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Hello,

I am the Central Jersey Organizer at Food & Water Watch, a national environmental non-profit organization that protects people from corporations and other destructive economic interests that put profit ahead of everything else. On behalf of our 70,000 members around the state, I write to oppose the construction of another fossil fuel power plant in Middlesex County.

Food & Water Watch is one of the founding members of the Don't Gas Middlesex Coalition, which consists of more than 50 community groups united in opposition to this project. We have organized educational events and participated in many government meetings to further our opposition to the Competitive Power Ventures (CPV) project proposed for the Keasbey section of Woodbridge.

Please accept this letter as Food & Water Watch's organizational comment for the ongoing environmental justice review, in addition to the comments already made by myself, my colleagues, and our members during the February 28, 2023 public hearing conducted by CPV.

As the DEP is aware, there were many procedural deficiencies in the notice of the hearing, and despite our efforts to engage with the Department on this application, we have not received answers to the vast majority our questions, and were denied a meeting that we had been promised by DEP.

Our organization has been requesting information on this project and corresponding with the DEP's Office of Permitting and Project Navigation (OPPN) for more than two years. For example, on June 23, 2021, my colleague Matt Smith had sent a written request for a meeting with the Department on this project. We were told the Title V Air Permit application was deficient and that a meeting could be arranged once the application was deemed complete.

On February 17, 2022, I requested that the DEP schedule "a meeting with some of our members who would like to share concerns and ask questions about this matter." David Pepe of the OPPN responded, stating: "I can assist in scheduling a call – however, please provide an agenda and questions."

On February 24, 2022, Mr. Pepe stated that the DEP was granting the applicant a "one-month extension" and therefore the Department "will be happy to touch base with you and your team at the end of March to determine an appropriate time to meet and discuss in more detail."

On May 31, 2022, Frank Steitz, the Director of the DEP's Division of Air Quality confirmed that additional analysis was received on April 29, 2022, and was being reviewed by DEP. Mr. Steitz directed me to "Please coordinate with Dave Pepe... to set up an initial meeting with the Department."

On June 2, 2022, I reached out to Mr. Pepe formally requesting the promised initial meeting. After receiving no reply, I followed up again on June 9, 2022. Later that day, Mr. Pepe responded: "Please provide an agenda and a list of questions. I can work with the programs to schedule a meeting based on the agenda and questions submitted."

On June 28, 2022, I provided a list of questions to Mr. Pepe, and followed up with additional questions on July 14, 2022. On July 27, 2022, I again asked about the meeting, and asked that our request be expedited.

Having received no substantive response for several weeks, on September 12, 2022, I wrote to Mr. Steitz, copying Mr. Pepe, asked about the timeline for the meeting, and again asked for the request to be expedited.

In a subsequent telephone call, Mr. Pepe assured me that the meeting "will definitely happen" and that he had gathered answers to my questions and was awaiting the approval of those answers from the "C-suite" at DEP. He thanked me for my patience, and again promised that the meeting would occur.

Having received no further substantive communication, I again contacted Mr. Steitz on December 19, 2022, asking about the timeline for our meeting request.

Having received no response to that message, I followed up again in writing on January 9, 2023. Mr. Steitz responded, but did not address the meeting request. I sent a follow-up email on the same date to Mr. Steitz and Mr. Pepe, again inquiring on the status of our meeting request.

No response was received until January 17, 2023, when Mr. Pepe left a voicemail for me asking for a return phone call. The following day, January 18, 2023, Mr. Pepe contacted me to state that the DEP would actually not be meeting with us after all.

"[T]he Department encourages your participation in the aforementioned engagement process and politely declines your request to meet with DEP," Mr. Pepe wrote. He attached to his email a public notice indicating that public comments would be accepted in February and March of 2022, and that a hearing would be held on February 28, 2022. The incorrect dates in the notice were confusing, and no subsequent corrective communication was received from OPPN.

We are greatly disappointed that the DEP would give us this runaround and fail to honor a promise that had been made repeatedly. This is even more disturbing and disappointing in light of the recent

news that CPV facility in Keasbey was deemed responsible for several violations of the law, violations which the Department has known about for years and apparently withheld that knowledge from the public until after the February 28, 2023 public hearing. (Fines were issued to CPV on March 1, 2023.)

I participated in the hearing and was disappointed at the lack of transparency, and the obstacles to access that I observed in the leadup to, and during, the hearing.

Notice of the hearing was inconsistent with the environmental justice law, despite the Department's published claims that notice should be consistent with the statute:

- The notice of the meeting was not published in any newspapers circulating in Woodbridge.
- The notice shared with me by Mr. Pepe on January 18 it included the wrong dates (2022 instead of 2023). No follow-up correction was provided.
- The notice was published in a newspaper not circulating in Woodbridge on January 27, encouraging residents to review the air permit application, but on that date, the application was not yet available at the in-person location listed in the notice (Woodbridge Town Hall), nor was it available at the online web address listed in the notice.
- Subsequent efforts to obtain the application from Woodbridge Town Hall led to me being told I could review the 560-page document on the premises of Town Hall, but that I could not get a copy of my own, contrary to what is stated in the notice. On February 6, I was told by the Township Engineer Mike Gelin to get my own copy, I would have file an Open Public Records Act request and that: "It will cost you a lot of money... We're gonna have to charge you."

The hearing itself was also problematic:

- The hearing was conducted remotely, so a telephone line and/or a device capable of using Microsoft Teams was required to participate, essentially requiring some folks to take on a per-minute cost to participate in the hearing.
- The hearing was conducted in English only, and the ability to turn on Spanish language captioning was only available to those participating using the Microsoft Teams application, effectively excluding the telephone participants who could not see the slides or avail themselves of captioning.
- Telephone participants were relegated to English-only participation, and for the first two hours of the meeting, were not told how to "raise" their hand or permitted to unmute themselves. Only after I raised a concern about their ability to participate at 8:00pm, the advertised end time of the meeting, were changes made to accommodate individuals who had called in to the meeting via telephone.
- CPV introduced false and misleading information into the record, erroneously referring to nitrogen oxides as "nitrous oxide" and incorrectly presenting one of the most important pieces of information: the annual emissions of pollutants. A set of emissions numbers were presented on-screen and verbally referred to as "the maximum potential annual emissions for the modification," meaning the additional amounts of pollution, not the total amount for both of their power plants (existing and proposed). The presenter, CPV Vice President Scott Skjellberg,

made it a point to note “this is a combination of our Woodbridge Energy Center and the Keasbey Energy Center, not the Keasbey Energy Center alone.” However, the numbers displayed, contrary to the speaker’s remarks, appeared to be the proposed annual emissions for the Keasbey Energy Center alone.

While the turnout at the hearing was impressive, and the speakers were overwhelmingly against the proposal to construct the gas-fired power plant, these outcomes were not the result of CPV or the DEP promoting the hearing. Indeed, we created an online form for individuals to sign up for the hearing, and nearly 200 people completed the signup process through that form. However, several used this same tool to give feedback that they ultimately were unable to join the hearing or make comments due to the choices made by CPV.

Below are a few of the feedback responses from residents who used our form:

- “was not given the opportunity to comment! they could have extended the time allotted to the public to speak.”
- “CPV should have a second forum”
- “Could not get on.. bad”

It should be noted that, among the questions we prepared for Mr. Pepe in 2022, were two relevant inquiries regarding any violations committed by CPV. It appears that DEP deliberately withheld information from the public about these violations until after the hearing. We were also disappointed to hear a DEP official state at the March 22, 2023 Brownfield Roundtable that CPV’s first gas plant was a “success,” and that the official was unaware of the corporation’s recent fines for air quality.

Finally, we must place on the record the following questions, many of which we have been asking for the better part of a year, to no avail:

- When was the air permit application submission completed?
- Why didn’t the DEP do its job and implement rules for this law in 2021 or 2022?
- Who made the determination that the EJ law would not apply to this project and when was that determination made?
- Why did the DEP decline to meet with our members about this project, after repeatedly promising to meet with us?
- How does this proposal fit in or align with greenhouse gas reduction goals in the Global Warming Response Act, EO 274 and the Governor’s most recent announcements and orders?
- Will DEP allow a project that runs counter to these critical goals? Why did DEP give the applicant an exemption from the one-year on site monitoring requirement?
- Why did DEP allow the applicant to use meteorological data from Newark Airport? Wouldn’t data from Perth Amboy be more appropriate and indicate a predominantly southerly wind would move pollutants through the air? Why wasn’t the most appropriate data used?
- How does the DEP justify the claim in CPV’s application that the area in question is rural considering the population exceeds the threshold for urban? Is there any reasonable measure by which this site would be considered rural?

- What kind of potential emissions are expected for benzene, formaldehyde, carbon dioxide, and methane?
- What does the DEP protocol say about stack height? Is the applicant proposing a stack height that aligns with the DEP protocol?
- Why didn't the DEP insist on cleaning up the radioactivity at this site before considering development on this brownfield?
- How much additional ozone will the second plant be responsible for (on top of the existing levels which are already out of compliance with federal EPA standards)?
- How much of their NOX and VOC emissions is CPV offsetting or planning to offset with the purchase of pollution credits? If so, how many credits have they purchased? Is there still a reciprocal agreement in place with NY that allows them to use NY based credits in NJ?
- How much money has CPV spent on remediation of the site and surrounding area? Has CPV contributed to the remediation of other parts of the contaminated waterfront or only the 27 acres that they need to build this project?
- What has DEP done to hold CPV accountable? Why did it take several years for DEP to fine them for violations at their first gas plant in Keasbey? Why wasn't any information about the violations shared with the public until after the public hearing?

In light of all of these concerns, we urge you to re-start this review pursuant to the newly-adopted environmental justice law rules. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Kratovil", with a stylized flourish at the end.

Charlie Kratovil
Food & Water Watch