



To: Governor Murphy's Front Office & NJDEP  
From: EmpowerNJ Coalition  
Re: Public Participation, Local & State Environmental Permitting during COVID-19  
Date: April 17, 2020

**INTRODUCTION:** We write to **request that you strengthen and clarify Executive Orders 122 and 127** to protect the public's health during and after the COVID-19 crisis **and to ensure that the public is not disenfranchised**, and has a meaningful opportunity to participate, in matters of great public concern.

In late March, EmpowerNJ, on behalf of more than 60 signatory organizations representing labor, faith, environmental and community organizations, submitted a letter urging your Administration to pause pending proceedings and actions for approving applications and permits for all major development projects. On April 1, we had a phone meeting with Governor's Office and DEP staff in response.

"Governor Murphy, you have taken bold and unprecedented actions to protect our communities from COVID 19 and to curtail community spread of the virus with one important and inexplicable exception: public participation in government hearings and decision-making. We are calling on you to pause pending permits and projects that usually afford public participation processes until after the COVID-19 health emergency has ended and full public access can be restored," reads the letter.

Wednesday's *Star Ledger* front page story on a [Harvard School of Public Health](#) report "[Dirty air tied to higher risk of COVID-19 death](#)" certainly highlights the stakes. The State is proceeding with permitting for numerous projects that will have an extremely detrimental impact on the air we breathe.

In the intervening two weeks, your Administration has issued multiple Executive Orders, including **Executive Order 122**, which restricted non-essential construction, but still deemed projects like the Southern Reliability Line in South Jersey as essential. This Tuesday, **Executive Order 127** was signed that states in part "in any contested case, any pending deadline for production and certification of a permitting record pursuant to N.J.S.A. 52:14B-10(a)(2); ... for filing of a recommended report and decision pursuant to N.J.S.A. 52:14B-10(c); and ... for adopting, rejecting or modifying a recommended report and decision, shall be extended by the number of days of the Public Health Emergency declared in Executive Order No. 103 (2020) plus an additional 90 days."

**EXECUTIVE SUMMARY:** You have recognized and we appreciate that COVID is an all encompassing crisis. For that reason, **we urge you to: 1) pause all major development permitting projects and plans** at both the state and local levels not related to the emergency or other critical health issues; **and 2) extend the pause on non-essential construction projects** to those not directly related to repairing our current utility operations.

As we wrote last month: "Some governmental actions are undermining the public's right to participate in ... decision-making on significant projects, policies... While residents are practicing social distancing ... making personal sacrifices for themselves and their families, the government continues making decisions business as usual that will have impacts on our communities and the environment well after the COVID 19 crisis ends."

A month after our schools closed, we are not in a business as usual scenario. We referenced 10 projects last we wrote, we list an additional 8 below. **We need comprehensive solutions here not individual fixes on a case by case basis.** Accordingly **we urge the expansion of Executive Order 122 and Executive Order 127** to pause more non-essential construction projects and major municipal development permitting and planning decisions.

**EO 122 AND EO 127 MUST BE EXPANDED:** Executive Order 127 gives the DEP too much discretionary power when it comes to rules, regulation, and reports. For example, EO127's citation of N.J.S.A. App. A:9-47, which is most germane to motor vehicle laws, to "suspend any regulatory provision of law when its enforcement is detrimental to the public welfare during an emergency" is dangerously broad and must be narrowed.

Further, while EO 127 extends deadlines an additional 90 days beyond the end of the emergency, it does not extend public comment on permits or rules similarly. We should be following New York's example, which extended public comment an additional 60 days.

Executive Order 127 will also extend expiring permits. This permit extension is too broad and will have adverse environmental consequences. **Permits will be grandfathered from any changes to any rules, regulations, or standards, including the PACT rules DEP advances to implement your EO100.** This is essentially the Permit Extension rule that can extend all permits that expire this year to beyond the 90-day health emergency, whether they should be or not. Why stop the Permit Extension Act if you're just going to do it by EO?

Executive Order 127 also does not appear to apply to local municipal decisions, permits or public comment sessions. **This EO's impacts are also unclear for decisions on Water Quality Management Plan (WQMP) decisions.** In the same way that so much of civic life has been put on pause, we need to do the same regarding the state regulatory process. **The EO should be extended to municipalities for the exact same reasons.**

"Towns will move ahead with major developments and zone changes that could have statewide implications on the environment, flooding, and even public health. If local government does online municipal council, zoning and planning board meetings, it will not allow for a give and take with experts being questioned or witnesses being cross-examined, and it will severely limit the dialogue with the public. We believe these meetings must be postponed during the public health emergency unless they are dealing with COVID 19 or public safety issues. These are quasi-judicial or legislative decisions that could have long-term consequences," reads our letter.

As we outlined last month, government buildings remain closed (and likely will remain so) and providing records to the public via the time prescribed by **OPRA (Open Public Records Act)** has been lengthened based on recent legislation (A3849) signed into law by the Governor.

Further below we offer more detail on, and 8 additional examples to, those 10 projects including fossil fuel infrastructure and local contentious development projects that we cited last month as examples, including:

- **NESE Frack Gas Pipeline:** April 3rd public comment deadline, despite numerous requests from advocacy organizations and impacted residents requesting public hearings and an extended public comment period due to the pandemic, DEP granted neither. Then weeks later the applicant, who has a long history of manipulating the DEP permitting process, asked for an extension of the permit deadline and their request was granted. Only after the applicant asked for more time did NJDEP re-open the public comment period for another 30 days.
- **NJ Turnpike Authority & SJTA Highway Widening & Toll Hikes:** Public hearings for the Turnpike Authority were held on March 18 & SJTA scheduled hearings for April 1 & 2;
- **NJ TRANSIT:** Frack gas power plant moving forward, renewable alternative stalled;
- **NJDEP/DRBC Land Use and Water Quality Permitting:** e.g. Haberman project, Hampton, NJ; April 6th public hearing in Oakland, NJ; DRBC LNG hearing;
- **Controversial Local Development Projects:** The Jaindl Warehouse, White Township, Warren County; Sewell Tract, Cape May; etc.; and
- **DCA Guidance to Towns:** Some municipalities are advancing planning board applications and other development while only limited government functions are supposed to occur.

**The patchwork approach to municipal action is disenfranchising the public. Municipalities are considering making application and zoning decisions during the COVID 19 emergency while the public cannot fully participate.** Changes to the Open Public Meetings Act (per S2294) and follow-on guidance from the Department of Community Affairs to municipalities has provided for electronic meeting formats that are being interpreted in different ways by different local governments. S2294, signed into law by Governor Murphy, states that “To the extent practicable, a public body providing only electronic notice of a meeting pursuant to this subsection shall limit public business discussed or effectuated thereat to matters necessary for the continuing operation of government and which relate to the applicable emergency declaration.” **However, local approvals are proceeding on other non-emergency matters.** Executive Orders 104 and 107 provide some further guidance but also leave open to interpretation what business is allowed during the COVID 19 emergency.

**The definition of “matters necessary for the continuing operation of government and which relate to the applicable emergency declaration” is also being interpreted differently by different municipalities.** The Department of Commerce guidance is also vague, leaving the precise limitations on business to be conducted that are imposed by S2294 largely to the discretion of local government. For instance, in DCA’s Guidance to local government from their Division of Local Government Services (DLGS) it is stated, “Meetings noticed pursuant to P.L. 2020, c.11, limit, ‘to the extent practicable’ the meeting ‘to matters necessary for the continuing operation of government which relate to the applicable emergency declaration.’ While the language is broad, it does attempt to place some limitations on action taken at electronically noticed meetings.” The guidance does not further explain what the limitations are in this notice, leaving municipalities to reach out individually to DCA to get one-on-one guidance. These guidance letters being provided should be available to the public and oversight by DCA and DEP should be required to assure consistency and transparency of how these important decisions about local government decision-making are being made.

Throughout New Jersey, there are currently dozens of projects in front of local planning boards that would have detrimental impacts on water quality, greenhouse gas emissions, air quality, and more if approved. **Lambertville** is still moving forward with a zone change and 5-story apartment building near Alexauken Creek; they are scheduled to vote on the ordinance on April 23<sup>rd</sup>. As we speak, **Jackson Parke**, an 1100-unit development proposal in the Pinelands is in front of the Jackson Planning Board now. Dozens of similar projects are moving forward like the massive **Jaindl Land Company** warehouse that has been proposed on environmentally sensitive farmland in **White Township** (see below), and a similar project in **Franklin Township in Hunterdon County**. The **Sewell Tract in Cape May** is a housing development on environmentally sensitive wetlands that is currently in front of the planning board and also in front of DEP.

For many of these projects, the public does not have access to attend these meetings and many cannot get proper information for planning board or zoning meetings because offices are closed. They cannot form questions or an opposition because they cannot adequately access public information due to the health emergency. The public does not have a real chance to participate in processes regarding these controversial projects that should not be moving forward during a pandemic in the first place.

**Warren County Warehouse Project:** This controversial White Township project is another example of a project that should be paused to allow meaningful public participation. An ordinance has been noticed for an April 22 Township Committee regarding the townships’ soil and fill ordinance, which could impact the proposed warehouse application. This meeting will be held electronically. As we discussed at length in our letter dated March 27 and on our follow up conference call with the Administration, many members of the public, including those who have been fully engaged in opposing this application, will not have the capacity or the resources to take part as they have been. Electronic formats are not accessible to all members of the public who may want to participate.

**These are examples where lack of clear, transparent and consistent guidance to local government has opened a door for business to be conducted that should be postponed until after the COVID 19 emergency has abated and emergency orders are rescinded, allowing for full and fair public participation to resume.**

Beyond these local projects, there are state projects that should not be deemed essential construction. We are in a health emergency and it is critical for New Jersey to halt and or postpone all unnecessary construction so that we can focus on protecting our health. These include:

**Southern Reliability Link (SRL):** In the Pinelands area, NJNG is currently constructing its Southern Reliability Link pipeline in Monmouth County and moving towards Burlington County. The SRL pipeline is built in redundancy and is not essential or even needed. Despite the fact that we are in court with them, NJNG is already cutting streets off in Monmouth and Burlington County and people cannot get to their homes. They are risking public safety by blocking traffic which is especially difficult for emergency vehicles. Transient workers from out of state have been observed working without PPE as recently as Tuesday April 14th, increasing the risk that the virus will be spread along the pipeline route and across state lines.

**Sparta Mountain WMA:** While all of the state parks are closed for hiking, DEP is still moving forward with the logging at the Sparta Mountain Wildlife Management Area. These forests in the Highlands provide clean drinking water for 6 million people, opening them up for logging will cause more runoff, more pollution, and release more carbon.

**Gibbstown LNG export terminal:** Despite the dangers of close working conditions and team-based construction operations at this site, the project remains under construction, endangering workers, their families and the community with exposure to the coronavirus. The adjudicatory hearing for the legal challenge to the DRBC's approval of the project is continuing with a virtual hearing format, depriving the public of being able to attend and witness the hearing proceedings. **Most egregiously, NJDEP has commenced a draft air permit (Permit Activity Number: PCP190002) process for Delaware River Partners for the Gibbstown facility on March 24 DURING the COVID 19 emergency shutdown, set a virtual hearing for April 22 (Earth Day!) after cancelling an in-person hearing and will close public comment on April 29, still in the midst of the shutdown. Access to records through OPRA is impossible by the date of the virtual hearing or the end of the comment period,** especially considering that in-person file reviews, offered in the notice, are not being scheduled due to office closures. This permit process is encapsulated within the COVID 19 emergency with no possibility of fair public participation by residents who are consumed by personal and family health issues but who will, nonetheless, bear the brunt of the air emissions that will be released if the permit is approved. This permit process is a shameful mockery of the public permit process and of the public's rights. It must be stopped.

**As previously cited, it is unclear whether EO 127 applies to WQMP and WMP processes, but we are concerned that it does not and these plans are a textbook case where the public is being kept in the dark.**

**WQMP/WMP:** One area where state and local decision-making intersects is the Water Quality Management Plan Amendment and Wastewater Management Plan processes. In these instances, the public is deprived of the information needed to inform them about an application for an amendment because the documents are not available for review and some documents may only be available by in-person file reviews, which are not being scheduled by DEP at this time. There are many examples of this in the April 6 New Jersey Register. The Notice for "**Galetto SSA**" (Program Interest No. 435441, Activity No. AMD190002, a proposed site-specific amendment to the Lower Delaware Water Quality Management (WQM) Plan and **Landis** Sewerage Authority Wastewater Management Plan (WMP)), states: "The Department's file is available for inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, upon request. An appointment to inspect the file must be arranged by calling the Bureau of Environmental Analysis, Restoration and Standards at (609) 633-1441." However,

when the office number is called, it is not possible to schedule an appointment at this time (presumably, because the building is closed).

It is also stated: "Interested persons may submit written comments on the proposed amendment to the Department at the address cited above. Comments should reference Program Interest No. 435441, Activity No. AMD190002 and must be submitted within 30 days of the date of this public notice." Yet the public cannot follow through on this within the 30-day comment period due to not having the records to review, disenfranchising their right to comment. There are other instances in the Register where public hearings have been cancelled, but the close of the comment period remains as originally noticed, removing this irreplaceable opportunity for the public to participate.

**We are not asking for individual fixes on a case-by-case basis, dependent on the expression of public interest by an individual; DEP should uniformly stop all forward approvals of WQMP and WMP amendments and plans.**

For all WQMP and WMP amendments DEP should either i) extend the public comment period until after the COVID 19 emergency declaration is over and the public's access to information and ability to comment is fully restored, or ii) deny the amendment applications. These applications could also be deemed incomplete and put on hold by DEP because the public cannot participate fully. In cases **where the WQMP has been initiated by DEP, the entire process should be stopped AND no new DEP-initiated amendments or plans should be proposed until after the emergency and the resumption of full public participation processes.**

**CONCLUSION** -- Again we sincerely appreciate the all-hands-on-deck approach you and your staff have taken amidst the COVID crisis, which is a painful contrast with the absolute abrogation of responsibility by the federal government. It is because COVID is so all encompassing that **we urge you and your Administration to 1) pause all major development permitting projects** at both the state-wide and local levels that are not related to the emergency or other critical health issues **and 2) extend the pause on non-essential construction projects** to those not directly related to repairing our current utility infrastructure.

A month after our schools closed, we are not in a business as usual scenario. **We urge you and your Administration to expand Executive Order 122 and Executive 127** to pause more non-essential construction projects and major municipal development permitting and planning decisions.