

Hearing requests re: Camden County Energy Recovery Associates L.P. (CCERA)

From: Camden For Clean Air <getinvolved@camdenforcleanair.org>
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Dear DEP officials:

The “public hearing” held by Covanta on December 8, 2022 violated basic concepts of fairness and due process to affected area residents. This hearing was regarding three requested permits submitted to the New Jersey Department of Environmental Protection (DEP) by Covanta’s CCERA trash incinerator facility at 600 Morgan Boulevard in Camden, NJ.

We write asking for an extension of time and for a fair and proper hearing and comment process in line with New Jersey’s Environmental Justice Law and Administrative Order No. 2021-25.

This Public Hearing has taken on greater importance, given the results of the Healthy Community Planning Reports recently issued by the New Jersey Department of Health (NJDOH) and DEP, which show that residents in Camden and the immediately surrounding towns have worse air quality and higher air cancer risks than other municipalities in the county and state. Not only is Covanta’s incinerator harmful to the environment, it is extremely harmful to the health of anyone who lives nearby. In fact, their facility is singly responsible for 50% of the health-damaging industrial air pollution released in all of Camden County, according to EPA’s National Emissions Inventory.

In light of New Jersey’s Environmental Justice Law, scheduled to take effect in the new year, DEP should consider the spirit of the soon-to-be law and deny any permit application being considered unless the permit applicant can establish that if the permit is granted, the planned activity will not pose an increased risk of environmental harm to marginalized communities.

The “public hearing” was grossly unfair in its timing and accessibility. Covanta held it on December 8, during the December holiday rush, with public comment closing on January 7, 2023, less than a week after the New Year holiday. The timing chosen by Covanta for its public hearing and comment period overlaps the busiest time of the year, which will almost certainly substantially reduce meeting turnout and public comment.

Moreover, Covanta’s distribution of its notice of public hearing seems deficient. All residents within a one or two-mile radius should have been notified. Most area residents had no knowledge of the hearing at all. How is the officially-sanctioned outreach method considered adequate when so few people are reached? Why weren’t all nearby residents notified directly?

DEP’s Administrative Order No. 2021-25 (AO 2021-25) makes clear that all New Jersey communities, and especially those disproportionately affected by environmental and public health stressors, must have a meaningful opportunity to participate in decision-making that affects their environment,

communities, homes, and health. The DEP has set forth a specific goal of “maximizing” the participation of individuals within an overburdened community such as Camden. Was it Covanta’s intention to stifle attendance and comment? The timing of the hearing and the failure to get the word out about it certainly suggests so. However, even if stifling attendance and comment was not the goal, Covanta certainly has not attempted to “maximize” the participation of individuals near the Covanta facility, as required by AO 2021-25.

DEP, not Covanta, should choose the public hearing date, on a date when area residents are more likely to be available, and DEP should advertise it in accordance with its rules and procedures governing notice for public hearings. After all, the public hearing is supposed to help DEP make an informed decision about CCERA’s permit application, taking public opinion into account. To do that, DEP needs to get the public’s opinion. DEP should require another public hearing be held to allow for greater community involvement in the process.

Covanta chose to hold the public hearing only via Zoom, rather than in-person. A provision of the proposed regulations for the EJ Law (N.J.A.C. 7:1C-4.2(a)(2)) provides that *“all hearings must be conducted on a weekday no later than 6:00 P.M. Eastern Standard Time/Eastern Daylight Time. An applicant shall include a virtual component to the in-person public hearing to increase participation. The virtual component shall be recorded and available online for the public to view after the hearing until at least the close of the public comment period.”* This makes it clear that the intent is for a virtual hearing to be in addition to an in-person one. Covanta should be required to conduct the meeting in-person at a location in the South Camden neighborhood where they operate, enabling those most affected to have a voice. In-person hearings provide a much better opportunity for area residents to actually be seen and heard. Many people in marginalized communities do not know how to use and/or cannot access Zoom, or have a hard time with their screens becoming “frozen” on the remote platform due to wi-fi deficiencies. We know from our own in-person meetings in the neighborhood that some who are interested do not have Internet access or use it enough to be able to participate in this way. Covanta and DEP should be trying to help overcome the “digital divide.” Offering both in-person AND remote access sends an important message – that the public’s comments are welcome and will be considered.

Language access is another important environmental justice consideration. All people who may be affected should have the ability to understand what is being proposed for their community. Covanta’s public hearing notice made no mention of the language in which the hearing would be held. It was held only in English, and when a question was posed in the chat in Spanish, Covanta responded with “Unfortunately, we cannot answer questions in Spanish.” This is completely unacceptable. During the same “hearing,” Covanta bragged about how they have the capability to translate because they had a flyer in Spanish last summer for a public meeting they hosted where they provided a Spanish translator. If they could do that for a PR meeting, why not for the public hearing on three permits they need to keep polluting our air and to start burning liquid industrial wastes? When asked about how they advertised the meeting, they claimed that they looked hard, but couldn’t find a Spanish language newspaper in the area to advertise in. They apparently did not look hard enough, there are several established Spanish language newspapers in NJ, most of which are circulated in the City of Camden such as: Hispano New Jersey, Reporte Hispano, The Latino Spirit, Americano Newspaper, The Nubian News and El Latino News. Census findings show that over 40% of Camden residents speak Spanish, so, at a minimum, a Spanish interpreter should be provided for meeting attendees who do not speak English. Full participation would require that the ads, permit applications, presentation, and receipt of comments all be available in Spanish.

It is disappointing that the public hearing and comments are being organized and run by the Covanta Corporation, not DEP. As a corporation beholden to shareholders, Covanta has an interest in minimizing opposition to the permits it is seeking. A public hearing run by DEP would likely receive more participation by members of the general public and affected communities. Further, all public comments should be submitted directly to the DEP for review. Not only does the submission of comments to Covanta run the risk of Covanta’s intentional or unintentional failure to turn over all

comments to DEP for review, the mere fact that Covanta receives the comments will likely have a chilling effect on persons who may wish to comment, either by scaring them off altogether because they do not want to become known to Covanta as being “against” its facility operation, or by causing filtered or toned-down comments instead of a full discussion of concerns.

By allowing Covanta to run the hearing, this permitted them to start the hearing with their own presentation, biased to their perspective and packed with misinformation. That presentation took up over 30 minutes when people had to wait to speak, and set the stage in a biased way. And instead of a formal hearing process where people give comments, Covanta took up time responding to each comment, providing their spin after each speaker. The public should be entitled to honest information, or at least balance. Any pro-Covanta presentation ought to be balanced by equal time given to a public interest group capable of providing a counterpoint from a health, environmental, and environmental justice perspective.

Also, from a procedural standpoint, there should be more than one public hearing on the issue of Covanta’s requested permits, since there are actually three permits being considered here: one for a renewal of Covanta’s Title V Operating Permit; one for the receipt and processing of Type 72 (liquid and semi-liquid) waste; and one for proposed air quality control system (AQCS) upgrades (intentionally interwoven with the acceptance of Type 72 liquid industrial wastes). Covanta provided only three minutes for speakers to address three permit applications, containing 362 total pages of technical material. This is clearly inadequate and unfair.

The purpose of Administrative Order 2021-25 (“AO 2021-25”) was to facilitate meaningful opportunities for public engagement consistent with the spirit of the EJ Law before it is implemented when the regulations are officially adopted. Specifically, AO 2021-25 states that during this promulgation phase, that *“there is an immediate need for further action to ensure, to the maximum extent allowable by law, that the spirit, intent, and direction of [Executive Order] 23 and the Environmental Justice Law are realized.”* DEP’s immediate action consists of exercising its *“inherent authority to require and extend public comment periods, to require and set the conditions upon which public hearings may be held,”* among other things. Therefore, consistent with the EJ Law, DEP exercised its authority to expand public participation by (1) requiring a 60 day comment period on permit applications in Overburdened Communities (“OBC”) with a 30 day extension upon request by a member of the OBC; (2) “[r]equire each applicant to hold a public hearing **in a manner determined by the Department as consistent with the Environmental Justice Law, so as to maximize participation of individuals within the subject overburdened community**”; (3) encourage those giving comments to provide DEP and the applicant with the existing conditions and potential adverse impacts of the applicant’s proposal on the community; (4) require the applicant to respond to comments received; (5) encourage applicants to engage directly with residents in the subject OBC and provide those residents with information; and (6) “[w]here permits or approvals may be issued, apply such **special conditions** as may be necessary to avoid or minimize environmental or public health stressors upon the overburdened community to the maximum extent allowable by law.”

Based on the above, we ask that DEP set up its own email for receipt of public comment, and require that:

1. multiple in-person hearings be held after the new year, separating the Title V Operating Permit renewal from the two intertwined air and waste permits relating to acceptance of liquid industrial waste and air pollution control upgrades.
2. the hearings be located within the Morgan Village or Waterfront South neighborhoods.
3. a virtual component be made available for both hearings, via Zoom, hosted by DEP so that it’s not a list-building tool for Covanta’s PR effort and so that attendees can trust to join in.
4. printed notice of the in-person and virtual components of both hearings, as well as details on the comment process, be delivered by mail to all residents within one mile of the facility, in plain unbiased language vetted by DEP with community feedback, which explains that there are public health implications related to these permits.

5. the public notice be printed in English and Spanish, and that it refer people to online copies of the permit documents as well as copies in a local library (also to be available in English and Spanish).
6. equal time be given to Camden for Clean Air to present for as many minutes as Covanta gets to present in any meeting portion prior to the start of any formal hearing, and that the time of the formal hearing (the onset of public testimony) be fixed and advertised for those who do not have time to sit through presentations before giving their public comment.
7. a hearing is a hearing, where members of the public get to present, on the record, without Covanta responding to each commenter.
8. a 60-day period following the hearings be provided for written public comment to be submitted.
9. as much of the EJ law process be followed as possible, in accordance with the spirit and letter of the law, regulations, and AO 2021-25.

Sincerely,

Benjamin Saracco and fellow members of Camden for Clean Air



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