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15 March 2018

Town of Wawayanda  
80 Ridgebury Hill Road  
Slate Hill, NY 10973

**ATTENTION: JOHN RAZZANO, SUPERVISOR**

**SUBJECT: WAWAYANDA TOWN BOARD MEETING 5 MARCH 2018  
PUBLIC COMMENT CPV**

Dear Supervisor Razzano:

Our office has reviewed public comments received during the Town Board meeting on 5 March 2018. The following will identify responses to comments which this office can address:

1. Several commenters identified concerns with the Town of Wawayanda Planning Board serving as Lead Agency for the project. On 10 March 2008 a Full Environmental Assessment Form and applications were submitted to the Planning Board. ***On 8 May 2008 Notice of Intent for Lead Agency letters were mailed certified return receipt requested to 20 interested or involved agencies including two to the New York State Department of Environmental Conservation at both their Albany headquarters and Region III headquarters.*** The process for determining lead agency is included in the NYS SEQRA Part 617 regulations. None of the agencies notified took exception to the Town of Wawayanda Planning Board becoming Lead Agency for the SEQRA review of the project. On 11 June 2008 the Planning Board formally assumed the role of lead agency as none of the prior notified interested or involved agencies exercised their jurisdiction for Lead Agency. On 25 June 2008 as Lead Agency, the Planning Board issued a positive declaration requiring preparation of a Draft Environmental Impact Statement.

In this case a lack of response from the New York State Department of Environmental Conservation caused the Planning Board to become Lead Agency by default. A lead agency for a SEQRA review serves as a gatekeeper for information and determinations under the SEQRA process. Establishment of a Lead Agency for SEQRA review in no way limits the jurisdiction or responsibility of any other involved agency. All involved agencies participate based on their jurisdictions and responsibilities. Each involved agency must adopt findings under the SEQRA process. Numerous involved agencies participated in all facets of the

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SEQRA review of the process including draft and final scoping, DEIS review and comment, DEIS public review, FEIS review and comment and issuance of findings. Each agency remains responsible for review, comment and permitting based on its involvement in the project. ***The Planning Board utilized the services of numerous consultants to review project documents including scoping documents, DEIS, FEIS and Finding Statements. It is important to note that no agency's jurisdiction is circumvented through the establishment of a Lead Agency.***

2. **Air Resource Impacts:** ***The air discharge from the power plant is under the jurisdiction of the NYSDEC and the EPA.*** The New York State Department of Environmental Conservation issued a State Air Facility Permit 3-3356-00136\00001 with an effective date of 1 August 2013 and an expiration date of 31 July 2018. The 79 page Air Permit regulates discharge from the facility. In addition to the Air Permit the DEC issued a separate Water Quality Certification and Fresh Water Wetlands Permit dated 1 August 2013 expiring 30 July 2018.

Based on issues regarding start up and commissioning of the facility representatives of the Town of Wawayanda contacted NYSDEC with regard to air quality issues emanating from the plant. While during review and approval it was not envisioned that start up of the plant would occur utilizing the oil distillate, delays in construction of the pipe line have resulted in the Applicants choosing to start the plant testing utilizing the back up fuel. The Town is aware that based on the use of the distillate oil and operational/weather issues during startup have caused concern with the discharge of smoke and fumes impacting the areas surrounding the power plant. The Town of Wawayanda officials met with the power plant operators regarding these issues. Representatives of CPV identified operational difficulties during the start up which resulted in the plumes emanating from the site.

The Town of Wawayanda is soliciting proposals for an Engineering firm to provide third party monitoring of the site based on recent issues. The site operator has verbally committed to funding the third party monitor through the Town of Wawayanda. The third party monitor will be retained to evaluate the existing permits, plant operations to date, future start up operations utilizing both distillate oil and natural gas when available, on site and off site air quality data collection and analysis. The Town of Wawayanda has heard concerns from residents near and far from the project and has determined that a third party monitor should be retained to assist the town in evaluating activities at the plant. The third party monitoring in no way limits the enforcement responsibilities of the NYSDEC and the United States EPA for discharge from the site. It is noted that the permit issued to the power plant expires on 31 July 2018, and must be renewed/ re-issued by the agencies having jurisdiction.

3. **Several commenters noted that excessive noise was emanating from the facility:** It was noted during the public meeting that the Town of Wawayanda does not have a Noise Ordinance. This is not the case. Section 195-23 General, Commercial and Industrial Standards states "Whenever commercial, manufacturing or other non-residential uses or improvements and changes to such uses, with the exception of agricultural activities and home occupations, are proposed, the following performance standards shall apply. The Building Inspector/Code Enforcement Officer shall ensure these standards are met prior to issuing certificates for such uses and may require the Applicants to provide documentation of compliance." Section 195-23D Noise shall not exceed an intensity of 65 decibels as measured

100 feet from the boundaries of the lot where such a use is situated. The project noise impacts were evaluated during the environmental review process. Project noise levels are limited to 65 decibels within 100 feet of the property line. The third party monitor being retained by the Town of Wawayanda will take noise measurements at the specified distances during future start up and operational phases. The Town of Wawayanda has an additional contractual agreement with the project sponsor in the host community agreement. That agreement states that "the company agrees that the project shall be constructed and operated in compliance with all applicable State and Federal laws, rules and regulations and in compliance with all permits and other authorizations issued by the town or the state with respect to the project site and documents identified in the Town's permits, including mitigation measures specified in the Findings Statements prepared by the Town Planning Board pursuant to the Environmental Quality Review Act." The town's ordinance as well as statements made in the Draft and Final Environmental Impact Statements and identified in the Findings Statements limit noise from the site to 65 decibels at 100 feet from the property line.

4. **Many commenters identified concerns with the construction activities regarding the extension of the Millennium Pipe line Known as the Valley Lateral.** The Town of Wawayanda does not have jurisdiction over the installation of pipelines. The Federal Energy Regulatory Commission and the New York State Department of Environmental Conservation have exclusive jurisdiction over the siting, location and construction of pipe lines. Numerous commenters identified concerns regarding impacts to a Bald Eagle nesting site. ***The Town of Wawayanda recommends that concerned residents contact the NYSDEC, Division of Law Enforcement with any knowledge of environmental law violations.*** NYSDEC, Division of Law Enforcement or the US Fish and Wildlife Service has jurisdiction to enforce the Bald and Golden Eagle Protection Act.
  
5. **Emergency Management/ Emergency Evacuation Plan:** Many commenters identified concerns regarding safety at the facility. The Findings Statement requires that the project sponsors work with Jurisdictional Emergency agencies to provided information and training regarding potential hazards at the facility. ***The Orange County Office of Emergency Management is aware of the facility based on required reporting under SARA Title III requirements.*** The county does not have a specific emergency action plan for the facility, nor will it. The county's emergency plans identify specific hazards for response regardless of the location within the county. The county is aware of the amount and quantities of potential hazardous materials stored on the site. The 15,000 gallon ammonia tank on the facility contains 19% ammonia solution. The evacuation distances for aqueous ammonia at that percentage is 50 meters. While it is unlikely that aqueous ammonia will be involved in a fire the evacuation guidelines for aqueous ammonia involved in fire is 800 meters. Fires involving diesel fuel on the site have a potential evacuation radius of 800 meters. The population within the specified evacuation zones are low and can be easily evacuated utilized jurisdictional emergency services. Both tanks are designed with 110% spill containment structures.

The Orange County Department of Emergency Management is aware of the facilities internal emergency plans with regard to safe operation and shut down of various facility components. These are proprietary in nature and are not available to the general public. The Town of Wawayanda is aware that the jurisdictional emergency services have met with representative of the facility on several occasions to discuss and plan for emergencies and various contingencies on the site. The Town of Wawayanda continues to encourage emergency

services training for various emergencies which could present themselves at the site.

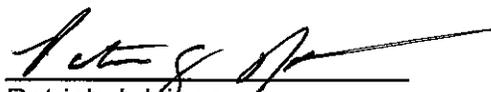
6. **Cultural Resources Impact:** The Town of Wawayanda in 2006 removed its local cultural resources law from Town Code. During 2006 review of the Comprehensive Plan and zoning, it was determined that the local cultural resources ordinance was redundant to the protections provided by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) and the State Environmental Quality Review Act requirements for projects.

The CPV project conducted Phase IA and IB Archeological surveys of all impacted areas of the project site to determine if any impacts to cultural resources eligible for inclusion in the National Register of Historic Places would occur. An additional archeological survey consisting of a literature search and field verification of historic resources, buildings, structures, objects, districts and sites fifty years or older was conducted within a half mile radius. The OPRHP responded in a letter dated 23 December 2008 concurring with the report's findings but recommended additional Phase II testing at two locations. Additional shovel testing of the two potential sites were performed in September of 2009 at the two small areas on the project site. These areas are identified in the SEQRA review and findings statement. Results of the September 2009 field work was submitted to OPRHP for concurrence of no adverse impact. ***NYSOPRHP concurred with the conclusion that the project would have no adverse impact in a letter dated 5 November 2009.*** In November of 2011 additional information was submitted based on comments received during the SEQRA review and permitting processes. These additional comments pertained to the project revisions regarding underground installation of the power lines emanating from the power plant. In addition proposed water supply/ return routing alternatives utilizing roadway corridors were also identified. In January 2012 the project sponsor committed to provide additional information and to carry out supplemental cultural resource investigation of the selected preferred alternatives. NYSOPRHP concurred with that methodology in February 2012. Additional cultural resources testing required by OPRHP was completed with a no adverse impact being issued by the state agency.

Review and evaluation of cultural resources were undertaken by the Federal Energy Regulatory Commission during the Environmental Review for the Millennium Pipeline project. This process was performed under the Federal NEPA process. Information pertaining to potential impacts for the Millennium Pipeline were evaluated by FERC prior to issuance of permits. Information pertaining to the cultural resources evaluation is available on FERC's document depository for the Millennium Pipeline project.

Very Truly Yours,

**McGoey, Hauser & Edsall**  
**Consulting Engineers, D.P.C**



Patrick J. Jones  
Principal