

CHP PA

Concerned Health Professionals of Pennsylvania Comment on the Delaware River Basin Commission proposed changes to their Rules of Practice and Procedure

We, as the Concerned Health Professionals of Pennsylvania (CHP PA) demand greater transparency and fair opportunities to provide meaningful and informed public participation in the approvals and policies that the Delaware River Basin Commission (DRBC) makes on behalf of the vast number of communities whose health and well-being rely on the health and well-being of this major source of water. The critical decisions made by the DRBC directly affect the quality of our environment, our drinking water, our air quality, the diversity and health of the Delaware River, its species, habitats, ecosystems, tributaries and communities throughout the entire magnificent Delaware River Watershed. Such weighty decisions must not be made by an influenceable, unaccountable, single person.

The DRBC has proposed changes to their Rules of Practice and Procedure. These changes are an attempt to solidify questionable practices the DRBC has already tried to use when making permitting and policy decisions. The residents and advocacy organizations working to protect the watershed and its surrounding communities have previously protested these same practices because such practices have led to poor decisions on behalf of the DRBC that are in contradiction to the needs of communities reliant on the Delaware River. It was protested in 2022 when the extension of the approval of the Gibbstown LNG Export Terminal Project was granted by the Executive Director of the DRBC without public comment, or even a public discussion among the DRBC Commissioners – the Governors of the four watershed states (New York New Jersey, Pennsylvanian, and Delaware) and the Army Corps of Engineers, representing the federal government (President Biden). The secrecy of the decision was discovered by pursuit of the Freedom of Information Act and with public pressure it finally came to a public meeting and was brought to a vote by the DRBC Commissioners. This kind of back room decision making should be recognized as undemocratic and be forbidden, not memorialized into regulations!

We cannot effectively take part and influence outcomes if the decision making process is not open and interactive, with all important decisions and the underlying information about them fully disclosed and available for review and comment. We also have advocated for the DRBC Commissioners to be hands-on involved and engaged with the decisions that are made as these public servants are representatives of our elected government and are accessible to us, as members of the public, and they are required to respect our rights and protect the environment for the public good. Any proposed sections that allow for anything less than for public servants to have full engagement with their constituents is undemocratic and inherently endangers the health and well-being of communities reliant on the Delaware River Watershed.

1. Administrative Staff decision making cuts out the public. The Executive Director is given far too much authority over many crucial decisions and these are made behind closed doors, without the public and without a vote by the DRBC Commissioners. These include: the power to decide whether or not a change to a project is "material" (if it is "material" it would open up for more robust review); and decisions about the submission of applications for projects, what is required in an application and when an application is complete; the extension for some permits for as many as 5 additional years.

2. Key Permits given a pass. Extension of Permits without an expiration date are given favored status, such as the Gibbstown LNG Export terminal docket. The Executive Director is being invested with exclusive authority regarding extension of permits that removes public input completely and relieves the Commissioners of their responsibility to review and approve extensions. This legitimizes the behind-the-scenes decision making that undermines government accountability and public trust.

3. Low Bar for the extension of Existing Projects that haven't been built. \$1M is set as a "minimum" amount expended to decide if a project has been sufficiently invested in, and even that value can be disregarded under certain circumstances. No foundation is provided for this amount and no substantive explanation of what "substantial funds in relation to a project" really means. And, the Executive Director has the power to decide if the amount expended is substantial.

4. Intimidate the public so they will not litigate a project. They are allowing the sponsors of a project to claim that litigation by opposing parties is an excuse that can be used to explain why they have not built or spent sufficient funds on a project that they want extended.

5. Loophole Word – "Material". The subjective and value-loaded term "Material Change" and "Materially" are used throughout the proposed rulemaking – yet no clear definition is available, only a bureaucratic explanation. This terminology is not easily understandable and clouds objectivity in decision making. It allows for varying interpretations for different projects, which is unfair, including unjust for the public who must live every day with the decisions that are made.

6. The Public Requires Freedom to Information! DRBC is removing all references to the federal Freedom of Information Act from its rules and is setting up an alternative DRBC-centric system that leaves many aspects unaddressed or in the hands of the Executive Director, such as forms, reason for denial, and how costs will be assessed fairly, including if a waiver of fees can be requested like other agencies allow. The DRBC must provide a prescribed public access system that is clear, user-friendly, and affordable to assure public access to public records. The public needs something concrete to rely on. It is proposed that the Executive Director determines whether or not to disclose requested information, deciding unilaterally if a disclosure is in the public interest! This invests unfair control over the information in an administrator who may not even be qualified to make such legally important decisions. The public needs to take part in DRBC decisions and without access to information, we cannot do that effectively. Information is power and we have a right to it!

Respectfully,

Concerned Health Professionals of Pennsylvania
Barbara W. Brandom, MD

Laura Dagley, BSN, RN

Marsha Haley, MD

Edward C. Ketyer, MD, FAAP

Robert G. Little, MD

Pouné Saberi, MD, MPH

Peggy Slota, DNP, RN, FAAN

Walter Tsou, MD, MPH

Physicians for Social Responsibility Pennsylvania
Tonyehn Verkitus, Executive Director

Tammy Murphy, Medical Advocacy Director