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NJDEP terminates agreement with Pennsauken and Cherokee

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The Delaware Riverkeeper Network today released a copy of an October 31, 2005, letter from the New Jersey Department of Environmental Protection (DEP) to Pennsauken Township and an affiliate of Cherokee Investment Partners giving a 30 day written notice that DEP is exercising its right to terminate its January 12, 2005 Letter Agreement on Petty's Island. (DEP Letter Agreement and Termination letters attached.)

The unprecedented agreement would have required Cherokee to pay DEP \$10 million when Pennsauken or Cherokee acquired Petty's Island or when the Superior Court of New Jersey approved a Declaration of Taking of the island under the Township's powers of eminent domain. It also provided (1) that DEP would recognize the payment as "fully addressing" CITGO's (the current island owner) natural resource damage (NRD) liability for Petty's Island, and (2) that DEP would "forgo CITGO's offer to donate the property to the New Jersey Natural Lands Trust" and would "not support donation of the property to any entity other than Pennsauken."

DEP Commissioner Bradley M. Campbell gave Pennsauken Mayor Jack Killion and Cherokee executive William H. Gauger III three reasons for terminating the agreement:

1. "Subsequent to execution of the Agreement, DEP initiated an enforcement action against Cherokee and its consultant, filed by the Attorney General in Superior Court on March 3, 2005, alleging violations of New Jersey's Endangered and Nongame Species Conservation Act." The pendency of this legal action, Campbell wrote, "militates against maintenance of the agreement in its current form."
2. DEP discovered a seep of oil from old bulkheads located near the edge of Petty's island and issued a directive to CITGO on August 19, 2005 to clean up and remove the oil. This discharge, Campbell wrote, "has caused additional natural resource injury to Petty's Island" and will "result in the assessment of additional natural resource damage claims against CITGO." DEP, Campbell wrote, is "revisiting its estimate of CITGO's potential NRD liability" and has determined that it "may well exceed \$10 million."

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3. The agreement provided that DEP could terminate in the event that Pennsauken had failed to acquire Petty's Island or secure a court order Declaration of Taking by May 1, 2005.

In releasing the termination notice, Maya van Rossum, the Delaware Riverkeeper said, "The withdrawal of DEP's agreement shows that the momentum to develop the Island is shifting. DEP should never have made this pro-development agreement with Cherokee and Pennsauken," van Rossum said. "We are extremely pleased the Administration has recognized the need terminate the agreement."

Fred Stine, Citizen Action Coordinator for the Delaware Riverkeeper Network, an organization that is also part of the Save Petty's Island Coalition, said that environmentalists had strongly "opposed the letter agreement because it compromised DEP's objectivity towards development of Petty's Island and permits the development would require." According to Stine, the Delaware Riverkeeper Network and Save Petty's Island Coalition also objected to provisions that bound DEP to "not support donation of the property to any other entity other than Pennsauken."

Roxane Shinn, Director of the Cooper River Watershed Association, another member of the Save Petty's Island Coalition, said, "The agreement didn't just remove obstacles from Island development, it actually encouraged it by granting Cherokee the right to receive millions of dollars in New Jersey taxpayer funds to undertake development. The agreement allowed Cherokee to recognize any remedial costs Cherokee incurred as reimbursable under New Jersey's brownfields law and by giving Cherokee the right to get reimbursed for the appraised value of any conservation easements Pennsauken and Cherokee elect to place on portion's of Petty's Island found not suitable for development. This would have set a bad precedent requiring state taxpayer funds to pay for wetlands that could not otherwise be developed."

van Rossum said, "Petty's Island is not saved yet. The public must continue to fight for protection of this important natural area, must continue to challenge the use of eminent domain to seize natural lands and private property in order to benefit the profit margin of a private company, and must continue to hold politicians accountable to protect our quickly dwindling and degrading natural resources."