

To: Schiller Station NPDES Permit Modification File

From: Michael Curley

Re: notes of 3/30 and 4/6 phones call with Tom DeLawrence at Balch & Bingham, outside counsel for GSP

Date: April 13, 2023

- I called Tom DeLawrence on 3/27 at 3:30pm. His secretary mentioned that he would be out all week but would be checking messages. I left him a voicemail message saying I was calling him about GSP's request regarding backsliding. See GSP Nov. 17, 2022, comment letter at 6.
- I didn't hear back, so I sent him an email on 3/29 at 4:30ish and cc'd Stephen Gidiere.
 - Tom wrote back shortly after to set up a call for the following day.
- Tom and I spoke by phone at 9am on 3/30/23
 - He was out of the country (on vacation), and we had a connection that kept breaking up intermittently and seemed to get worse as the call went on, so it was not always possible to hear him.
 - Told him I was calling b/c GSP's comment had requested that, if EPA disagreed "with any aspect" of GSP's conclusion, that we let them know before issuing the mod. I told him in response that it was not clear to EPA that backsliding would not prevent the general changes GSP mentioned in its comment. I asked whether this meant GSP would no longer be interested in the mod or whether perhaps the backsliding point was not all that important to GSP. He said he'd have to talk to GSP to see.
 - We talked more about anti-backsliding, and I said that it was hard to know how an anti-backsliding analysis would go at this point without more specific idea of the changes GSP might request and how any anti-backsliding exceptions might apply.
 - He asked whether we knew particular scenarios that would definitely prevent changing flow limits in the future.
 - I said I didn't b/c there are many permutations so I haven't thought about it that way. I did mention that, under the draft mod, there would be both flow limits and WWS provisions, which could mean that a BTA analysis EPA might do in a future permit would probably not be a strict comparison of new flow limits to old flow limits, but rather a comparison of new flow limits to the entrainment impact under the alternatives in the draft mod (WWS or flow limits) to see if the new limits were less stringent than either of those.
 - He asked that, if Schiller decided it wanted to ramp up energy production and increase the flow limits, would that just be straight up forbidden in a future permit, or would EPA look at other entrainment technologies that GSP would say it might install to counter the entrainment impact.
 - I said EPA would likely look at the entrainment impact rather than looking narrowly at the difference in flow limits. So, if GSP were to propose additional entrainment reduction technologies, that would

likely be part of EPA's analysis into whether the flow limits could be increased.

- As our connection started to deteriorate even further, he started to say that he needed to talk to his client, would get back in touch with me next week, and possibly more, but the connection got so patchy at this point that, after a bit of "can you hear me now," we decided to end the call and he said he'd contact me next week. He followed up with an email a few minutes later to that effect.
- Tom De Lawrence called back on 4/6
 - GSP is OK with the uncertainty surrounding the backsliding issue.
 - I asked whether Schiller has operated since the June-ish 2020 shutdown and whether GSP is willing to tell us whether it has any plans to shut Schiller down permanently. He said he didn't know if they have operated at all since that shutdown began and he didn't know whether they have any plan to shutdown permanently but that they generally want to have the flexibility to be able to operate.
 - I mentioned that I had recently heard that GSP removed all of its air monitoring equipment from Schiller at some point, and he said he did not know that.
 - I also asked about Merrimack and whether GSP has any plans it can tell us for shutdown there, given last week's news that Merrimack did not clear the forward capacity auction for June 2026
 - He said he would check with GSP about both plants and get back to me if he had any news
 - He also asked about what it would take to terminate a permit if GSP did want to shutdown. [I think he was focussed on Schiller].
 - We talked generally about how some portions of a permit could be terminated in a way, if various discharges are eliminated, such that the portions of the permit applicable to the eliminated discharges might be able to be deleted. [40 CFR § 122.63(e)]. We also discussed that some discharges might continue, however, even if a plant were no longer operating, such as stormwater discharges or coal pile runoff or leachate discharges and thus NPDES coverage would have to continue for those, though there could potentially be General Permit coverage for a stormwater discharge, though sitting here now I don't know whether that would work for Schiller.
 - We also spoke briefly about a recent letter from EPA regarding GSP Schiller's reapplication.
 - He also asked about a communication Jim Andrews had recently via email with EPA about a Merrimack modification, but I said I didn't really know about that and that he should probably speak to Mark
 - Lastly, I just asked him to let GSP know that we may want to have a call with them about Merrimack in light of the recent news about the ISO auction.