



VIA ELECTRONIC MAIL: [Suzanne.biggin@dep.nj.gov](mailto:Suzanne.biggin@dep.nj.gov)

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**RE: Delaware Riverkeeper Network Public Comment on Delaware River Partners, LLC's Joint Application and DEP's Notice of Technical Deficiency Land Use Application(s) Waterfront Development Individual Permit – Commercial/Industrial/Public (Landward) Flood Hazard Area Individual Permit Application No(s): 0807-16-0001.5 LUP220001**

Dear Ms. Biggins,

The Delaware Riverkeeper Network (DRN) respectfully requests the opportunity to submit public comment to the Department of Environmental Protection (DEP) on the above-referenced joint application submitted by Delaware River Partners LLC (DRP) for the construction of two underground storage caverns at the Gibbstown Logistics Center (GLC) in Gibbstown, Gloucester County.

DRN supports DEP's position that it will not be able to approve the joint application prior to DRP's demonstration of compliance with several relevant regulatory programs, including the yet-to-be-promulgated regulations governing underground storage caverns. DRN reiterates its request to DEP to refrain from acting on DRP's application, or to deny the joint application without prejudice, until DEP

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finalizes the proposed Underground Storage Caverns rules and reviews DRP's application thereunder.<sup>1</sup> DRN further urges DEP to halt all examination of DRP's application for its land use permits, or to deny the joint application without prejudice until DRP can demonstrate compliance with all required regulatory programs. DEP should not create a precedent encouraging premature permit applications that are subject to statutory decision deadlines, and should reject DRP's request for conditional permit approval.

**I. DRN supports DEP questioning its ability to review DRP's land use permit application until it is in compliance with existing and pending regulatory programs.**

On December 9, 2022, DRN submitted comments concerning DRP's joint land use application for the construction of an underground storage facility at the Gibbstown Logistics Center, despite the fact that the rules governing such a facility had not been finalized. These additional comments are in reference to the notice of technical deficiency sent to DRP, along with DRP's response. In addition, while the notice did not in detail discuss how the lack of a finalized underground storage cavern rule affected DEP's ability to review DRP's land use permit application, DRN feels it would be incomplete to discuss this substantial regulatory gap when commenting on DRP's additional lack of regulatory noncompliance. As such DRN's previous comment will be reiterated to further illustrate the scale of regulatory noncompliance DRP's application contains.

In May 2022, DEP proposed new rules governing "the construction, operation, modification, and decommissioning of any underground storage cavern in the state." 54 N.J.R. 816(a) [hereinafter "Proposed Rules"]. The Proposed Rules would implement the DEP's statutory obligations under N.J.S.A. 58:10-35.1 through 35.4 (Act), which states, in part, that "no person shall construct or operate an underground storage cavern before obtaining a permit from [DEP]."

DEP stated that the Proposed Rules:

will apply to systems that are used for the underground storage of any natural or artificial gas, or any petroleum product or derivative of any petroleum product, with the exception of liquefied natural gas (LNG) . . . and will govern the construction, operation, modification, and decommissioning of the systems. Under the Act, a system is required to obtain a permit prior to construction, operation, and storage. The process to obtain a permit is contained in this rulemaking, as well as enforcement provisions for violations of the Act or the rules implementing the Act.

54 N.J.R. 816(a).

The requirements of the Proposed Rules will have a direct bearing on DRP's potential underground storage cavern system. For example, the Proposed Rules boast a robust environmental health and impact statement (EHIS) requirement, which provides that

[p]rior to the construction of any underground storage cavern system and as part of any application pursuant to N.J.A.C. 7:1F-4, the owner and operator of an underground storage system shall prepare and submit to the Department an environmental and health impact statement (EHIS) utilizing a systematic, interdisciplinary approach in order to ensure the integrated assessment of technical, economic, environmental, and social

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<sup>1</sup> To be codified at N.J.A.C. 7:1F.

parameters potentially affected by the construction and operation of an underground storage system.

54 N.J.R. 816(a) (to be codified at N.J.A.C. 7:1F-2.4(a)).

The Proposed Rules also require a suite of detailed information—such as assessments of climate change impacts,<sup>2</sup> distances of required separation “between any individual underground storage caverns within a new or expanded facility shall be a distance sufficient to ensure that the caverns are able to maintain mechanical integrity and can be safely operated, and that migration of the regulated substance(s) between caverns is prevented,”<sup>3</sup> and groundwater monitoring requirements—that would greatly benefit the Department to review before it acts on the current Permit applications.

As of the date of this public comment, DEP has not yet adopted the Proposed Rules. To construct two new underground storage caverns at the GLC, however, DRP must obtain permits from DEP. See N.J.S.A. 58:10-35.1. DRP confirms this requirement in Section 2.4 of its Environmental Impact Statement/Environmental Report (EIS/Environmental Report) in support of the Permits. Despite this substantial regulatory uncertainty and wholly premature state of the application to determine whether DRP has the authority to construct and operate such a facility, it is attempting to move forward with the other permits necessary for its construction and operation. Specifically, it is attempting to have DEP review its Waterfront Development and other land use permits, while also not being in compliance with multiple other permits necessary for DEP to do an adequate permit application review.

On October 19, 2022 DEP sent a notice of technical deficiency on DRP’s land use permit applications to DRP. In this notice DEP again highlighted all of the additional permits that DRP will need for this facility, including the proposed Underground Storage Cavern Construction Permit, along with a substantial lack in addressing the issues covered by Water Quality (N.J.A.C. 7:7-16.3). The notice concludes with this statement:

“please note that it is **unlikely that the Division will be able to make a positive determination on the pending application prior to DRP demonstrating compliance with many of the regulatory programs** listed above in “Other Permits and Approvals.” The Department welcomes a discussion with DRP to coordinate the timing of DLRP permits with other regulatory programs.”<sup>4</sup>

DEP affirmatively states that it likely cannot effectively review its land use application in the absence of clear adherence to required regulatory schemes. Specifically, DEP lists permits under Air Quality (N.J.A.C. 7:7-16.8), Special Hazard Areas (N.J.A.C. 7:7-9.39), and Wetlands (N.J.A.C. 7:7-9.27)/Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A et seq.).<sup>5</sup>

The absence of a demonstration of compliance with these rules significantly hinders DEP’s ability to effectively review its land use permit applications. Effectively assessing the efficacy, scale, and impact of the project on the land of the facility is both difficult and impractical to do in the absence of adherence to these rules. Specifically, this project will have substantial construction impacts, and a number of

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<sup>2</sup> 54 N.J.R. 816(a) (to be codified at N.J.A.C. 7:1F-2.4(f)4).

<sup>3</sup> 54 N.J.R. 816(a) (to be codified at N.J.A.C. 7:1F-2.2(c)4).

<sup>4</sup> Technical Deficient Land Use Application(s) Waterfront Development Individual Permit –Commercial/Industrial/Public (Landward) Flood Hazard Area Individual Permit Application No(s): 0807-16-0001.5 LUP220001 Applicant: Delaware River Partners Project(s): Delaware River Partners – Underground Cavern, Janet Steward NJDEP: Division of Land Resource Protection, October 19, 2022

<sup>5</sup> *Id.*

permanent aboveground infrastructure components. It effectively requires DEP to ask unanswerable questions:

- What will the air quality impact be on the coastline without an updated Title V operating air permit to measure emissions?
- What will be the surface and groundwater quality impact of the construction and operation of the project without a NJPDES?
- How can they measure the likely potential impact of soil and ground water quality without evaluating the required TCPA mitigation measures implemented?
- What will be the wetlands impact when DRP has not yet demonstrated which and to what degree will the freshwater wetlands be impacted by construction?

These questions are completely in line with the concerns outlined in DEP notice, and indicates that this project is in a stage long before granting land use permits would be viable. DEP outlines clear logistical and practical questions about their ability to fully review the current permit applications without the listed regulatory compliance issues remedied. Furthermore, it presents a possibility of DEP using substantial amounts of agency resources to review and issue a decision on a permit that could become moot or invalid in the coming months. With such substantial and reasonable concerns expressed by DEP, it would follow that DRP would have a substantial response with assurances and timelines for compliance. However, what DEP received in response to DEP was wholly inadequate.

## **II. DEP should deny DRP's request to grant a conditional permit approval pending the promulgation of the Underground Storage Cavern Rule, along with issuance of Air Quality Permit, TCPA Permit, and other required permits.**

On January 25, 2023, DRP sent a response to the October notice of technical deficiency.<sup>6</sup> Doing so utilizing a "comment/response" format, DRP woefully under-addressed DEP concerns about additional regulatory noncompliance at the time of application. Specifically responding to DEP concerning about current noncompliance with Air Quality (N.J.A.C. 7:7-16.8) and TCPA (N.J.S.A. 58:10-23.11b), DRP issued a nearly identical three-sentence response, which included:

"DRP fully understands that work activities approved under this permit may not occur until all other applicable permit approvals are received. **We request that any permit issued be conditioned on receipt of any applicable [TCPA/Air permits].**"<sup>7</sup>

Furthermore, it states definitively with insufficient expansion that this new facility will be able to operate completely within a modified version of the existing Title V operating air permit. It also states that DRP will simply do the TCPA permit application later. Not only does DRP not state any concrete assurances of timelines or plans to demonstrate regulatory compliance so this application can move forward, it also requests conditional permit approval pending getting those permits. It does not address the very real practical concerns DEP has in their ability to actually evaluate this application absent that compliance.

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<sup>6</sup> Technical Deficient Land Use Application(s) Waterfront Development Individual Permit –Commercial/Industrial/Public (Landward) Flood Hazard Area Individual Permit Application No(s): 0807-16-0001.5 LUP220001 Applicant: Delaware River Partners Project(s): Delaware River Partners – Underground Cavern, Own Zalme Ramboll Consulting, January 25 2023.

<sup>7</sup> *Id.*

This clear disconnect between DEP's issues, and DRP's response, comes from the desire of DRP to move through this permitting process as quickly as possible at the cost of practicality, DEP resources, and the environmental health of the surrounding communities. This cavalier attitude towards the regulatory structure of the DEP that DRP is displaying through these communications should not be rewarded with a conditional approval of their land use permits. This project's application process cannot legally or practically move forward until the rules governing the construction of underground storage caverns are finalized, and DRP clearly establishes adherence to application regulatory schemes. If not DRP will be allowed to side step the regulatory process for the construction and operation of this facility all in the name of timesaving for DRP.

Accordingly, DEP should refrain from issuing a decision on the joint application until such compliance is demonstrated, or alternatively, deny the joint application without prejudice.

Respectfully submitted,

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