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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION
1 CONGRESS STREET, SUITE 1100 (RAA)
BOSTON, MASSACHUSETTS 02114-2023

September 18, 2006

John MacDonald, Vice President Operations
Public Service Company of New Hampshire
P.O. Box 330
Manchester, NH 03105-0330

Re: Merrimack Station, National Pollutant Discharge Elimination System Permit No.
NH0001465, Proposal for Information Collection

Dear Mr. MacDonald:

On May 2, 2005, the Public Service Company of New Hampshire's (PSNH) submitted a Proposal for Information Collection (PIC) for Merrimack Station located in Bow, New Hampshire (the Station), pursuant to requirements under the Phase II Regulations promulgated by EPA under Section 316(b) of the Clean Water Act (the Phase II Regulations), 40 C.F.R. Part 125, Subpart J. Since that time, EPA and PSNH have exchanged a number of letters and phone calls, often through our respective attorneys, regarding issues related to the Station's PIC. This letter follows up the most recent phone calls, from early August of this year, from EPA's attorneys to PSNH's attorneys.

To state the bottom-line first, after carefully considering the issues raised by PSNH, EPA's position continues to be that the Station is subject to the entrainment reduction requirements of the Phase II Regulations and, accordingly, that the Station's PIC must address entrainment reduction issues. The Phase II Regulations specify that a facility is subject to the applicable entrainment reduction performance standards if "your *facility* uses cooling water withdrawn from a freshwater river or stream and the *design intake flow* of your cooling water intake *structures* is greater than five percent of the mean annual flow" (emphasis added). 40 C.F.R. § 125.94(b)(ii)(B). In its PIC submission of May 2, 2005, PSNH argued that when applying the five percent of mean annual river flow criterion, each of a facility's multiple intake structures should be assessed *separately* and that *actual flow*, rather than *design flow*, is the pertinent metric. PSNH further argued that the Station's PIC should not have to address entrainment issues because the *actual* flow of each of the facility's two intake structures, assessed *separately*, is less than five percent of the Merrimack River's mean annual flow.

In a letter dated August 5, 2005, EPA Region 1 detailed its disagreement with PSNH. Region 1's letter explained that when applying the five percent of mean annual flow criterion under the

Phase II Regulations, a facility's multiple cooling water intake structures should be assessed *together* in light of their *combined* flow, and that *design flow* rather than actual flow is the pertinent metric for this purpose. EPA concluded, therefore, that the entrainment reduction standards of the Phase II Regulations apply to the Station because the design flow of the two intakes combined is greater than five percent of the Merrimack River's mean annual flow. (EPA has also concluded, and it is our understanding that PSNH would agree, that the *actual* intake flow of each of the two intakes *combined* is also greater than five percent of the River's mean annual flow.)

In response, PSNH expressed its disagreement with the Region's position in a letter to the Region dated November 2, 2005. Following telephone calls in which the Region explained to PSNH that it had considered the company's arguments, but continued to maintain the views stated in the Region's August 5, 2005, letter, the Region agreed to discuss the issues further with EPA Headquarters to further verify that the Region's views represented the Agency's considered interpretation of the recently promulgated Phase II Regulations. The discussions between EPA Region 1 and EPA Headquarters did, in fact, confirm the Region's reading of the Phase II Regulations: specifically, that for purposes of applying the five percent of mean annual flow criterion, the intake flow of the Station's two intakes should be combined and that design flow is the pertinent metric for this purpose. Thus, EPA's position continues to be that the entrainment reduction requirements of the Phase II Regulations apply to the Station and entrainment reduction issues must be addressed by the Station's PIC. EPA Region 1 attorney Mark Stein communicated this result to PSNH's attorney Elizabeth Mason, of the law firm Goodwin Procter, in a telephone call on August 8, 2006. This was also mentioned in an August 11, 2006, phone call between Mr. Stein and the company's attorney Elise Zoli of Goodwin Procter.

EPA had expected that the above-mentioned telephone calls would be sufficient to communicate EPA's position on this issue to PSNH. EPA further expected that PSNH would proceed to address the entrainment issues in a revised PIC for the Station, while perhaps reserving its rights to question the issue again at a later date. In a recent phone call from Region 1 to PSNH to check on the status of the revised PIC, however, PSNH informed the Region that it was not moving to revise the PIC to address entrainment issues until it received a written response to its November 2, 2005, letter. Therefore, EPA Region 1 is providing this letter to clearly state its position in writing: the entrainment reduction requirements of the Phase II Regulations apply to the Station and the Station's PIC must be revised to address entrainment reduction issues.

Finally, PSNH's May 2, 2005, PIC submission also raised certain questions regarding the determination of the "calculation baseline" for the Station under the Phase II Regulations. Region's 1's letter of August 5, 2005, addressed these issues as well and again detailed its disagreement with PSNH's stated position. PSNH further argued its position in the company's November 2, 2005, letter. While Region 1 has explained that it continues to disagree with PSNH and hold the views stated in the Region's August 5, 2005, letter, the Region has also explained in telephone calls to PSNH that the Region understands that EPA Headquarters will address the pertinent calculation baseline issues in a national, publicly available "Questions & Answers" document. It is the Region's understanding that this document will be issued by the Agency in the relatively near future, though there is no specific deadline for such issuance. There is no

reason, however, why the PIC cannot be revised appropriately prior to the final resolution of these calculation baseline issues. EPA Region 1 has explained this to PSNH in past telephone calls and the company has not disagreed. Therefore, EPA expects the Station's revised PIC to be submitted regardless of when the Agency issues the document addressing the calculation baseline issues.

EPA Region 1 hopes that this letter resolves any remaining uncertainty that PSNH might have regarding the Agency's position on these issues. The Region looks forward to receiving the Station's appropriately revised PIC on a timely basis.

If you have any questions regarding the above, please contact John Paul King of my staff at (617) 918-1995. Alternatively, you may have your attorneys contact Mark Stein of EPA's Office of Regional Counsel at (617) 918-1077.

Sincerely,

A handwritten signature in black ink that reads "David M. Webster". The signature is written in a cursive style with a large initial "D".

David M. Webster, Chief
Industrial Permits Branch

cc: Elizabeth Mason, Esq., Goodwin Procter
Harry T. Stewart, NHDES
✓ Mark Stein, EPA

