preliminary or inaccurate, we agree that some data contained in the report are preliminary and subject to change and, therefore, cannot necessarily be relied upon as PSNH continues to make changes to its processes and corrections to

its data. Nonetheless, there is no exception under RSA 91-A that would allow us to withhold this information.

By copy of this letter, I am advising CLF that they may make arrangements to review the report subject to the removal of the confidential information discussed herein.

If you have any questions about this procedure, please contact me at (603)271-2464.

Sincerely,

COPY

Roger Demas
Legal Coordinator

Cc: Harry Stewart, DES, WD Director
Gretchen R. Hamel, DES Legal Unit Administrator
Jeffrey Andrews, DES, WEB