



Concord Monitor : PSNH story 

Dave Deegan to: Stephen Perkins, David Webster, John King,
Mark Stein, Sharon DeMeo, Nancy Grantham,
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12/12/2011 09:50 AM

From: Dave Deegan/R1/USEPA/US
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Stephen & All - Absolutely a very good story presenting the history of the permit and our perspective in a straightforward way. Many thanks to Dave W. and John Paul King especially for a lot of time spend both with the reporter and in getting documents to her to present our story.

Dave

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Bow

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Documents: EPA and PSNH talked

By [Tricia L. Nadolny](#) / [Monitor staff](#)

December 11, 2011

Since the Bow power plant's draft permit for discharging into the Merrimack River was issued, Public Service of New Hampshire has complained repeatedly that the "long-awaited" action comes after 14 years of little contact or feedback from the Environmental Protection Agency. But documents obtained by the Monitor show the agency sought information from the company numerous times during that period, and twice it was PSNH that asked regulators to slow the permitting process.

The Merrimack Station permit, which calls for the installation of a \$112 million cooling system, was released Sept. 29. EPA officials say the new closed-cycle system would replace one decades old that they believe is doing substantial harm to aquatic life by heating the habitat around the power plant and crushing wildlife in its mechanisms.

PSNH officials have adamantly denied those claims. Documents show the company asked regulators to institute lenient thermal discharge limits many times over the 14 years, with the

first requests coming as early as 2002.

Data submissions supporting the requests went unanswered, according to the company.

But the account presented by PSNH - detailing 14 years of one-way communication, ignored requests, and a distant regulator - doesn't align with the one presented by the agency.

"I'm just short of flabbergasted that they would make that statement," John Paul King, an EPA environmental scientist who worked on the permit, said in response to PSNH's complaints.

The agency asserts it gave PSNH adequate opportunity to provide data and analysis. But ultimately it's the EPA, not the company, that writes the permit, several officials familiar with the process told the Monitor. While there were delays, they said, the agency worked to issue the permit as quickly as possible.

PSNH spokesman David Skelton said that was the company's goal as well, and its requests in 2006 and 2008 that the agency hold off on releasing a permit were symptoms of a larger problem: the company had been left in the dark.

The conflicting narratives, voiced as the draft permit moves into the public comment period, leave questions as to how that permit came to be and what shape it will take when complete.

Little movement

In 1997, as the Merrimack Station's permit neared its five-year expiration date, PSNH officials submitted a request to the EPA for new guidelines. The existing permit was continued, and over the next few years, both parties agree, there was little movement on a new permit.

Skelton said this lag substantially lengthened the process.

"There is a five-year window in there where there is nothing happening," he said. "That in and of itself is an entire permit cycle."

Several EPA officials interviewed by the Monitor agreed the new permit took too long. They said the agency has been working through a burdensome backlog that today has left eight plants in New Hampshire and Massachusetts with discharge permits that expired at least 12 years ago, the oldest dating to 1994.

"From our perspective, the permit is long overdue," said Mark Stein, a lawyer for the agency. "This has taken much longer than EPA has wanted it to."

But following the initial stall, EPA officials say they steadily pushed ahead with the permit. As proof the EPA did not cut out PSNH from the process, agency officials point to a string of emails, phone calls, meetings, information requests and follow-up letters that now are part of record made up of 788 documents.

"We're not making this in a vacuum," said David Webster, the agency's local permit branch chief.

Over the 14 years, documents show the two parties worked through several cycles of agency information requests, submissions from PSNH, and follow-up inquiries from the EPA, with gaps between responses lasting anywhere from a few weeks to several months. EPA regulations require the company to provide annual reports, but PSNH also made submissions beyond what the agency mandated.

The communication continued until mid-2010, when EPA officials say they began preparations to issue the draft permit.

Much of the data and analysis provided by the company during this period centers on its assertion that stricter thermal limits were not necessary at Merrimack Station. PSNH continuously requested an extension of the thermal variance included in its current permit, which allows the plant to bypass state discharge limitations. When crafting the standing permit, regulators included the variance based on a belief the plant was not harming nearby aquatic life.

Skelton of PSNH said the company rarely, if ever, was told whether regulators agreed with its conclusions.

"There was no feedback or communication back on where to go from here or where the process moves forward from here," Skelton said. "From our perspective, if there was a collaborative aspect to that it would have been more productive."

After years of requesting that the variance be extended, PSNH sent a letter to the EPA in January 2010 questioning the agency's authority to change the thermal limits. The charge came after two EPA requests that the company provide "an estimate of the most stringent thermal discharge limits that Merrimack Station would be able to comply with."

In its letter, PSNH said the variance could only be lifted if it's clear the aquatic populations were being harmed. As the plant claims that is not the case, PSNH says the "EPA's request for information is difficult to reconcile with EPA's authority."

Both King and Webster said the relationship with PSNH was not adversarial, and they do not believe the company was purposefully withholding information. But they did say having a company question the agency's authority is uncommon.

The limits ultimately provided by PSNH became the exact figures mandated in the new permit, according to King. Skelton declined to comment on the permit's contents, including thermal limits, pending the company's formal response to the EPA.

Delay requests

The two PSNH requests that the EPA slow its work on the permit came in 2006 and 2008.

In the first, the company informed the agency it would be submitting a study in early 2008 in response to another EPA regulation. PSNH asserted that it would be best for the agency to wait for this information so it could write the draft permit with all relevant information.

The second appeal came in July 2008, when PSNH asked the agency to wait for a U.S. Supreme Court ruling related to the Clean Water Act before writing the draft permit.

Skelton said both requests were made because the company expected the permit to be issued soon.

"There was a sense that the permit could be coming immediately, that it could be imminent," he said.

Stein, the EPA lawyer, said the two requests were denied because the agency worried that slowing progress would only add to the already lengthy process. He said the agency preferred to edit the permit after the additional information became available, rather than stop the process in anticipation of the changes.

"To us it didn't make sense to stop our work," he said. "It made sense to keep going."

Moving ahead, EPA officials agree, meant at some point the agency stopped engaging PSNH in conversation. Ultimately, they said, it is the EPA's job to analyze the data and draw its own conclusions.

"As you get closer to the point where you have a sense that you're going to issue the draft permit and supporting documents, you stop asking questions . . . and you start concentrating on getting your final document completed," King said.

That can be frustrating for the company, Webster said.

"Anyone would like the agency to keep talking with them until they come to an agreement with their point of view," he said. "But sometimes, no matter how much you talk, you're not necessarily going to come to their point of view if there is no flexibility in that."

"If that's what I needed to do, it would have taken me another 10 years," Webster said.

Skelton said rather than slowing progress, increased communication could have accelerated the permitting process. He said the two parties had only four in-person meetings over the 14 years, all at the company's request. Several other meeting requests, he said, were not granted. The EPA denies ignoring any meeting requests.

"With the amount of information and data that's been exchanged, certainly we understand that the EPA may not be able to share their full analysis," Skelton said. "But there was little to no communication or acknowledgment of what we were providing them, and any additional communication or collaboration from our view would have been helpful to the process."

Skelton pointed to permits issued by the state's Department of Environmental Services as examples of more collaborative regulatory processes.

PSNH is expected to make a formal response late in the 120-day public comment period, which ends Feb. 28. The process was initially slated to last 60 days, but PSNH received a 90-day extension.

It's not uncommon for such permits to go through lengthy appeals and rewrites before the final permit is issued.

Webster said permits have changed dramatically following the public comment period, sometimes prompting the agency to reissue the draft permit for another round of public consideration. He said the agency is very open to feedback.

"It's not at all set in stone," Webster said. "But at the same token it's not something we take lightly. It took us years to get it out."

(Tricia L. Nadolny can be reached at 369-3306 or tnadolny@cmonitor.com.)

Stephen Perkins	seems fairly done. thanks for time well spent wit...	12/11/2011 05:03:41 PM
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From: Stephen Perkins/R1/USEPA/US
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Cc: Dave Deegan/R1/USEPA/US@EPA
Date: 12/11/2011 05:03 PM
Subject: the Concord Monitor story

seems fairly done. thanks for time well spent with the reporter. hopefully we can build on that as the story progresses.

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