

## File Memorandum

**Date:** February 21, 2018

**From:** Mark Stein

**To:** Schiller Station NPDES Permit File

**Re:** January 26, 2018, Call from Sierra Club Regarding Status of NPDES Permits for Schiller Station and Merrimack Station

On January 26, 2018, Sierra Club's staff attorney, Zachary Fabish, called me to ask about the status of the NPDES permits for the Schiller and Merrimack Stations. He also raised the threat of Sierra Club suing (for a third time) to force expedited issuance of the permits if the permits were not forthcoming.

I told him that a suit would be pointless and, in fact, counter-productive because we are working very hard on the permits, just as we had indicated that we would do and as the First Circuit is expecting us to do. I pointed out that having to respond to another law suit would unavoidably deflect our attention from the permits themselves. I reiterated once more that we take issuance of the permits very seriously and are striving to complete this work.

He asked when the permits would be coming out. In response, I told him that for the Schiller permit, while I couldn't give an exact issuance date, I thought it was very close to issuance. I explained that I thought it was "a matter of weeks, not months." (Indeed, I observed that I was working on the permit myself when he called.)

With regard to the Merrimack permit, I indicated that I did not currently have an estimated issuance date to give him because, as he knew, the reopened comment period for that permit only recently closed (on December 18, 2017), and we had received voluminous comments from multiple parties, including from the Sierra Club, and we had not yet had a chance to review and assess these comments.

I explained that while the work of reviewing and considering the new comments (in conjunction with prior comments) had begun, our full team was not yet engaged with the Merrimack comments because some members of our Merrimack permit team are also on our Schiller permit team and are currently focused on that permit. I indicated that once Schiller was issued, we expected to shift focus to the Merrimack comments.

I also reminded Mr. Fabish that, while we had previously, in the First Circuit litigation, estimated that we would issue the Schiller and Merrimack permits by December 2017, we also identified to the court a number of possible contingencies that could push the issuance dates back. I then reminded him that since the litigation ended in April 2017, a number of these contingencies had occurred and had resulted in the issuance dates moving back from December 2017. I specifically mentioned that, for example, (1) EPA decided that we had to reopen the comment period for the Merrimack Station permit and accept additional comments (again, that new comment

period only ended on December 18, 2017), and (2) the State of New York ended up suing EPA over the Agency's designation of the Eastern Long Island Sound dredged material disposal site, and also filed two expansive Freedom of Information Act requests for records related to the site designation, all of which has demanded the attention of the lead staff attorney on the Schiller and Merrimack permits. (Beyond these two examples noted in the phone call, additional previously noted contingencies also arose, such as (a) that EPA had to track and then respond to the sale of the two power plants by PSNH to new owners, Granite Shore Power LLC, (b) that unpredicted appeals of other NPDES Permit have demanded staff attention that otherwise would have been focused on the Schiller and Merrimack permits, (c) that we also had to reopen the Endangered Species Act (ESA) consultation for the Schiller permit in the fall of 2017 because NOAA's newly designated critical habitat areas for the endangered Atlantic sturgeon included the Piscataqua River, and (d) that we are still awaiting completion of the CZMA review process by the permittee and the State of New Hampshire for the Schiller permit.)

I told him that we will need some time to get into the Merrimack permit comments, but that they should let us know if they want us to try to estimate when we thought we could issue permit after we have had the chance to consider the comments. In response, he did not clearly request that estimate at this time, but made clear that they welcome the soonest possible issuance of the Schiller permit.