

July 31, 2020

Delaware Department of Natural Resources and Environmental Control (DNREC)
Division of Air Quality

Via Email to daqpermittinginfo@delaware.gov and DNRECHearingComments@delaware.gov

Public Comment on Docket #2020-P-A-0017, <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>

Re: DNREC Must Strengthen the Draft Title V Renewal Permit for Delaware City Refining Company¹

To the DNREC Hearing Officer:

The following is the public comment of the undersigned individuals and/or organizations in the above-listed docket.

Now more than ever, we need clean and healthy air. In the midst of a raging global pandemic, we urge the Delaware Division of Natural Resources and Environmental Control to strengthen the Title V permit for the Delaware City Refinery to assure full compliance with all applicable Clean Air Act requirements that protect public health and well-being. Without the permit changes called for in technical comments submitted by Delaware Audubon Society, Sierra Club, Environmental Justice Health Alliance for Chemical Policy Reform, the Widener Environmental and Natural Resources Law Clinic, Environmental Integrity Project, and Earthjustice, DNREC's draft permit will not comply with the Clean Air Act.

Communities affected by the Delaware City Refinery's pollution need clean air now.

Clean air is a basic human need. The Delaware City Refinery, located at 4550 Wrangle Hill Road in Delaware City, emits volatile organic compounds and hazardous air pollutants, like benzene, 1,3-butadiene, and hydrogen cyanide, that contribute to ozone and/or can cause cancer, birth defects, neurological, respiratory and other health impacts. The refinery emits sulfur dioxide and nitrogen oxides, which can cause or contribute to asthma, cardiovascular, and environmental harm. The refinery's emissions also include particulate matter (soot) which can cause and contribute to early death, heart attacks, asthma, difficulty breathing, and other serious health effects.² DNREC has the legal responsibility to protect the community from these health threats and to fully satisfy Title V of the Clean Air Act by assuring DCRC does not operate without a lawful permit.

On January 27, 2020, the U.S. Health and Human Services declared a national health emergency in the United States due to community spread of COVID-19.³ This virus currently has no effective vaccine and few treatments are available. COVID-19 causes particular harm to the respiratory system, and research has shown people exposed to air pollution face worse illness and greater risk of death from this virus.⁴ The virus and air pollution from the refinery disproportionately harm communities of color including the approximately 81,000 Delaware City residents who live within a five mile radius of the refinery—of whom 47% are people of color, 26% are youth (under the age of 18), 8% are seniors over the age of 65, and nearly a quarter (19,074) live below the poverty level.⁵

It is DNREC's job to protect the health and well-being of communities in Delaware City and downwind of the refinery— including the birds, wildlife, waterways, and natural areas that we care about and want to be able to continue to enjoy. Herons and egrets who nest each year at the Pea Patch Island Nature Preserve also need clean air to continue to thrive.⁶

For DNREC to do its job and satisfy the Clean Air Act, it must correct the following serious problems with the DCRC draft permit and permit process:

1. DNREC must grant a valid public hearing in which the public can speak.

After local groups timely requested a public hearing, the meeting that DNREC held on July 14 did not include any opportunity for the public to speak or ask questions.⁷ DNREC must give the public an opportunity to *speak*, and to be heard, as the Clean Air Act requires and as Governor Carney directed in his 2020 Proclamation.⁸ DNREC may satisfy this requirement during the COVID-19 pandemic by providing a live comment opportunity by telephone or video through the Internet service, WebEx, that DNREC used for the July 14 hearing. Other states are holding valid public hearings during the pandemic and DNREC has no excuse for refusing to hold a valid public hearing for the DCRC permit.⁹ The Clean Air Act requires both an opportunity for comment *and* an oral hearing.¹⁰

2. Remove all unlawful and harmful exemptions for air pollution.

Make clear that clean air requirements apply at all times and remove the unlawful exemptions, affirmative defense, and other similar provisions that the permit contains, some of which effectively give the refinery free rein to release uncontrolled toxic and other air pollution during startups, shutdowns, maintenance, emergencies, and malfunctions at the refinery. Placing these provisions into the permit cuts the heart out of core requirements by giving the refinery advance authorization to avoid satisfying clean air terms and conditions. The public needs clean air protection to be continuous and enforceable even during startups, shutdowns, maintenance, emergencies, and malfunctions. That is the only way that the refinery will have full incentive to comply and to prevent these incidents in the first place, to the greatest extent possible.

3. Ensure the permit includes applicable requirements designed to protect the community from fires, explosions, and toxic releases by the refinery.

Ensure DCRC fully complies with the Accidental Release Prevention, Risk Management Program and General Duty requirements, and acts in advance to prevent releases and protect the community from toxic releases and safety threats. The permit does not include sufficient conditions to assure compliance with these requirements – which are particularly important in view of the repeated safety problems the refinery has had. Most recently, a fire on March 11, 2020 critically injured two workers and created a “huge column of thick, black smoke . . . visible for miles.”¹¹

4. Include specific terms and conditions that assure compliance with all applicable clean air requirements, as well as sufficient monitoring, recordkeeping, and reporting.

The permit must assure compliance with the 2015 national emission standards for refineries, including benzene fence-line monitoring, as detailed terms and conditions. Five years ago, during the last permit renewal, DNREC refused to implement fence-line monitoring. Now that the federal regulations require this, DNREC must ensure that the compliance certification fully includes the monitoring and corrective action requirements.

Also, in view of the serious issues the refinery has had in recent years, DNREC has failed to require prompt compliance for any continuing problems. EPA has recognized that, over the last 3 years, the DCRC has experienced “high priority violations” or “violation[s] identified” for important clean air requirements.¹²

Finally, due to the serious issues with compliance as reflected in the consent decree and settlement addressed in this permit renewal and EPA’s enforcement report, DNREC should also require DCRC to implement real-time fence-line monitoring, to assure compliance with all applicable requirements in this permit. In particular, DNREC should follow its sister permitting agency in dealing with similarly serious air pollution, health, and environmental justice concerns at refineries in the City of Los Angeles (the South Coast Air Quality Management District). DNREC should supplement the permit here to require at least the same real-time fence-line monitoring for a list of dangerous pollutants that the SCAQMD requires in Los Angeles, and further strengthen monitoring requirements for flares as the South Coast also requires.¹³

5. Environmental justice

Address environmental justice as a key concern to satisfy public participation requirements, and to strengthen the permit to protect public health as discussed above, including by strengthening monitoring and removing unlawful exemptions and other similar barriers to enforcement by the public. DNREC should also commit to reduce cumulative impacts and address the unfairness that the refinery’s pollution, along with that of other major polluting sources, is falling disproportionately on communities of color and low-income people, including children, in Delaware City, by fully satisfying Title V and exercising DNREC’s full authority to protect Delaware residents’ health.

Conclusion

During a global pandemic that targets the respiratory system, assuring healthy air quality for Delaware residents has paramount importance. By this permit, DNREC must do all it can assure adequate health protection for the communities near and downwind of the Delaware City Refinery. DNREC must fulfill its legal and moral responsibility to protect individuals from harm resulting from pollution and to hear and address Delaware residents’ concerns and not silence community voices.

We support the detailed technical comments filed by Delaware Audubon Society, Sierra Club, the Environmental Justice Health Alliance for Chemical Policy Reform, the Widener Environmental Law Clinic, Environmental Integrity Project, and Earthjustice during this comment period. Please make all necessary changes to strengthen the DCRC permit to assure full compliance with the Clean Air Act. Thank you for your time and consideration.

Sincerely,

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¹ Permit No. AQM-003/00016 - Part 1 (Renewal 3), Part 2 (Renewal 2), and Part 3 (Renewal 3).

² EPA ECHO Detailed Facility Report, Delaware City Refinery, <https://echo.epa.gov/detailed-facility-report?fid=110001148598>. See also Cal. EPA OEHHA, Analysis of Refinery Chemical Emissions and Health Effects (Mar. 2019), <https://oehha.ca.gov/media/downloads/faqs/refinerychemicalsreport032019.pdf>.

³ <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

⁴ D. Carrington, ‘*Compelling*’ evidence air pollution worsens coronavirus – study, The Guardian (July 13, 2020), <https://www.theguardian.com/world/2020/jul/13/compelling-evidence-air-pollution-worsens-coronavirus-study>.

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- ⁵ EPA, ECHO Report 2020, <https://echo.epa.gov/detailed-facility-report?fid=110001148598>.
- ⁶ <http://www.ecodelaware.com/place.php?id=370>.
- ⁷ <https://dnrec.alpha.delaware.gov/events/703/virtual-public-hearing-delaware-city-refining-company/>.
- ⁸ Proclamation of Governor John C. Carney, No. 173292 § 2 (Mar. 24, 2020), <https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/Proclamation-173292-03132020.pdf> (requiring opportunity for the public to “hear the comments of and speak to such members of the public body contemporaneously”).
- ⁹ See Del. Audubon Soc’y, Sierra Club *et al.*, Initial Public Hearing Request (May 22, 2020), <http://www.dnrec.delaware.gov/Admin/Documents/dnrec-hearings/2020-P-A-0017/Full%20Public%20Hearing%20Request.pdf>.
- ¹⁰ See Del. Audubon Soc’y, Sierra Club, EJHA *et al.*, Request for Valid Public Hearing (June 25, 2020) (citing sources), <http://www.dnrec.delaware.gov/Admin/Documents/dnrec-hearings/2020-P-A-0017/Emma-Cheuse-comment.pdf>.
- ¹¹ https://www.wdel.com/news/update-2-critically-injured-in-fire-at-the-delaware-city-refinery/article_5d076dea-63c1-11ea-a60c-0fdaa04bc550.html.
- ¹² EPA ECHO Report, <https://echo.epa.gov/detailed-facility-report?fid=110001148598>.
- ¹³ See SCAQMD Rule 1180 and Guidelines; <https://www.aqmd.gov/home/rules-compliance/rules/support-documents/rule-1180-refinery-fenceline-monitoring-plans>.