



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

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EPA/RC  
Water Office

Administrative Action  
No. WSPCD AF94-13

Mark

Public Service Company  
of New Hampshire  
1000 Elm Street  
P.O. Box 330  
Manchester, N.H. 03105

Settlement Agreement

The New Hampshire Department of Environmental Services (hereinafter "DES") and Public Service Company of New Hampshire (hereinafter "PSNH"), have agreed to the following in settlement of certain claims asserted by DES against PSNH as described below:

I. Introduction

1. PSNH owns and operates a coal/oil fired electric generating facility called Schiller Station in Portsmouth, New Hampshire.
2. PSNH holds NPDES/State discharge permit number NH0001473 (hereinafter "the Permit") for several wastewater discharges to the Piscataqua River from Schiller Station.
3. The permit contains several conditions relative to the operation of the cooling water intake screenhouses at the station. These conditions include Parts I.A.1.c., I.A.1.e., I.A.1.f. and I.B.
4. On August 8, 1994, DES issued a Letter of Deficiency (hereinafter "LOD") to PSNH. The LOD asserted that violations of the Permit had occurred and requested PSNH to take corrective action.
5. On August 22, 1994, DES received a letter from PSNH dated August 19, 1994 which included the following in response to the LOD:
  - a. Relative to the removal of the trash rack at the intake screenhouse: *"The screen was removed from the cooling water intake structure in November 29, 1993, for repairs. After the repairs were made, the rack could not be replaced due to the build up of sediment on the floor of the intake structure."*

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- b. Relative to who at DES and EPA approved the station's plans to remove the trash rack: *"The removal of the screen for repair is a maintenance activity. It is not a change in the location, design or capacity of this present structure."*
- c. Relative to PSNH's plans to minimize the stress to the live fish/shellfish returned from the screens to the Piscataqua River: *"It appears that written PSNH policies to return fish/shellfish to their habitat were not followed by one or more PSNH employees and an investigation is underway. PSNH is extremely disturbed by this development."*
6. On September 23, 1994, DES received copies of discovery in the case of State v. Joseph Couture from Harry N. Starbranch, Assistant County Attorney of the Office of the Stafford County Attorney. The discovery contained among other information the following:
- a. A receipt dated July 29, 1994 for evidence seized from Mr. Couture's auto as he was leaving Schiller Station which lists "(28) Sublegal lobster (seized from NH/BPT 779)."
- b. An arrest report which in statement number 1 lists as "1542 hrs" as the time that Mr. Couture's auto was searched, and in statement number 3 reads "Found Box w/20, bag w/8."
7. On September 26, 1994, DES received (as requested by Jeff Andrews during a visit to the station on September 14, 1994) copies of documents titled "Guidelines for Reporting and Investigating Events of Distress/Mortality at all PSNH Generating Stations" (4 pages) and "Fish Distress/Mortality Notification Procedures for Schiller Station" (1 page). It is pertinent that each document defines a reportable extraordinary event as "Any event where any number of . . . American Lobster are observed in distress or dead at a PSNH generating station."
8. In its response to the LOD, PSNH reported that removal of the trash rack was a maintenance activity and not a *"change in the location, design or capacity of this present structure."* This would be a reasonable argument if the rack was removed for repairs and replaced within a short period of time. The fact that the rack could not be replaced until dredging was completed, however, makes the removal no longer a temporary maintenance activity but a change in the design of the structure. By not seeking approval for this change in the design of the structure, PSNH violated state permit condition I.A.1.f.
9. When Joseph Couture, a PSNH employee working at Schiller Station, left work on July 29, 1994 at 1530 hrs with 28 sublegal lobsters, each lobster not returned to the Piscataqua River was a violation by PSNH of permit condition I.A.1.c.
10. New Hampshire Administrative Rules Env-C 603.05(d) provides that "For failure to comply with the conditions and requirements of the State permit, the fine shall be \$500 for each violation."
11. The sum of the single violation described in item 8 and the 28 separate violations described in item 9 above, which equals 29, times the \$500 per violation described in item 10 above equals \$14,500.

## II. Monitoring and Penalty

12. PSNH agrees to continue the intensive biological monitoring voluntarily instituted at Schiller Station since management became aware of the unusual lobster entrapment events until further written notice from DES or until the permit is reissued.
13. PSNH agrees to complete, on or before December 31, 1995, at least \$14,500 worth of DES approved projects that provide for a direct environmental benefit to the citizens or the fish and wildlife of the State of New Hampshire, beyond actions otherwise required by law or permit, in full settlement of any administrative action that DES might have initiated against it based on the violations described above. PSNH shall provide the Division with proof of all expenditures made with respect to the project(s) mutually agreed upon.
14. Notwithstanding the above, nothing herein shall be construed as a release by the State of any claims against PSNH for past or future violations of the permit that are revealed subsequent to this agreement.

Now therefore this Agreement has been executed this 25<sup>th</sup> day of October, 1994.

William T. Frain, Jr.

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Chief Operating Officer  
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1000 Elm Street, Manchester, N.H. 03105

Meredith MacArthur  
Witness

Department of Environmental Services

Edward J. Schmidt

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