



For Immediate Release:

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Contact:

Maya van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network, 215-801-3043

**NJDEP Commissioner Blocks Review of Permitting Decision
*Commissioner McCabe Denies Access to Witnesses on Salem Permit, Over-Ruling an
Administrative Law Judge***

Trenton, NJ - On December 16, 2019, the Commissioner of the Department of Environmental Protection (NJDEP) reversed in part an October ruling from the New Jersey Office of Administrative Law that granted the Delaware Riverkeeper Network's (DRN) motion to compel the deposition of three NJDEP employees regarding the Salem Nuclear Generating Station's New Jersey Pollution Discharge Elimination System (NJPDES) permit.

After consideration of over 1,000 pages of documents and a substantive oral argument, Administrative Law Judge Kennedy rendered his October 28, 2019 decision finding good cause for the requested depositions of the permit writers. The Judge found that "there has been a showing that the information requested is highly technical in nature and cannot be obtained in other ways."

NJDEP appealed the October ruling. In a remarkable twist, in this administrative proceeding, the arbiter to whom the NJDEP appealed was NJDEP Commissioner Catherine McCabe. DRN urged Commissioner McCabe to uphold Judge Kennedy's ruling. In Commissioner McCabe's ruling, she suggests that the ruling of the Administrative Law Judge would "set a precedent that makes depositions routine in all permitting matters and will cause an undue burden on the Department."

"We are greatly disappointed with Commissioner McCabe's ruling denying us the right and ability to depose the permit writers for the Salem Nuclear Generating station. This facility kills over 14 billion fish, eggs and larvae every year; it is the single largest predator of Delaware Bay fish and aquatic life. It is commonplace in litigation that depositions be allowed of agency officials who are in possession of pertinent and critical knowledge, as is the case here," **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper**

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 3701
Bristol, PA 19007
Office: (215) 369-1188
fax: (215) 369-1181
dm@delawareriverkeeper.org
www.delawareriverkeeper.org

Network. “Further, interlocutory review of an administrative law judge’s decision, such as Commissioner McCabe permitted, is generally exercised sparingly and only granted in the rarest of instances and in the interests of justice. This was certainly not such a situation and indeed perpetuates an injustice – the wrongful issuance of a permit that allows Salem to continue with its unmatched fish kills on our river -- as opposed to preventing one.”

The issues in the case concern the Salem Nuclear Generating Station, a nuclear power plant that withdraws one of the largest volumes of cooling water in the world – up to 3.024 billion gallon per day -- and impinges and entrains up to 14 billion fish, eggs and larvae every year. DRN is seeking to review the NJDEP’s determination of whether the Salem plant utilized the “Best Technology Available” as required under the Clean Water Act to minimize its harmful impacts on our river system. Unfortunately, Commissioner McCabe’s decision is in keeping with ongoing efforts by the NJDEP to block the transparent review of their permitting decision on Salem’s permit.

The Delaware Riverkeeper Network has vigorously pursued discovery in this in case, which has been pending for three years. “Perhaps NJDEP is just hoping that we will get to the permit renewal date of 2021 before the case can be properly litigated,” **said van Rossum.**

On July 8, 2016, the Delaware Riverkeeper Network (DRN) filed with the NJDEP Office of Legal Affairs seeking a new hearing to review the renewed permit issued by NJDEP to PSE&G’s Salem Nuclear Generating Station located on Artificial Island in Salem County, NJ. The permit, as issued, would extend the Salem facility’s use of once through cooling (OTC), a controversial technology that has been challenged as being outdated, unnecessary, and responsible for the annually killing billions of fish, including the endangered Atlantic sturgeon and Kemp’s ridley sea turtles.

The Delaware Riverkeeper Network, a nonprofit organization working to protect our environment and communities, has had to repeatedly go through the courts to secure access to information the public is clearly entitled to. The outdated technology used at the Salem facility kills billions of Delaware River fish, eggs, and larvae each year. These fish kills could be reduced by over 95% using existing technologies.

To read Commissioner McCabe’s decision, click here:

<https://delawareriverkeeper.org/sites/default/files/PSE%26G%20v.%20DPE.Decision%20on%20interlocutory%20review.SIGNED.pdf>

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Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.