



April 21, 2021

Via Certified Mail, Return Receipt Requested

Granite Shore Power LLC
431 River Road
Bow, NH 03304
Attn: James Andrews, President

GSP Schiller LLC
400 Gosling Road
Portsmouth, NH 03801
Attn: James Andrews, President

RE: Notice of Violation and Intent to File Suit under the Clean Water Act

To whom it may concern:

We, the Sierra Club, Inc. and Conservation Law Foundation (“CLF”) (together referred to as the “Notifiers”) write to notify you of our intent to file suit against Granite Shore Power LLC and GSP Schiller LLC (referred to as “GSP” or the “Permittee”) pursuant to Section 505(a) of the federal Clean Water Act (“CWA”).¹ The Notifiers intend to file suit in the United States District Court for the District of New Hampshire seeking appropriate equitable relief, civil penalties, and other relief no earlier than sixty days from the postmark of this letter.²

The Notifiers intend to take legal action against the Permittee due to its ownership and operation of Schiller Generation Station (“Schiller Station” or the “Station”), a power plant on the banks of the Piscataqua River in Portsmouth, New Hampshire. Schiller Station is engaged in ongoing and continuous violations of the CWA. Namely, GSP was required to submit a final design for new technology by December 30, 2020, but to date has not, and is therefore not in compliance with the National Pollutant Discharge Elimination System (“NPDES”) permit for Schiller Station, (Permit NH0001473).

¹ 33 U.S.C. § 1365(a).

² See 40 C.F.R. § 135.2(a)(3)(c) (CWA notice of intent to file suit is deemed to have been served on the postmark date).

I.

BACKGROUND

A. The Schiller Station

Schiller Station is located on approximately eighty-one acres along the western banks of the Piscataqua River in Portsmouth, New Hampshire, adjacent to Newington Station.³ Schiller Station has two dual-fuel units capable of firing coal or fuel oil, a fuel oil-fired combustion turbine, and a biomass boiler, with a combined total output of 155 MW (winter capacity).⁴ The current NPDES permit for Schiller Station, dated April 6, 2018, lists “Granite Shore Power Schiller LLC” as the permittee. On information and belief, Granite Shore Power LLC is a member (or other parent entity) of GSP Schiller LLC, and one or both of those entities owns and operates Schiller Station and is responsible for compliance with the facility’s NPDES permit.⁵

The Station utilizes a once-through cooling water intake system (“CWIS”) with a total design intake flow (“DIF”) of 125.8 million gallons per day (“MGD”)⁶ of cooling water from the waterbody, killing, maiming, or poisoning fish, fish larvae, and other aquatic organisms that become trapped on the plant’s intake screens, or are pulled into the once-through cooling system.⁷ Region 1 of the United States Environmental Protection Agency (“EPA”) issued Schiller Station’s NPDES permit on April 6, 2018, which became effective on July 1, 2018. Over decades, Schiller Station has entrained (drawn into cooling water systems) and impinged (pinned against intake screens) large numbers of fish and macrocrustacean eggs, larvae, juveniles, and adults.⁸ The EPA considers these entrainment and impingement losses from the current operation to be adverse environmental impacts.⁹

The Piscataqua River is an important public resource, prized by communities in New Hampshire and Maine for its wildlife, prominent role in the history of the region, and for the fishing, boating and other recreational opportunities it affords. A large variety of fish and macrocrustaceans of all life stages are present in the Piscataqua River in the vicinity of Schiller Station. All of these organisms are or may be negatively impacted by Schiller’s cooling water system. As a result of operating in the same manner for decades, the Schiller Station’s operations have contributed to a decline and disruption to aquatic life in the Piscataqua River. GSP’s failure to comply with the deadlines and schedule mandated by the EPA, regarding the

³ See Schiller Station Overview, <https://www.graniteshorepower.com/schiller-station>.

⁴ *Id.*

⁵ *Authorization to Discharge Under the National Pollutant Discharge Elimination System*, Schiller Station (Permit No. NH0001473) (April 6, 2018) (hereinafter the “NPDES permit”).

⁶ U.S. EPA, *Response to Comments, Draft National Pollutant Discharge Elimination System Permit No. NH0001473, Schiller Station, Portsmouth, New Hampshire*, at 63. at 18.

⁷ See U.S. EPA, Region 1, *Fact Sheet – Draft National Pollutant Discharge Elimination System (NPDES) Permit to Discharge to Waters of the United States Pursuant to The Clean Water Act (CWA)* (Sept. 29, 2015) at § 8.2.3 (“Summary of Impingement and Entrainment Impacts”); see also AR-312 (comments of Sierra Club).

⁸ *Id.*; see also Fact Sheet at 97.

⁹ *Id.*

final design and installation of new technology, is an ongoing violation of the NPDES Permit and the CWA.

B. Relevant Statutory and Regulatory Background

Congress passed the CWA in 1972 “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”¹⁰ The CWA’s goal is to eliminate all discharges of pollution into navigable waters.¹¹ To that end, the CWA prohibits point sources from discharging pollutants into waters of the United States, except in compliance with a NPDES permit.¹²

Section 316(b)¹³ of the CWA requires EPA to issue regulations on the design and operation of intake structures, in order to minimize adverse impacts. The 2014 CWA § 316(b) Final Rule established requirements for existing power generating facilities and existing manufacturing and industrial facilities that are designed to withdraw more than 2 MGD of water from waters of the United States and use at least 25 percent of the water they withdraw exclusively for cooling purposes.¹⁴ These national requirements, implemented through NPDES permits, apply to the location, design, construction, and capacity of CWIS at regulated facilities and provide requirements that reflect the site-specific, case-by-case Best Technology Available (“BTA”) determinations for minimizing adverse environmental impact.¹⁵

C. Schiller Station’s NPDES Permitting

Schiller Station’s NPDES permit, which the EPA originally issued in 1990, was finally reissued in 2018. In this 2018 NPDES permit, EPA required Schiller to comply with a schedule for the selection and installation of the new equipment required to help better reduce adverse impacts from impingement and entrainment. On March 10, 2020, GSP requested a modification to the 2018 NPDES Permit for Schiller Station, which EPA granted, creating a modified schedule of compliance for design of the new technology. In particular, EPA set the deadline for Schiller’s submission of a final design for the wedgewire screens as December 30, 2020.¹⁶ The Schiller NPDES permit requires installation of new cooling water intake structures to reduce adverse impacts from impingement and entrainment. The permit requires the Permittee to install and operate a fine mesh wedgewire screen intake system with a pressurized air system to clear debris from the screens,¹⁷ and maintain a through-screen velocity at the wedgewire screens no

¹⁰ 33 U.S.C. § 1251(a).

¹¹ *See id.* § 1251(a)(1).

¹² *See* 33 U.S.C. §§ 1311(a), 1342(a).

¹³ 33 U.S.C § 1326(b).

¹⁴ EPA, Office of Water, *Fact Sheet: Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities* (May 2014), https://www.epa.gov/sites/production/files/2015-04/documents/final-regulations-cooling-water-intake-structures-at-existing-facilities_fact-sheet_may-2014.pdf

¹⁵ *Id.*

¹⁶ EPA, Region 1, *Minor Modification for GSP Schiller’s Permit No. NH0001473* (signed March 25, 2020) (hereinafter, the “Modification”) at 3).

¹⁷ NPDES Permit Part I.A.11.a.1.

greater than 0.5 fps,¹⁸ with certain reporting requirements. The Modification gave GSP time extensions and new deadlines for submitting a demonstration report documenting the results of the pilot testing,¹⁹ data collection,²⁰ and a final design for the wedgewire screens.²¹ Rather than complying with the final deadline, GSP sent EPA a letter saying that it did not intend to make a technology selection for the wedgewire screens and, instead, would at some point in the current year, seek another permit modification for an updated BTA determination by EPA.²² Such modification would not be a minor modification and would require a public comment period.²³

II.

GSP IS ENGAGED IN ONGOING AND CONTINUOUS VIOLATIONS OF THE CLEAN WATER ACT AT SCHILLER STATION

A. GSP Was Required to Submit a Final Design for New Technology by December 30, 2020, Under the Modification to the 2018 NPDES Permit, But Has Failed to Comply with this Requirement

As discussed above, EPA set a deadline in GSP's modified NPDES permit of December 30, 2020, for Schiller's wedgewire screen technology selection submission. As-modified, the NPDES permit requires the following:

iii. A demonstration report documenting the results of the pilot testing shall be submitted to EPA and NHDES by July 30, 2020

iv. Data collection, including but not limited to topographic and bathymetric surveys, geotechnical exploration, and other design and marine construction variables that need to be evaluated shall be completed by August 29, 2020.

v. The permittee shall submit a final design for the wedgewire screens at Schiller Station by December 30, 2020, and in accordance with EPA's review of and comments on the preliminary design.²⁴

GSP states that it complied with the aforementioned deadlines of July 30, 2020, and August 29, 2020, by submitting the required documents to the EPA.²⁵ However, GSP's December 30, 2020, letter states that it does not intend to submit a final design as

¹⁸ *Id.* at Part I.A.11.a.2.

¹⁹ *Id.* at Part I.A.11.b.1.iii; Modification at Att. B.

²⁰ *Id.* at Part I.A.11.b.1.iv; Modification at Att. B.

²¹ *Id.* at Part I.A.11.b.1.v; Modification at Att. B.

²² See GSP Schiller Letter to EPA (Dec. 30, 2020), attached hereto as Attachment A at 2.

²³ 40 C.F.R. §§ 122.62, 122.63.

²⁴ Modification at NPDES Permit Part I.A.11.b.1 (emphasis added).

²⁵ See GSP Schiller Letter to EPA (Dec. 30, 2020).

required by its NPDES Permit.²⁶ To date, GSP has, in fact, not submitted a final design for the wedgewire screens at Schiller Station. As such, GSP's failure to comply with the deadline is an ongoing and continuous violation of the terms of the Station's NPDES permit and a violation of the Clean Water Act.

III.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The entities referred to in this letter as the Permittee (*i.e.*, Granite Shore Power LLC and GSP Schiller LLC) are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice.

On information and belief, Granite Shore Power LLC and/or GSP Schiller LLC, own and operate Schiller Station. Therefore, the Permittee has been responsible for submitting a final design in accordance with the terms of Schiller Station's permit.

The Notifiers hereby put the Permittee on notice that if the Notifiers subsequently identify additional persons as also being responsible for the violations set forth above, Notifiers intend to include those persons in this action.

IV.

LOCATION OF ALLEGED VIOLATIONS

The violations alleged in this Notice have occurred and continue to occur at Schiller Station in Portsmouth, New Hampshire.

V.

DATES OF VIOLATIONS

The Permittee is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue.

With respect to the dates that the permit's provisions have been violated, Part 11.b.1 of Schiller's as-modified permit requires that the final design for the new technology be submitted to EPA by December 30, 2020. Therefore, with respect to each day of missing or unsubmitted final designs, a separate date of violation has occurred on each date after December 30, 2020.

VI.

²⁶ See GSP Schiller Letter to EPA (Dec. 30, 2020).

RELIEF REQUESTED

The Notifiers will ask the court to order the Permittee to comply with the Clean Water Act, to pay penalties, and to pay Notifiers' costs and legal fees.

First, the Notifiers will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d)²⁷ and such other relief as permitted by law.

Second, pursuant to Section 309(d) of the CWA,²⁸ each separate violation of the CWA subjects the Permittee to a penalty of up to \$56,460 per day per violation for all Clean Water Act violations assessed on or after December 23, 2020, for violations that occurred after November 2, 2015.²⁹ The Notifiers will seek penalties.

Finally, pursuant to the CWA, the Notifiers will seek recovery of their litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.³⁰

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

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²⁷ 33 U.S.C. § 1365(a), (d).

²⁸ 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

²⁹ 40 C.F.R. § 19.4 (Table 1).

³⁰ 33 U.S.C. § 1365(d).

VIII.

IDENTIFICATION OF COUNSEL

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IX.

CONCLUSION

The foregoing provides more than sufficient information to permit the Permittee to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.³¹

During the sixty-day notice period, the Notifiers are willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If the Permittee wishes to pursue such discussions, please contact the undersigned attorneys immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,

/s/ Zachary M. Fabish
Zachary M. Fabish
The Sierra Club
50 F Street, NW - 8th Floor

³¹ 40 C.F.R. § 135.3(a).

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