



VIA ELECTRONIC MAIL: Suzanne.biggin@dep.nj.gov

December 9, 2022

Suzanne Biggins
Project Manager
New Jersey Department of Environmental Protection
Division of Land Resource Protection
Mail Code 501-02A, P.O. Box 420
Trenton, NJ 08625-0420

Todd Stueber
Project Manager
New Jersey Department of Environmental Protection
Division of Land Resource Protection
Mail Code 501-02A, P.O. Box 420
Trenton, NJ 08625-0420

RE: Delaware Riverkeeper Network Public Comment on Delaware River Partners, LLC's Joint Application for a Waterfront Development Individual Permit and Freshwater Wetlands Individual Permit, Activity No. 0807-16-0001.5 LUP 220001

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 urges DEP to refrain from acting on DRP's application until such time as DEP finalizes the proposed Underground Storage Caverns rules and commences its review of DRP's application thereunder.¹ In the event that DEP approves the joint application and issues the Waterfront Development Individual and Flood Hazard Area Individual permits, DRN respectfully requests affirmative confirmation from DEP that DRP will not be authorized to take any action under those permits until such time as DRP obtains authorization under the pending Underground Storage Caverns rules.

¹ To be codified at N.J.A.C. 7:1F.

I. Action on the joint application before DEP reviews DRP's application for an Underground Storage Cavern permit is premature.

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).

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. This section is customarily a result of the pre-application meeting DEP requests applicants to have with the Department before formally submitting permit applications, so it is reasonable to infer that DEP has already communicated this requirement to DRP. DRP also states in its joint application that a separate application under the Proposed Rules has been submitted, yet this application was not included as a part of the joint application, nor was it publicly noticed in the New Jersey Bulletin.

To issue the requested Permits for the construction of facilities that are not yet permissible would be wholly premature at this time. The highly unique nature characteristic of hard-rock underground caverns that store, among other things, petroleum products requires comprehensive environmental analyses that are also highly relevant to, and have a direct bearing on, DEP’s evaluation of the project under the Coastal Zone Management Rules and Flood Hazard Area Rules. DRN urges DEP not to issue the requested permits at a time when ample, critical information regarding the potential public health and environmental hazards are not yet before the Department or the public for comprehensive review.

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 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,² 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,”³ and groundwater monitoring requirements—that would greatly benefit the Department to review before it acts on the current Permit applications.

This type of site-specific information is critical to informing permitting decisions under the Coastal Zone Management Rules⁴ and Flood Hazard Area Rules.⁵ Some examples include, but are not limited to:

- Whether the proposed caverns would interfere with port uses.⁶
- Whether the proposed caverns are incompatible with the surrounding development (due to safety hazards).⁷
- Whether the development within the special hazard area includes appropriate mitigating measures to protect the public health and safety.⁸
- Whether the proposed caverns must be rejected or conditionally approved to: promote the public health, safety, and welfare; protect public and private property, wildlife and marine fisheries; and/or to preserve, protect and enhance the natural environment.⁹
- Whether and to what extent the “expan[sion of] the functional capacity of the existing port facilities and operations”¹⁰ will result in secondary impacts.¹¹

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

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

⁴ See N.J.A.C. 7:7.

⁵ See N.J.A.C. 7:13.

⁶ N.J.A.C. 7:7-9.11.

⁷ *Id.* at 7:7-9.23(e)(3).

⁸ *Id.* at 7:7-9.39(b).

⁹ *Id.* at 7:7-14.2(a).

¹⁰ EIS/Environmental Report in Support of WD & FHA Individual Permit Applications at § 6.2.2.

¹¹ N.J.A.C. 7:7-14.3.

- Whether the relevant site-specific information demonstrates that the caverns will not result in adverse impacts to special areas.¹²
- Whether, given the unique nature of the proposed caverns, they are adequately buffered from surrounding uses or would conflict with recreational use of the River.¹³
- Whether the proposed caverns are compatible with surrounding land uses or interfere with national, State, county or municipal parks, recreational areas, or wildlife refuges.¹⁴
- Whether the operation of the proposed caverns are consistent with the strategies of New Jersey's State Implementation Plan for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.¹⁵
- Whether, for health or safety reasons, the operation of the proposed caverns will interfere with public access to the Delaware River and Aunt Deb's Ditch.¹⁶
- Whether there is an adequate buffer between the proposed caverns and adjacent land uses.¹⁷
- Whether the caverns are likely to cause significant and adverse effects on water quality, aquatic biota, water supply, flooding, drainage, channel stability, threatened and endangered species and their habitats, navigation, energy production, or fishery resources.¹⁸
- Whether an engineer can certify that utility lines conveying liquids are sealed to ensure no discharge or leakage in the flood hazard area.¹⁹
- Whether and to what extent flood hazards may impact the above-ground components of the cavern system, the damage or destruction of which may affect the safe containment of the hazardous substances 700 feet below the ground surface.²⁰
- Whether and to what extent flood hazards can cause changes in groundwater movement that may affect the stability of the cavern or the containment of its contents.

Even if DEP believes the joint application contains adequate information about the environmental, health, and safety impacts of the caverns to reach a decision under the Coastal Zone Management and Flood Hazard rules, modification of the cavern system is likely to occur through the detailed process set out in the proposed Underground Caverns rules. Thus, DRP will likely be required to modify the permits at a to-be-determined date. The Department would need to engage, then, in three separate time- and resource-consuming reviews of applications for the same system. This approach is not only inconvenient to the Department and the public, but also risks segmentation of the caverns' environmental

¹² *Id.* at 7:7-15.4(b)(1).

¹³ *Id.* at 7:7-15.4(p)(2), 3.

¹⁴ *Id.* at 7:7-15.9(d).

¹⁵ *Id.* at 7:7-16.8(b).

¹⁶ *Id.* at 7:7-16.9.

¹⁷ *Id.* at 7:7-16.11.

¹⁸ *Id.* at 7:13-12.1.

¹⁹ *Id.* at 7:13-12.8(b)(2).

²⁰ *See id.* at 7:13-12.18.

impacts by prematurely "locking in" the approval of impacts that, given a fuller understanding of the cavern system, may not have been approved. Thus, the Department should refrain from acting on the joint application until such time as it adopts the Proposed Rules and can systematically and comprehensively review all of DRP's applications for its underground storage cavern system at the GLC.

II. DRN Requests Affirmative Confirmation from DEP that DRP Will Be Required to Obtain Permits under the Proposed Rules

DRN respectfully requests affirmative confirmation from the Department that DRP will be required to apply for and obtain permits under the Proposed Rules, once they are adopted, before construction of the system may commence. Though the Proposed Rules have not yet been adopted by the Department, DEP cannot sanction the construction of two new underground storage caverns under the Waterfront Development Law and Flood Hazard Area Control Act without the critical information the Proposed Rules would require DRP to provide. Approving DRP's Permit applications at this stage—when so much detailed information is simply not before the Department and the public—would be premature and constitute an impermissible cart-before-the-horse permitting approach incongruous with the protective goals of all three applicable statutes.

Respectfully submitted,



Tracy Carluccio
Deputy Director
Delaware Riverkeeper Network
tracy@delawareriverkeeper.org
(215) 369-1188 x. 104