

Christopher Lish

Thursday, November 30, 2023

Delaware River Basin Commission
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Subject: Reject Proposed Rule Changes because they Threaten Public Input on Environmental Impacts -- Notice of Proposed Rulemaking & Public Hearing: Amendments to the Commission's Rules of Practice and Procedure

To Delaware River Basin Commission Chair Governor Philip Murphy and DRBC Commissioners:

I strongly urge the Delaware River Basin Commission (DRBC) to reject the proposed changes to their Rules of Practice and Procedure. These changes will make public participation in the environmental review process much more challenging. 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. I am most concerned about the following issues:

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); decisions about the submission of applications for projects, what is required in an application and when an application is complete; and the extension for some permits for as many as five additional years.
2. Key Permits will more frequently be 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 Bars will be established for the extension of Existing Projects that haven't been built. One million dollars 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 will have the power to decide if the amount expended is substantial.
4. The proposed changes will be used by project sponsors to intimidate the public so they won't litigate a project. The DRBC is allowing the sponsors of a project to claim that litigation by opposing parties is an excuse that can be used to explain why they haven't built or spent sufficient funds on a project that they want extended.
5. Define the 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 and especially unjust for the public who must live every day with the decisions that are made.

6. The Public Requires Freedom to Information. The 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. And it's 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 but without access to information, we can't do that effectively. Information is power and we have a right to it!

Thank you for your consideration of my comments. Please do NOT add my name to your mailing list. I will learn about future developments on this issue from other sources.

Sincerely,
Christopher Lish