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August 19, 2016

Via Electronic Mail

Re: Overdue NPDES Permit Updates for Merrimack and Schiller Stations in New Hampshire

Dear Regional Administrator Spalding and Senior Assistant Regional Counsel Stein,

The Sierra Club is writing to express concern regarding the slow pace in issuing the final National Pollution Discharge Elimination System (NPDES) permit for Merrimack and Schiller Stations in New Hampshire (permit Nos. NH0001465 and NH0001473, respectively). Although NPDES permits are only issued for a period not to exceed five years, both of these permits have been administratively continued beyond their expiration for a period of roughly *twenty* years (over 19 years for Merrimack, and nearly 21 years for Schiller). Nonetheless, in a discussion between Sierra Club and EPA on June 21, 2016, EPA was unable to identify a timeline on which the Merrimack permit would be finalized, and noted that the Schiller permit would likely not be finalized this fiscal year or next. This is despite the fact that EPA had previously stated—in materials filed before the First Circuit in *In re Sierra Club*, Case No. 12-860—that the Schiller permits would be finalized by June 2016 (and indicated that the Merrimack permit would be finalized before that). *See also* Judgment, *In re Sierra Club*, (No. 12-860, May 8, 2013) (noting that EPA had indicated a timeline of issuing “final permits by June 2016”).

In the meantime, both Merrimack and Schiller Station are operating under severely outdated administratively continued permits with inadequate requirements for, in pertinent part, controls on cooling water withdrawals and thermal loading of receiving waters, to the massive detriment of the Merrimack and Piscataqua rivers. Due to the heightened risk posed by these facilities continuing to operate under permits drafted a quarter-century ago, the Sierra Club feels that permit updates in the near future are imperative. Unless we are promptly assured that EPA intends to expedite its issuance of the final Merrimack and Schiller NPDES permits by a date

certain, we will once again take legal action seeking an order compelling EPA to issue the overdue permits. *See In re Int'l Chemical Workers Union*, 958 F.2d 1144, 1150 (D.C. Cir. 1992) (imposing an enforceable deadline on an agency that “has not met any timetable proposed to the court”).

Please do not hesitate to contact me if you have questions or wish to discuss. We would be interested in meeting with you to discuss a way forward.

Sincerely,

_____/s/
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