

PSNH's Comments on EPA's Draft NPDES

A. EPA's rejection of Merrimack Station's request for a continuation of its CWA § 316(a) thermal discharge variance is arbitrary and capricious (7)

1. EPA was arbitrary and capricious in choosing the population that existed in the 1960s as the BIP (13)
 - a. Merrimack River was heavily polluted in the 1960s (14)
 - b. A BIP may not include species whose presence or abundance is attributable to pollutants (16)
2. The aquatic community currently in the Hooksett Pool is a BIP (17)
 - a. The Hooksett Pool is characterized by diversity (17)
 - b. The current population sustains itself through cyclic seasonal changes (28)
 - c. The Hooksett Pool Contains the Necessary Food Chain Species (30)
 - d. The Hooksett Pool is not Dominated by Pollution Tolerant Species (32)
3. EPA should have considered the adjacent Garvins Pool as the point of reference for its appreciable harm determination (34)
 - a. The Garvins Pool shares similar characteristics with the Hooksett Pool (35)
 - b. This approach of using a reference, or control, water body from which to determine impacts from the thermal discharge is widely accepted (35)
4. Operation of Merrimack Station has not resulted in appreciable harm (36)
 - a. Merrimack Station's Thermal Discharge Has Not Caused Appreciable Harm To The Aquatic Community in The Hooksett Pool Under The Draft EPA § 316(a) Guidance's "Appreciable Harm" Criteria (42)
 - b. The Hooksett Pool BIP Has Not Experienced "Appreciable Harm" From Merrimack Station's Thermal Discharge Under the EPA § 316(a) Guidance's "Appreciable Harm" Criteria for RIS of Fish (53)
5. EPA's consideration of an alternative approach to determining thermal discharge limits is unwarranted (59)

B. EPA's § 316(b) BTA determination requiring installation and seasonal operation of CCC technologies at Merrimack Station is arbitrary and capricious (60)

1. EPA incorrectly applied the BTA factors (66)
 - a. CCC is Not BTA for Merrimack Station (67)
 - b. EPA Rejected CWW Screens for the wrong reasons (101)
 - c. Proposed Operational Changes and Installation of a New Fish Return System at Merrimack Station Constitute BTA and Satisfy the Requirements of § 316(b) (113)
2. EPA's case-by-case determination of BTA is arbitrary and capricious in light of the impending issuance of EPA's final phase II regulations on July 27, 2012 (118)

C. EPA's BAT determination and its proposed effluent limits on metals in the FGD system wastestream are arbitrary, capricious, and erroneous (122)

1. EPA's determination that a biological treatment process is BAT is arbitrary, capricious, and without rational basis (134)
 - a. EPA's basis for its BAT determination is flawed and unlawful (134)
 - b. Biological Treatment is Not an Available, Proven or Effective Technology and It Cannot be Considered BAT for Merrimack Station (136)
 - c. An Analysis of the BAT Factors Indicates that Biological Treatment is Not BAT for Merrimack Station (140)
2. The physical/chemical treatment process is BAT for Merrimack Station (149)
3. The vapor compression or "zero liquid discharge" process is not BAT for Merrimack Station (153)
 - a. PSNH Had No Choice but to Construct a Reduced Liquid System at Merrimack Station (153)
 - b. An analysis of the BAT Factors Makes Clear that ZLD is Not BAT for Merrimack Station (154)
 - c. ZLD is not a transferable technology (157)

4. The effluent limitations established by EPA are not technologically achievable at Merrimack Station because EPA relied on faulty data to set the limits (158)
 - a. EPA Inappropriately Rejected Good Data and Used Bad Data (159)
 - b. EPA Misapplied the Box-Plot Analysis when Testing For Outliers (161)
 - c. EPA Incorrectly Assumed a Random Sample Collection (161)
 - d. EPA Ignored the Negative Impacts That Low Levels/Trace Elements have on PSNH's Ability to Measure Limits in the Draft Permit (162)
 - e. EPA Erred in Setting Limits that Cannot Be Met by the Facilities Which EPA Used in Creating the Limits (162)
 - f. EPA's Draft Permit Limits for Outfall 003C Are Arbitrary (165)
5. EPA's decision to establish BAT on a case-by-case basis is arbitrary and capricious (169)
 - a. EPA's Decision to Use its BPJ was Arbitrary and Capricious Because National Effluent Guidelines Already Exist (169)
 - b. EPA's Decision to Use its BPJ was Arbitrary and Capricious Because Even if PSNH Accepted EPA's Inaccurate Position Regarding the 1982 National Effluent Guidelines, EPA is Proposing New Effluent Guidelines in the Immediate Future (172)
 - c. EPA's Decision to Use its BPJ was Arbitrary and Capricious Based on Concerns and Other Public Policy Considerations (176)

D. EPA failed to consider important costs and consequences implicated by the limits and requirements in its draft permit (177)

1. EPA failed to consider impacts on the availability, operating capabilities, and dispatch profile of Merrimack Station (180)
2. EPA failed to consider impacts of the draft permit on electric grid Reliability (184)
 - a. Local and Regional Electricity System Reliability Impacts of Requiring CCC at Merrimack Station Must Be Evaluated and Addressed (188)
 - b. The Draft Permit's Discussion of Reliability is Incomplete and Incorrect (191)

- c. EPA Incorrectly Dismisses as Insignificant the Expected Lost Generation that Will Occur if CCC is Installed at Merrimack Station (193)
- 3. EPA failed to consider the culmination of upcoming regulatory actions imposed on the electric utility industry (194)

E. EPA cannot issue a final permit for Merrimack Station until it adequately responds to PSNH’s Freedom of Information Act request (199)

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