

Public Service Company of New Hampshire  
Docket No. DE 10-261

Data Request OCA-01  
Dated: 02/25/2011  
Q-OCA-039  
Page 1 of 5

Witness: William H. Smagula  
Request from: Office of Consumer Advocate

**Question:**

Referring to Section V-B.5 Fuel Procurement Strategies there is a reference to an annual fuel and emission planning meeting. Please provide the agenda, minutes and any handouts of the most recent meeting.

**Response:**

The content of internal business strategy discussions constitutes confidential business information. Due to a litigious climate, no agenda is issued and no minutes are taken. The attached handout was distributed during the last annual meeting in November 2010.

The information contained in the documents included in this response is highly confidential. The information is being supplied to the OCA pursuant to the general confidentiality agreement between PSNH and the OCA. Should the OCA intend to include this information in any future discovery requests, testimony or any other communication or document in this proceeding, please inform PSNH in advance. PSNH will file a motion for confidential treatment before the commencement of hearings on the merits, pursuant to Puc §203.08 (d), We trust the information will be kept confidential pursuant to Puc § 203.08(e).

Public Service Company of New Hampshire  
Docket No. DE 10-261

Data Request OCA-01  
Dated: 02/25/2011  
Q-OCA-049  
Page 1 of 3

Witness: Elizabeth H. Tillotson  
Request from: Office of Consumer Advocate

**Question:**

Section IX, starting on page 133 addresses PSNH's compliance with clean air and emissions regulations at the Federal and State levels. On page 137 the statement is made: "A subgroup of PSNH's Generation management team meets at least annually to comprehensively analyze PSNH's position and to set strategic direction for PSNH Generation." Please provide the agenda, minutes and all handouts or documents discussed of the most recent meeting.

**Response:**

The content of internal business strategy discussions constitutes confidential business information. Due to a litigious climate, no agenda is issued and no minutes are taken. The attached document is a sample of the meeting handout which provides a snapshot of the current status. For clarity, not all of the information in the table is referred to and updated for each meeting.

The information contained in the documents included in this response is highly confidential. The information is being supplied to the OCA pursuant to the general confidentiality agreement between PSNH and the OCA. Should the OCA intend to include this information in any future discovery requests, testimony or any other communication or document in this proceeding, please inform PSNH in advance. PSNH will file a motion for confidential treatment before the commencement of hearings on the merits, pursuant to Puc §203.08 (d). We trust the information will be kept confidential pursuant to Puc § 203.08(e).



# CONSERVATION LAW FOUNDATION

## Attachment A

February 26, 2009

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Gary A. Long, President and Chief Operating Officer  
Public Service Company of New Hampshire  
780 North Commercial Street  
Manchester, New Hampshire 03101

Robert A. Bersak, Esq., Registered Agent  
780 North Commercial Street  
Manchester, New Hampshire 03101

Re: Notice of Intent to File Clean Air Act Citizen Suit

Dear Messrs. Long and Bersak:

Conservation Law Foundation ("CLF") provides this Notice of Intent to file a citizen suit against Public Service Company of New Hampshire ("PSNH") pursuant to Clean Air Act ("CAA") § 304(a)(3), 42 U.S.C. § 7604(a)(3). Activities undertaken by PSNH at its Merrimack Station facility located at 97 River Road in Bow, New Hampshire, constitute proposing to construct and / or constructing a new or modified major emitting facility without a permit required under CAA subchapter I part C (relating to significant deterioration of air quality) and / or part D (relating to nonattainment) and violations of the permitting requirements set forth in the New Hampshire State Implementation Plan ("NHSIP"). These modifications have resulted or will result in significant increases in air pollutant emissions.

The CAA authorizes the court to issue injunctions and to apply appropriate civil penalties. CAA § 304(a)(3), 42 U.S.C. § 7604(a)(3); *Sierra Club v. Franklin County Power of Illinois*, 546 F.3d 918, 935 (7<sup>th</sup> Cir. 2008). PSNH is liable for up to \$25,000 for each day of each violation. See CAA § 113, 42 U.S.C. § 7413(b)(1) (state implementation plan violations) and 7413(b)(3) (failure to comply with new source requirements).

27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059 • [www.clf.org](http://www.clf.org)

MASSACHUSETTS: 62 Summer Street, Boston, Massachusetts 02110-1016 • Phone: 617-350-0990 • Fax: 617-350-4030

MAINE: 14 Maine Street, Brunswick, Maine 04011-2026 • 207-729-7733 • Fax: 207-729-7373

RHODE ISLAND: 55 Dorrance Street, Providence, Rhode Island 02903 • 401-351-1102 • Fax: 401-351-1130

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

## CONSERVATION LAW FOUNDATION

### *Background*

Merrimack Station is among the most polluting power plants in New England. PSNH reports that in 2007, the plant emitted 36,485 tons of sulfur dioxide, 3,224 tons of nitrogen oxide, over 137 pounds of mercury compounds, and nearly 4 million tons of carbon dioxide.

PSNH is required under New Hampshire law to install by 2013 wet flu gas desulphurization scrubbers that will reduce mercury emissions from the plant by eighty percent ("Scrubber Project"). See RSA 125-O:11, *et seq.* ("Scrubber Law"). When the law was passed in 2006, the estimated cost of the scrubber installation was \$250 million dollars. In an August 7, 2008, quarterly earnings report (10-Q) filed with the Securities and Exchange Commission, PSNH's parent company, Northeast Utilities, disclosed that the estimated cost for the Scrubber Project is now \$457 million dollars. PSNH has represented that it has commenced construction on the project, and that the project "is already half done." See Gary A. Long, *Need for Bow Scrubber Project is Real* (Concord Monitor, February 8, 2009).

### *Legal Framework*

Preconstruction review is required for all major sources of air pollution before new source construction or modification. The prevention of significant deterioration ("PSD") program governs attainment pollutants, see CAA subchapter I, part C and 40 C.F.R. 52.21; the New Source Review ("NSR") program governs non-attainment pollutants. See CAA subchapter I, part D; 40 C.F.R. 52.24. New Hampshire state implementing regulations for these programs have been promulgated by the New Hampshire Department of Environmental Services ("DES") and approved by the United States Environmental Protection Agency. See New Hampshire Code of Administrative Rules ("N.H. Admin. Rules") Env-A chapter 600 *et seq.*; 40 CFR 52.1520; 40 CFR 52.1525.

A temporary permit is required before construction of new or modified sources in certain categories. See RSA 125-C:11; N.H. Admin. Rules Env-A 607.01. Nothing in RSA 125-O:13 disturbs that requirement. See RSA 125-O:13 ("The achievement of this requirement is contingent upon obtaining all necessary permits and approvals from federal, state, and local regulatory agencies and bodies.").

The term "construction" is defined under the CAA and New Hampshire law to include modifications. A modification is defined as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." CAA § 169(2)(c), 42 U.S.C. § 7479(2)(c) (incorporating NSPS definition of modification set forth at CAA § 111(a)(4); 42 U.S.C. § 7411(a)(4)); CAA § 171(4), 42 U.S.C. § 7501(4); N.H. Admin. Rules Env-A 101.52.

## CONSERVATION LAW FOUNDATION

For preconstruction permitting purposes, interrelated activities must be aggregated and treated as a single project. *See* Draft EPA NSR Workshop Manual § III.B.1 (October 1990); February 15, 1989 EPA WEPCO Applicability Determination; *see also* EPA Final Rule, PSD / NA-NSR: Aggregation and Project Netting (Jan. 12, 2009) ("Our aggregation policy aims to ensure the proper permitting of modifications that involve multiple physical and / or operational changes. Thus, multiple, nominally separate activities that are sufficiently interrelated should be grouped together and considered a single project for the purpose of [ ] the NSR applicability test.").

### *Violations*

During 2008, PSNH made substantial modifications to Merrimack Station Unit 2 ("MK2") to accommodate the scrubber that (i) increased the power output of that unit somewhere in the range of 6 to 13 megawatts, and possibly more; and (ii) have resulted or will result, based on PSNH's own data, in significant net emissions increases from the facility.

In April and May of 2008, PSNH removed a high pressure / intermediate pressure ("HP/IP") turbine, and replaced it with a new HP / IP turbine. *See* Testimony of PSNH Technical Business Manager Lynn Tillotson, December 4, 2008, Redacted Hearing Transcript, New Hampshire Public Utilities Commission ("PUC") Docket No. DE 08-113, p. 16, lines 10-22 (hereinafter, "Tillotson Testimony"). The new turbine components include the HP/IP rotor with integral shroud rotating blading, integral shroud stationary blading, nozzle block, inner and outer cylinder casings, associated seals and piping, and inspection ports. *See* February 20, 2009, PSNH Response to Data Request TS-01, PUC Docket No. DE 08-145, attached hereto as *Exhibit 1*.

PSNH also replaced the generator rotor; air heater tube; boiler floor; selective catalytic reducer ("SCR") catalyst; secondary superheater inlet bank; station batteries; excitation switchgear voltage regulator; sootblowers; SCR sub-grit, insulation, and lagging; distributed control computer system; primary superheater bypass valve; secondary superheater bypass valve; main boiler feedpump control valve; SCR expansion joints; and coal bunker gates. *Id.* PSNH installed ash conditioning equipment on an existing flyash storage tank. *Id.* These projects were all treated as capital expenditures. *Id.* Substantial other work was performed on the unit during the outage, including "numerous other corrective and preventative tasks." *Id.*

PSNH "worked to modify boiler combustion temperatures," and "[t]ube shields were removed from the boiler reheater to increase heat transfer and improve steam temperatures," in order to "accommodate the design and engineering of a scrubber system." *See* September 2, 2008, PSNH Response to PUC Request for Information, PUC Docket No. DE-08-103 at 8.

The outage was longer than the routine annual scheduled maintenance outage, *see* Tillotson Testimony, p. 16, lines 10-15, beginning April 1 and ending on May 22. *See*

## CONSERVATION LAW FOUNDATION

February 20, 2009, PSNH Response to Data Request TS-01, PUC Docket No. DE 08-145.

The purpose was to increase turbine efficiency, increase output, and reduce maintenance outages. See Tillotson Testimony, p.17, lines 1-22. Increased output would provide "additional megawatts to offset the scrubber installation." *Id.* This work was performed with the assistance of outside turbine installation contractors. See *id.*, p. 18, lines 9-10; p. 19, lines 11-12. The turbine ultimately failed. See *id.*, pp. 18-20. An additional three and one-half week outage to accommodate further work on the new turbine occurred between June 20 and July 14, 2008. See *id.* at 19, line 8. The initial cost estimate for this project was in the range of \$9 million to \$15 million dollars. See June 7, 2006, Letter from Mr. William H. Smagula, P.E. to NH DES ARD Director Robert R. Scott at 3, attached hereto at *Exhibit 2*.

As of February 20, 2009, the cost of the MK2 modifications was \$11.4 million dollars. See February 20, 2009, PSNH Response to Data Request TS-01 in PUC Docket No. DE 08-145. PSNH contracted for "an expected base increase of about 6 megawatts," in addition to MK2's pre-modification output, and the "contract was also structured such that it was a pay-for-performance." Tillotson Testimony, p. 24, lines 8-12. Accordingly, "to the extent that [PSNH] could find ways to operate the turbine more efficiently and get additional output, the contractor would be providing more costs, they would be paid more money, and the upper range of that was 12 megawatts." *Id.* at p. 24, lines 12-13; p. 25, lines 14-16.<sup>1</sup>

The MK2 work took place over the course of at least eleven and one-half weeks in 2008, *five years* before July 2013, when the Scrubber Law requires the scrubber to be operational. The new generation capacity of six to twelve megawatts or more enabled by the work will not be offset in any amount by scrubber power requirements until the scrubber is operational, resulting in significant additional air pollution, including global warming pollution.

The physical changes made to MK2 to accommodate the scrubber did not constitute routine maintenance, repair, or replacement. "[R]outine maintenance, repair and replacement occurs regularly, involves no permanent improvements, is typically limited in expense, is usually performed in large plants by in house employees, and is treated for accounting purposes as an expense." *Sierra Club v. Morgan*, 2007 WL 3287850, No. 07-C-251-S (W.D. Wis. Nov. 7, 2007) (citing *U.S. v. Ohio Edison Co.*, 276 F.Supp.2d 829, 834 (S.D. Ohio 2003)). The facts here, including the project's purpose—to increase output to accommodate the scrubber, reduce outages, and enhance operational

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<sup>1</sup> PSNH's counsel during this proceeding, Mr. Gerald M. Eaton, made clear his displeasure that Mrs. Tillotson had been as forthcoming as she was with respect to the new turbine's anticipated capacity: "I wish the last two answers could be part of the confidential record. Mrs. Tillotson is a very knowledgeable person, and went into far more detail than I wanted her to do." December 4, 2008, Redacted Hearing Transcript, PUC Docket No. DE 08-113, p. 25, lines 21-24.

## CONSERVATION LAW FOUNDATION

efficiencies—cost, duration of outages, project capitalization, and use of outside consultants, all demonstrate that the MK2 work does not constitute routine maintenance, repair, and replacement. *See generally, id.*

### ***MK2 Modifications Will Result in Significant Net Increases in SO<sub>2</sub> and NO<sub>x</sub>***

PSNH projects MK2 post-modification emissions increases for NO<sub>x</sub>, SO<sub>2</sub>, CO, PM, and VOCs. *See* January 31, 2008, letter from Mr. Smagula to Director Scott at Attachment 1, attached hereto at *Exhibit 3*. For 2009, PSNH has projected a 527 ton per year (“tpy”) post-modification increase in NO<sub>x</sub>, and a 1,166 tpy post-modification increase for SO<sub>2</sub>. *See id.* Both appear to be “significant” for PSD and non-attainment NSR purposes. *See* 40 C.F.R. 52.21 (b)(23) & (b)(40) (“significant means, in reference to a net emissions increase . . . a rate of emissions that would equal or exceed any of the following rates: . . . Nitrogen oxides: 40 tpy, Sulfur dioxide: 40 tpy . . .”); 40 CFR 52.21(b)(41) & (b)(48); 40 CFR 51.165(a)(1)(x)(A) & (a)(1)(xxviii).

PSNH has represented to DES that these projected increases are those attributable to the modification: “In accordance with EPA guidance, the projection of post-change emissions does not include the portion of emissions that could have been accommodated before the change and is unrelated to the change.” *See* January 31, 2008, Letter from Mr. Smagula to Director Scott at 3. It therefore appears that the projected increases are net increases.

### ***Additional Planned Modifications to MK2***

PSNH anticipates that further repair or replacement of the new turbine will be necessary. *See* January 16, 2009, Prehearing Conference Transcript, statements by PSNH counsel Robert A. Bersak, PUC Docket No. DE 08-145. On January 21, 2009, PSNH made an interconnection request to the Independent System Operator Administered Transmission System to increase the winter net capacity of MK2 to 353.3 megawatts (an increase of 31.75 megawatts over its current 321.75 winter claimed capacity) by the projected commercial operation date of December 14, 2009. It does not appear that PSNH has applied for a permit for this work.

### ***Aggregation***

PSNH was required to aggregate, for purposes of the preconstruction permit process, the activities performed on MK2 to accommodate the scrubber, any other non-routine modifications made in connection with those activities, and the scrubber installation work. EPA has long cautioned that “[a] deliberate decision to split an otherwise ‘significant’ project into two or more smaller projects to avoid PSD review would be viewed as circumvention and would subject the entire project to enforcement action if construction on any of the small projects commences without a valid PSD permit.” Draft EPA NSR Workshop Manual § III.B.1 (October 1990); February 15, 1989 EPA WEPCO Applicability-Determination (“WEPCO cannot evade PSD and NSPS applicability by

## CONSERVATION LAW FOUNDATION

carving out, and seeking separate treatment of, significant portions of an otherwise integrated renovation program. Such piecemeal actions, if allowed to go unchallenged, could readily eviscerate the clear intent of the Clean Air Act's new source provisions.""); *see also* EPA Final Rule, PSD / NA-NSR: Aggregation and Project Netting (Jan. 12, 2009).

That a company may take the position that projects were "undertaken as separate business decisions," and / or are "based on independent economic justifications" does not overcome the aggregation requirement. *See* July 5, 2005, EPA Southwire Co. PSD Applicability Opinion.

PSNH has represented in correspondence to DES regulators that the MK2 work is being undertaken to comply with the Scrubber Law. *See* June 7, 2006, Letter from Mr. Smagula to Director Scott ("[T]o maintain the generation output and value to customers, the large power consumption of a scrubber system—as much as 6 to 10 megawatts, *justified the need to fully assess balance of plant improvements necessary to offset the additional load. . . . installation of a scrubber will require . . . balance of plant work, MK2 high pressure / intermediate pressure (HP / IP) turbine and generator work, in addition to the installation of the scrubber vessel. . . . Completion of the MK2 HP/IP turbine and generator projects is expected to maintain the reliability and output of MK2, and allow for the operation of a scrubber.*") (emphasis supplied); January 31, 2008, letter from Mr. Smagula to Director Scott (" . . . the balance of plant projects planned to be completed during the 2008 MK2 outage, including the HP/IP project and associated generator repair work, *are necessary in order to maintain the output of MK2 and comply with RSA 125-O:13 which requires PSNH to install a wet scrubber at Merrimack Station, no later than July 2013.*") (emphasis supplied).

Nevertheless, PSNH sought to exclude the MK2 capacity expansion work from the Scrubber Project construction permit application process, and therefore avoid any transparent public review of all project elements.

The activities undertaken by PSNH, as set forth above, including the replacement of the HP / IP turbine and generator, constitute proposed construction and construction of a modified major emitting facility without obtaining the permits required under CAA subchapter I parts C (PSD) and / or D (nonattainment) and a federally enforceable violation of the NHSIP which requires that a temporary permit be obtained prior to commencement of construction of a new or modified stationary source. N.H. Admin. Rules Env-A 600 *et seq.*

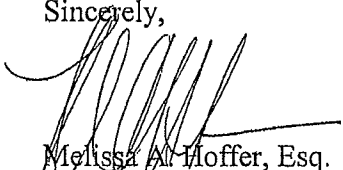
CLF reserves all rights to amend this notice and identify additional claims as further facts are developed. If you believe that any portion of this Notice is in error and / or if you wish to discuss any portion of this Notice, please contact me at the address and phone



CONSERVATION LAW FOUNDATION

number listed below. CLF would be pleased to discuss alternatives for a cooperative resolution of the violations identified in this Notice.

Sincerely,



Melissa Al Hoffer, Esq.  
Vice President, Director  
Conservation Law Foundation  
New Hampshire Advocacy Center  
27 North Main Street  
Concord, New Hampshire 03301  
(603) 225-3060

Cc:

Lisa Jackson, Administrator (by certified mail)  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington DC 20460

Ira W. Leighton, Acting Regional Administrator (by certified mail)  
U.S. Environmental Protection Agency  
1 Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

Governor John Lynch (by certified mail)  
State of New Hampshire  
Office of the Governor  
107 North Main Street, Room 208  
Concord, New Hampshire 03301

Thomas Burack, Commissioner (by certified mail)  
New Hampshire Department of Environmental Services  
29 Hazen Drive  
Concord, New Hampshire 03301

Robert Scott, Director, Air Resources Division (by certified mail)  
New Hampshire Department of Environmental Services  
29 Hazen Drive  
Concord, New Hampshire 03301

MAR 14 2005



Conservation Law Foundation

March 11, 2005

**VIA CERTIFIED MAIL**

**Attachment B**

Mr. Michael T. Nolin, Commissioner  
State of New Hampshire  
Department of Environmental Services  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

Mr. Gary A. Long, President and Chief Operating Officer  
Public Service Company of New Hampshire  
PSNH Energy Park  
780 North Commercial Street  
P.O. Box 330  
Manchester, NH 03105-0330

RE: Notice of Intent to File Suit Under the Clean Air Act 42 U.S.C. § 7412(j)

Gentlemen:

Pursuant to Section 304(b) of the Clean Air Act, 42 U.S.C. sec. 7604(b), and its implementing regulations, 40 C.F.R. Part 54, the Conservation Law Foundation (CLF) hereby provides Notice of Intent to File Suit under the Clean Air Act against the New Hampshire Department of Environmental Services, Air Resources Division (NHDES), and Public Service Company of New Hampshire (PSNH) in connection with the failure of the Administrator of the EPA to establish mercury emission standards, as required by Section 112 of the Clean Air Act, 42 U.S.C. for combustion electric generating plants, and the consequent responsibilities of NHDES and PSNH to engage in the equivalent MACT permit process pursuant to 42 U.S.C. § 7412(j) for the facility known as "Merrimack Station", located in Bow, New Hampshire. CLF specifically provides notice of its intention to file a complaint in the United States District Court for the District of New Hampshire seeking appropriate remedies, including injunctive, declaratory and other relief, together with attorney fees and expenses of litigation, no earlier than 60 days from the postmark date of this letter, on or after May 12, 2005. Additional defendants may be named as necessary to provide complete relief.

Section 112 of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7412 (hereafter also referred to as "section 112"), requires EPA to set emissions standards to control identified toxic

## Conservation Law Foundation

pollutants, such as mercury, from all facilities listed as "major sources" under section 112(c). EPA must promulgate, within two years after a major source category is listed under section 112(c), emissions standards that comply with the specific requirements of section 112(d). This provision requires the application of "maximum achievable control technologies", or "MACT" based controls for each category of major source listed for regulation pursuant to section 112(c). If the EPA does not meet this deadline for promulgating emission standards for a specific major source category, section 112(j)(2) requires each major source in that category to obtain an amended Title V permit containing MACT emission standards equivalent to those required under section 112(d). Section 112(j)(2) specifically requires that each major source file a timely permit application. Section 112(j)(5) specifically requires that the Title V permitting authority issue a permit that contains emission limitations equivalent to the limitations that would have applied if the emission standard(s) had been promulgated in a timely manner under section 112(d). The clear purpose of these provisions is to ensure that hazardous air pollutants will be effectively regulated under the permit process even if EPA fails to issue the required emissions standards within the statutory timeframe.

EPA was required under section 112(n)(1) to study the health hazards of electric utility power plant emissions and determine whether regulation under section 112 was "appropriate and necessary". EPA issued on December 20, 2000 its ruling that the regulation of mercury emissions from electric utility power plants, including coal fired power plants, is "appropriate and necessary", and specifically listed these plants as a major source category under section 112(c). (See 65 FR 79825.) The EPA therefore had two years, until December 20, 2002, to issue specific MACT emission standards that comply with the requirements of section 112(d). See section 112(c)(2) and (5). The EPA failed to meet this deadline and issue MACT emission standards for electric utility plants under section 112(d). As a result, each owner of a coal-fired power plant was required under section 112(j)(2) to submit a permit application by June 20, 2004, and the Title V permitting authority is required to issue the MACT equivalent emission limitation permit required by section 112(j)(5), within the 18 month time frame contemplated by 42 U.S.C. § 7661b(c), i.e. by December 20, 2005.

EPA has since the December 2000 listing notice continually failed to meet its statutory obligation to issue MACT emission standards for electric utility plants that comply with the requirements of section 112(d). The specific language of section 112(d) clearly contemplates emission limitations based on the maximum achievable control technologies, and does not authorize a cap and trade based approach to complying with the mandates of section 112. NHDES has, in fact, stated in formal comments to EPA that a proposal to regulate mercury emissions by a "cap and trade" methodology is not authorized by the applicable provisions of the CAA. (See comment letter dated January 3, 2005 by Jeffrey T. Underhill, Ph.D., Chief Scientist, Air Resources Division, NHDES.) Moreover, NHDES specifically states in these comments that emission controls for coal-fired powerplants are commercially available and cost effective.



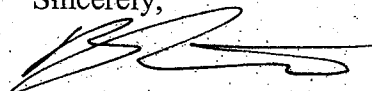
## Conservation Law Foundation

Therefore, as required by law, prior to the filing of a citizen suit pursuant to 42 U.S.C. § 7604(a), you are notified that:

1. EPA has failed to comply with its statutory obligations under 42 U.S.C. § 7412 to issue timely MACT based emission standards for the control of mercury emissions; that comply with the standards set forth in 42 U.S.C. § 7412(d)(2), for coal-fired power plants including the Merrimack Station power plant owned by PSNH, located in Bow, New Hampshire. 42 U.S.C. § 7412(c)(2) and (5).
2. The failure of the EPA to issue timely "MACT" based emission standards by December 20, 2002 triggered the statutory duty of PSNH to file, and NHDES to accept pursuant to its Title V permit program, a permit application by June 20, 2004. 42 U.S.C. § 7412(j)(2) and (3).
3. PSNH has failed to file a permit application for the Merrimack Station power plant as required by 42 U.S.C. § 7412(j)(2) and (3), by the deadline of June 20, 2004.
4. NHDES, the "permitting authority" for stationary sources in New Hampshire, has failed to require PSNH to timely initiate the permit process as required by 42 U.S.C. § 7412(j)(2) and (3), and failed to undertake the permit process as required by 42 U.S.C. § 7412(j)(4) and (5) for the Merrimack Station power plant, which must be completed by December 20, 2005. Thus, NHDES has not commenced the required permit review process to determine, on a case by case basis, the mercury emission limitation for Merrimack Station that would be equivalent to the limitation that would apply had EPA promulgated such emission standards in a timely manner. 42 U.S.C. § 7412(j)(5); and,
5. The failure of PSNH and NHDES to timely perform these nondiscretionary duties is likely to render it impossible for NHDES to issue or deny a Title V permit for PSNH by the statutory permit deadline of December 20, 2005, and result in a breach of the major source permit deadline(s) set forth in 42 U.S.C. § 7661b(c).

CLF intends to seek a judgment compelling PSNH and NHDES to comply with the permit requirements and deadlines outlined above, and any other appropriate remedies available pursuant to the Clean Air Act. You are further notified that should suit be required as prescribed in 42 U.S.C. § 7604(a), the expenses of litigation will be sought, including attorney and expert witness fees as authorized by 42 U.S.C. § 7604(d).

Sincerely,



Bradford W. Kuster, Esq.  
Staff Attorney

(Service List Attached)

