

Vincent Lampone

Dear DRBC Friends:

I am writing with regard to 18 CFR Part 401. My interest in the proposed rules comes from the need for greater transparency and fair opportunities to provide meaningful and informed public participation in the approvals and policies from the DRBC. These critical decisions 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 Delaware River Watershed. We cannot effectively take part and influence outcomes if the decision-making process is not open and interactive, with all important decisions and underlying information fully disclosed and available for review and comment.

In particular, I want to draw attention to the following shortcomings in the proposed rules:

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 "materials" 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. Furthermore, the Executive Director has the power to decide if the amount expended is substantial.
4. The Loophole Word - "Material". The subjective and value-loaded term "Material Change" and "Materially" are used throughout the proposed rule-making – 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 for the public who must live every day with the decisions that are made.
6. The Freedom to Information Act. 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. Allowing the Executive Director to unilaterally determine whether or not to disclose requested information 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 but without access to information, we can't do that effectively.

I appreciate your consideration of these points, and strongly encourage your team to revise the proposed rules to ensure greater transparency and public engagement in decision-making.

Warmly,

Vince Lampono