June 22, 2018

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Via Electronic and Certified Mail

Re: Notice of Intent to Initiate Legal Action on Overdue NPDES Permit Update for Merrimack Station in New Hampshire

Dear Regional Administrator Dunn and Senior Assistant Regional Counsel Stein:

The Sierra Club gives notice of its intent to initiate a judicial mandamus action to compel issuance of a modern National Pollution Discharge Elimination System (NPDES) permit for the Merrimack Station electric generating unit in New Hampshire (permit No. NH0001465), if EPA fails to act. Merrimack Station is operating on a permit issued 26 years ago this month (June 25, 1992), long past the five-year term limit set by the Clean Water Act. 33 U.S.C. § 1342(b)(1)(B). To avoid the necessity of judicial intervention, Sierra Club requests that EPA respond to this letter, stating in writing that, by no later than September 1, 2018, it will issue a final permit.

This violation has been brought to the attention of EPA Region 1 frequently since 2012, a period of time itself even longer than the CWA's five-year limit. In that time, EPA twice promised to act while opposing judicial mandamus actions and has twice failed to remedy its ongoing and unreasonable delay. First, in materials filed in *In re Sierra Club*, Case No. 12-1860, EPA indicated that the Merrimack permit would be finalized by June 2016. *See also* Judgment, *In re Sierra Club* (No. 12-1860, May 8, 2013) (noting that EPA had indicated a timeline of issuing "final permits by June 2016"). But in a discussion with Sierra Club on June 21, 2016, EPA could not provide a timeline for finalizing the Merrimack permit. Accordingly, Sierra Club again sought mandamus relief in the First Circuit. Again, the EPA opposed a judicially enforceable timeline and intimated that it would finalize the permit by the end of 2017. *See* Judgement, *In re Sierra Club* (No. 16-2415, Apr. 19, 2017) (expecting EPA to work diligently to issue final permits by the end of 2017).

EPA has since allowed that timeline to lapse, taking no final action on the Merrimack permit in 2017. Instead, on August 4, 2017, for the third time since 2011, EPA decided to

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reopen comment rather than finalize a permit for Merrimack Station, and twice extended this latest comment period. By September 1, 2018, EPA will have taken almost twice as long to issue the Merrimack permit as it proposed to the First Circuit last year.

Currently, Merrimack Station operates under an antique administratively continued permit with particularly outdated limits on cooling water withdrawals and thermal loading of receiving waters, to the massive detriment of the Merrimack River. At the same time, EPA's delay gives this uneconomic plant an unfair competitive advantage over generators operating in compliance with modern pollution control requirements. Therefore, unless EPA states in writing that it will issue a final permit no later than September 1, 2018, Sierra Club will take legal action requesting mandamus relief to cure EPA's failure to act. *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").

Sierra Club is interested in seeing this matter resolved. Please do not hesitate to contact us if you have questions or wish to discuss EPA's planned compliance.

Sincerely,

/s/

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