



March 20, 2020

Governor Andrew Cuomo

Governor John Carney

Governor Phil Murphy

Governor Tom Wolf

Federal Representative to Delaware River Basin Commission Major General Jeffrey L. Milhorn

Executive Director Steve Tambini, Delaware River Basin Commission

U.S. Army Corps of Engineers

Federal Energy Regulatory Commission

U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

U.S. Department of Energy

Delaware Riverkeeper Network is reaching out during this unprecedented time when our communities are directed to operate under protective precautionary principles to avoid community transmittal of the Coronavirus COVID-19. It is essential that as government responds to protect peoples' health from the Coronavirus that it does not undermine or jeopardize peoples' other rights, including the right to active and meaningful participation in public hearings and comment opportunities. Public hearings, comment opportunities, and engagement in government decisionmaking with regards to permits, dockets, regulations, legislation, programs and policies must remain fully operational and continue to function as the law and government's social contract with the people intend. The Delaware Riverkeeper Network has already witnessed actions that are imposing limits on public participation and input, and that are reducing transparency on decisions being made by agencies. And so we are speaking out for the Delaware Riverkeeper Network's 25,000+ members and supporters and for our watershed's communities, especially our most vulnerable and heavily impacted communities, that will be burdened with the environmental and public health outcomes that will result from the decisions being made today, or that could benefit from informed, proactive and protective government action.

According to health professionals, the COVID-19 pandemic is now a major global health threat. There have been 164,837 cases and 6,470 deaths confirmed worldwide as of March 16, 2020. Global spread has been rapid, with 146 countries now having reported at least one case<sup>1</sup>.

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<sup>1</sup> Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand. Imperial College CoVID-19 Response Team, Imperial College London. <https://www.imperial.ac.uk/media/imperial->

We are requesting that agencies in all four Delaware River Watershed states, the Delaware River Basin Commission, and federal agencies with projects, policies, or regulations pending or anticipated that will impact our watershed carefully examine how they are providing full and accessible public access to their decisionmaking. While we understand that many public buildings are closed and public hearings must be cancelled to protect from community spread, we consider it of utmost importance that decisionmaking be put on hold when hearings are not possible. Agencies should extend public comment periods when hearings are cancelled or not scheduled and should delay making final decisions on permits, dockets, regulations, legislation, policies, programs and projects with substantial public and/or environmental implications until after in-person public hearings can be held.

At this time, industry projects, development, substantial projects of all kinds, rulemaking, permitting and docketing are continuing while the public and most social/community activities are in suspension. This is unjust and can be remedied by pausing decisions on these types of decisions until the opportunity for meaningful public participation has been provided for.

Right now, public hearings on permits and government decisions have been cancelled and yet associated comment periods have the same deadlines —providing no increased opportunity to access documents or information, providing no opportunity for verbal testimony of any kind, providing no recognition of the diminished access to government decisionmaking that results from a cancelled public hearing opportunity. For example, the Pennsylvania Department of Environmental Protection announced on March 17, 2020 that Chapter 102 and 105 hearings pertaining to Mariner 2 East pipelines permits are cancelled while the public comment period still ends on May 8. In addition, on March 16, PADEP [canceled three public hearings](#) on a very important rulemaking to establish groundwater and soil cleanup standards for lead and for per- and polyfluoroalkyl substances (PFAS), with no plans to reschedule them. The extension of the comment period by one month will still be closing prematurely because the public will be deprived of their participation through public hearings. This agency action is especially egregious considering the public participation requirements under 25 PA ADC § 250.6 that the public be afforded a public participation plan in the adoption of these standards for cleaning up contaminated sites. Finally, Delaware Riverkeeper Network was in the process of securing crucial documents from New Jersey Department of Environmental Protection (NJDEP) through an Open Public Records Act request but was notified on March 19 that “...the NJDEP Office of Record Access has to postpone all File Review appointments and copy jobs that have been scheduled for the next three (3) weeks.”<sup>2</sup> This embargo on public records demands that NJDEP and related agencies who are denying the public access to requested records due to the shutdown, institute fairness by stopping all decisions on actions that have not provided public access to government documents.

While the interests of the public are being set aside, the goals of industry and development projects are being held in unprecedented regard. For example, the New Jersey Turnpike Authority held two in-person public hearings on toll hikes on March 18, despite the many actions, decisions, and orders from government and business that prevented or curtailed the ability of the public to participate, including, but not limited to: Governor Murphy’s Emergency Declaration, that government buildings were closed, that all nonessential

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[college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf?fbclid=IwAR2bpdCWKY7BT2msxkzU9PC2Y-nBzFjWIFmDBmk9KeeGQG3G0-qOh5WRkA](#). March 16, 2020

<sup>2</sup> Communication from Records, DEP <[Records.Custodian@dep.nj.gov](mailto:Records.Custodian@dep.nj.gov)> to Delaware Riverkeeper Network dated Thursday, March 19, 2020 9:53 AM.

travel and gatherings have been required to cease, that nonessential businesses (including those that could assist interested folks with their travel or copying of comments) be closed, and that some affected cities, such as Hoboken, have adopted self-isolation policies for their residents. The Authority said it wanted to move ahead with its planned capital plan to expand its highway systems and as a result the required hearings could not wait. Not only was this stunningly irresponsible regarding the public health implications – i.e. it sought to encourage increased contacts that could help spread the Coronavirus -- it deprived the public from any real opportunity for verbal input into this important decision that will, in the end, provide funding for projects with enormous negative environmental and public health impacts.

We do not consider on-line hearings on environmentally consequential government decisions to provide equivalent open access that is required by our laws and regulatory procedures, especially during this health crisis. Computer access is not available to all residents through web-based systems, whether by computer or by phone; many without computers would customarily go to a library or school to use them but these public resources are not available during the shutdown. Where computers are in the home, now that primary and secondary schools, colleges and graduate schools have been closed and “distance learning” from the home is wide-spread, time on in-home computers and internet bandwidth are under great demand limiting when people would be able to submit on-line comments and the confidence that those comments are actually being delivered. Being able to show up at a public location and speak up without any investment in electronics or phone systems, is the only way some members of the public can easily meaningfully participate. In addition, people are focused on staying healthy, protecting their families and have committed to taking drastic actions such as sheltering in place to protect not only themselves but the vulnerable populations that are most susceptible to the virus. In these times, local and family matters, such as assisting elderly family members and neighbors, even everyday activities like grocery shopping, take precedence and often use up all the capacity that people can provide. The family and community priorities people are so admirably displaying should be honored by agencies in the form of deferring decisions on important government actions until we are through this crisis, whether that be days, weeks or months.

We also consider the continued construction of large and environmentally damaging projects to be contrary to the public interest for other reasons. Many construction projects are continuing as if there is no crisis. This despite, for example, the New Jersey Health Commissioner Judith Persichilli announcing that health officials believe the virus is "community-spread" in the state, as the number of cases has spiked to at least 742 in 2 days with nine deaths as of March 19. Workers are traveling to job sites, associating with others, and carrying out work duties on sites such as the massive Shell Petrochemical processing facility (the “Cracker plant”) in Beaver County, PA, the Delaware River Partners Gibbstown Logistics Center in Gloucester County, NJ, the accident-ridden Mariner East pipeline, and numerous other fracked gas operations, gas extraction wells, and private development projects in all four Delaware River Watershed states. In addition to an individual’s exposure in the wider community, we find it difficult to believe that social distancing is being implemented by workers on construction and industrial projects of this kind. It is unconscionable that workers would have to choose between protecting their own health and their family’s health, and their job. Who is providing the oversight to be certain that community spread is not being fostered by working conditions on these often crowded and team-based construction operations? It is essential that all loopholes in community spread be caught in order to let increased social distancing efforts take hold. These construction projects and all projects with substantial environmental and public implications should be paused during this public health emergency.

The scale of the crisis we face must have thoughtful reactions and progressive sustainable plans devised, adopted and implemented that protect our rights to a clean and healthy environment for generations to come. A right to full public participation is essential and one important ingredient to fulfilling that obligation. The public must have adequate and ample time to review harmful proposed projects that ultimately infringe on these rights to clean air and a healthy environment, including having the time and access to secure essential information, to deliver public comment, to craft and deliver written comment, to communicate with government officials in order to secure needed support and information, amongst other things. Upholding this public process is especially critical at a time when the public is distracted during a pandemic and having to shift focus on disrupted daily routines and work conditions, children out of school for weeks and perhaps the whole school year, elders needing special attention and care to ensure they stay healthy, and hourly workers having to feed their families and pay their mortgages to the big banks when they may not be able to go to their hourly jobs for several weeks or months. This due process of public comment and participation is especially important for vulnerable and poor populations who already are unjustly targeted by corporations.

Furthermore, it is unclear how some agencies will be proceeding to ensure a thorough public process and the protection of the public and the environment during this time. How will the agencies thoroughly review these applications? How will the agencies inspect sites and ensure construction projects still being constructed are following requirements and permit conditions? How will the agencies operate to ensure file reviews and open record requests by the public are addressed and completed when offices are closed?

To protect the community from harmful applications and projects, Delaware Riverkeeper Network urges that each of the four basin states and the federal government that have an obligation to protect the Delaware River watershed and the communities that rely on this watershed, roll out an aggressive precautionary and proactive policy to stop the forward movement of any substantially significant policy, permit, docket, rulemaking or regulatory change to protect communities that would be impacted by pending applications and ongoing construction projects. This is not a time to slick the wheels of projects or short shrift public input – we know that the corporations that seek to exploit resources and pursue self-interested gain despite harm to our communities will likely capitalize and use this time of disruption to push for their harmful projects that are going to drastically and irreparably harm our communities, children and future generations through catastrophic climate change. The climate changing devastation, pollution impacts and irreparable environmental harms, including the economic, health and safety implications they inflict, will be sustained longer than this current pandemic. This is a time for agencies to put on the brakes and insist that permits, projects, regulations, decisions, legislation, policies and programs are put on hold and to ensure due public process.

In closing, Delaware Riverkeeper Network urges in the strongest possible terms that agencies and all government entities should extend public comment periods when in-person public hearings are cancelled or not scheduled and should delay making final decisions on permits, dockets, regulations, legislation, policies, programs and projects with substantial public and/or environmental implications until after in-person public hearings can be held and full public participation can be provided. We also urge that these decisions be delayed until public access to public records as required under current statutes and regulations is restored by government agencies. We also call for all projects and operations with substantial environmental and public implications and that have the potential to expose workers to the COVID-19 virus through community spread that are under construction or anticipated to begin construction during this crisis, to be paused during

this public health emergency. This suspension includes oil and gas extraction, development, operations and infrastructure.

Thank you for your time and consideration.

Sincerely,



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