



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

NPDES/Clean Water Act: New Hampshire Coal-Fired Power Plant Files U.S. EPA Environmental Appeals Board Petition Challenging Certain Permit Conditions

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GSP Merrimack, LLC, (“GSP”) filed a July 27th Petition for Review (“Petition”) before the United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) challenging certain conditions in a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit.

The Petition states that GSP is the owner of Merrimack Station in Bow, New Hampshire.

Merrimack Station is described as a coal-fired electric generating facility consisting of two primary steam-electrical generating units. It also is stated to encompass two smaller, jet-fuel-fired peaking combustion turbines. The station’s two units are stated to have been operating since 1960 (Unit 1) and 1968 (Unit 2), respectively.

The Petition states that Merrimack Station withdraws water from and discharges to the Merrimack River. EPA Region 1 had issued an NPDES permit renewal to the Merrimack Station on May 22, 2020. Prior to the issuance of the permit renewal, the station had operated pursuant to an NPDES permit issued by EPA Region 1 in 1992.

The Petition challenges certain provisions and conditions in the NPDES permit renewal.

In referencing the focus of its challenge to the permit, the Petition states:

... Section 316(b) of the CWA addresses cooling water intake structures (“CWISs”) and requires that “the location, design, construction, and capacity of [CWISs] reflect the best technology available [“BTA”] for minimizing adverse environmental impact” to aquatic organisms. GSP is not seeking review of any provisions of the Permit other than those specific provisions related to § 316(b) that are identified below.

GSP specifically describes three provisions that are being challenged. It seeks review and remand of:

1. the requirement to install and operate cylindrical wedgewire screens from April 1 through August 15 without the ability incorporate other operational measures such as targeted flow reductions to reduce entrainment;
2. the requirement to schedule Merrimack Station Unit 2 maintenance outages between May 15 and June 15, to the extent practicable; and

3. the six-month deadline within which to install fish return sluices.

The summary of the two arguments put forth by GSP include:

- Parts I.E.1, 2, 4, and 7.a.-7.c. and Part I.G.3 of the Permit should be remanded because those provisions do not properly take into account Merrimack Station's changed operational profile.
- The six-month deadline to install fish return sluices is unworkable and not supported by the record.

A copy of the Petition can be downloaded [here](#).