

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits

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www.dec.ny.gov

November 29, 2020

Via Electronic and Ordinary Mail

Donald Atwood
CPV Valley, LLC
8403 Colesville Rd Ste 915
Silver Spring, MD 20910

Re: **Notice of Revocation of Complete Application
and Notice of Incomplete Application**
CPV Valley, LLC – CPV Valley Energy Center
Title V and Title IV Permit Applications
DEC ID 3-3356-00136/000010 & 00009

Dear Mr. Atwood:

The Department of Environmental Conservation (“DEC” or “Department”) is currently reviewing public comments received on CPV Valley LLC’s (“CPV”) application for a Title V (operating) permit and Title IV (acid rain) permit (collectively “Title V application”). DEC prepared a draft permit and held a 60-day public comment period, from May 29, 2019 until July 29, 2019, which included holding two public legislative hearings on July 17, 2019 in Middletown, New York. Based on its review of public comments and newly enacted laws of the State of New York, DEC has determined that the Title V application is incomplete pursuant to 6 NYCRR Part 621. Specifically, 6 NYCRR Part 621.3(a)(2) provides that DEC may request information that “is reasonably necessary to determine ... compliance with the conditions of the permit, **the ECL, [and] other applicable laws administered by the department**” (emphasis added). Here, CPV must submit an assessment of how issuance of a Title V permit by the DEC would be consistent with the Statewide greenhouse gas (“GHG”) emissions limits established in Article 75 of the New York State Environmental Conservation Law (“ECL”), as required by Section 7(2) of the Climate Leadership and Community Protection Act (Chapter 106 of the Laws of 2019)(the “Climate Act”). Consequently, the Department’s prior Notice of Complete Application is hereby revoked, and the Title V application has been deemed incomplete.

The Climate Act, effective January 1, 2020, establishes economy-wide limits to reduce GHG emissions in New York State. Specifically, ECL § 75-0107(1) establishes Statewide GHG emission limits of 40% below 1990 levels in 2030, and 85% below 1990 levels in

2050.¹ DEC is developing a regulation to translate these statutorily required percentage reduction requirements into tonnage volumes, expressed in terms of carbon dioxide equivalents, as required by the Climate Act. See proposed Part 496, Statewide Greenhouse Gas Emissions Limits, available at <https://www.dec.ny.gov/regulations/121052.html>.

For purposes of these limits, under the Climate Act, Statewide GHG emissions include all GHG emissions within New York State, as well as those produced outside of the State that are associated with either (1) the generation of electricity imported into the State or (2) the extraction and transmission of fossil fuels imported into the State. ECL § 75-0101(13). While the Climate Act was not in effect during the public comment period for CPV's draft permit in 2019, it is now in effect and requires the Department to adhere to its mandates.

Section 7(2) of the Climate Act requires that all State agencies consider whether permits and other approvals are inconsistent with or interfere with meeting the economy-wide GHG emission limits established in ECL Article 75. If an agency deems its decision to be inconsistent with or interfere with the Statewide limits, then Climate Act §7(2) requires the agency to "provide a detailed statement of justification as to why such limits/criteria may not be met." Finally, in that situation, the agency must also identify alternatives or GHG mitigation to be required where the project is located.

Pursuant to the Climate Act, DEC requires major source permit applicants to submit information to DEC setting forth an assessment of whether the proposed project is inconsistent with or interferes with the Climate Act's Statewide GHG emission limits. Because the Climate Act includes upstream, out-of-state emissions as part of Statewide GHG emissions, CPV must include such emissions in its assessment. This new requirement is set forth in the Climate Act. Moreover, the issue of GHG emissions, climate change, and the project's consistency with the Climate Act and other State policies was specifically raised in public comments on CPV's Title V application received by the Department. Therefore, CPV must provide an assessment of the project's consistency with the Statewide GHG emission limits under the Climate Act.

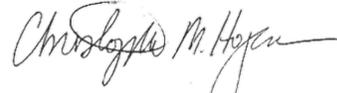
Finally, Section 9 of the Climate Act expands requirements of the existing Community Risk and Resiliency Act ("CRRRA"), requiring facilities to demonstrate that future physical climate risk has been considered and allowing the Department to require mitigation of those risks. Section 9 of the Climate Act newly expands CRRRA's requirements to Title V applications. Therefore, CPV must also provide an assessment of these risks.

The requested information must be provided to and reviewed by staff prior to the Title V application being deemed complete.

¹ In addition to the Statewide GHG emission limits established in ECL Article 75, the Climate Act also requires that one hundred percent of Statewide electric generation be GHG emission-free by 2040. Public Service Law § 66-p(2). CPV should also provide an assessment of how it intends to meet this separate requirement of the Climate Act.

Should you have any questions or if you would like to schedule a call to discuss please feel free to contact me at chris.hogan@dec.ny.gov.

Sincerely,

A handwritten signature in black ink that reads "Christopher M. Hogan". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Christopher M. Hogan
Project Manager
Bureau of Energy Project Management

Cc: G. Kelly, Harris, Beach
M. Sanza/K. Gibbs, OGC
G. Sweikert/A. Carbone, R3 DAR