

To: Lloyd Lorenzi, NEPA Compliance Officer, NETL
From: Joseph Minott, Esq, Executive Director, Clean Air Council
Date: May 19th, 2003 via fax, email and mail
Re: Gilberton Coal-to-Clean Fuels and Power Project - Request for new public scoping meeting and extension of comment deadline

Founded in 1967, the Council is the oldest member-supported environmental organization in Pennsylvania. The Council's team of attorneys, community organizers, and policy analysts committed to the belief that everyone has the right to breathe clean, healthful air. We do not yet have an opinion on the potential public health and environmental affects of the "Gilberton Coal-to-Clean Fuels and Power Project," but we are concerned that DOE has sought to meet only the minimum requirements under NEPA in the scoping process for the proposed WMPI project. We have noticed several deficiencies which are cause for our concern. They are:

- Failure to abide by Presidential Executive Order 12898 on Environmental Justice
- Public Scoping Meeting Held in an Inappropriate Location
- Lack of Access to Documents
- Public Notice was Misprinted
- Public Notice was Insufficient and Poorly Timed
- Proposed Facility Location Unspecified

We respectfully request that the DOE:

- Advertise and hold a new scoping meeting in Frackville
- Issue a new public notice with a corrected email address
- Conduct thorough outreach to the affected communities and potentially interested parties
- Allow for a 60 day extension of the comment deadline

Failure to abide by Presidential Executive Order 12898 on Environmental Justice

The Presidential Executive Order 12898 on Environmental Justice directs federal agencies to evaluate impacts on low-income and minority populations and to provide enhanced public participation where programs may affect such populations.

There are high incidences of low-income and minority populations in the affected area.

Shenandoah Borough is a municipality adjacent to Gilberton Borough and West Mahanoy Township, in close proximity to the proposed facility. Shenandoah Borough is defined as a "low-income community" by the Pennsylvania Department of

Environmental Protection (DEP) for the purposes of their environmental justice program. The proposed facility would likely be within 2-3 miles of Shenandoah Borough.

Portions of Mahanoy and West Mahanoy Townships have significantly large minority populations to qualify as “minority communities” according to the PA DEP. The sites that we understand to be under consideration for the proposed project are in the southern section of West Mahanoy Twp and near the town of Morea in the southwestern part of Mahanoy Township. Those are also the locations of two of the state’s correctional facilities, which house most of the area’s minority population. SCI Frackville is just south of Frackville in the southern section of West Mahanoy Twp, and SCI Mahanoy is very close to the town of Morea in the southwestern part of Mahanoy Twp. The proposed facility would likely be within 1-2 miles of these two state correctional facilities.

According to the Council on Environmental Quality’s Environmental Justice Guidance under the National Environmental Policy Act:

“Each Federal agency should analyze the environmental effects, including human health, economic, and social effects of Federal actions, including effects on minority populations, low-income populations, and Indian tribes, when such analysis is required by NEPA.”

Furthermore:

“Agencies should develop effective public participation strategies. Agencies should, as appropriate, acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation, and should incorporate active outreach to affected groups.”

The Guidance specifically addresses measures that agencies should take in the scoping process:

“During the scoping process, an agency should preliminarily determine whether an area potentially affected by a proposed agency action may include low-income populations, minority populations, or Indian tribes, and seek input accordingly. When the scoping process is used to develop an EIS or EA, an agency should seek input from low income populations, minority populations, or Indian tribes as early in the process as information becomes available.”

“If an agency identifies any potentially affected minority populations, low-income populations, or Indian tribes, ***the agency should develop a strategy for effective public involvement in the agency's determination of the scope of the NEPA analysis.*** Customary agency practices for notifying the public of a proposed action and subsequent scoping and public events may be enhanced through better use of local resources, community and other nongovernmental organizations, and locally targeted media [emphasis added].”

Among the outreach methods recommended are reaching out to:

- Religious organizations
- Newspapers, radio and other media, particularly media targeted to low-income populations, minority populations
- Community and social service organizations

- Civic associations
- Environmental and environmental justice organizations
- Legal aid providers
- Local governments
- Senior citizens' groups
- Local schools and libraries

From what we can tell, Clean Air Council believes that DOE's outreach to the above constituencies has been non-existent.

Clean Air Council calls for DOE to do thorough outreach to the above constituencies and to ensure that any extension of the scoping comment deadline be set at least 30 days from the receipt of notice to these constituencies.

Public Scoping Meeting Held in an Inappropriate Location

CEQ's NEPA Environmental Justice Guidance suggests multiple steps in developing "an innovative strategy for effective public participation." Such steps include:

- Coordination with individuals, institutions, or organizations in the affected community to educate the public about potential health and environmental impacts and enhance public involvement;
- Use of locations and facilities that are local, convenient, and accessible to the disabled, low-income and minority communities
- Assistance to hearing-impaired or sight-impaired individuals.

The location of the May 5th public scoping meeting was in a different valley than the project would be located in. There is a vast cultural, social, economic and geographic difference between "north of the mountain" where the project would be located and "south of the mountain" where the meeting was held.

In selecting Pottsville for the public meeting, DOE failed to choose a "local, convenient and accessible" location. The communities which would be most directly impacted by the project live north of I-81 and host an above-average elderly population. Based on 2000 Census data, the local average* for the area is 24.2% over the age of 65 compared to a state-wide average of 15.6%. Pennsylvania's state-wide average elderly population is the second highest in the nation, making this even more significant.

The May 5th meeting was held in a location and at a time that was not particularly safe for elderly residents of the affected area. They would have to drive over the mountain in the dark to get home, between 8 and 17 miles each way. That could easily have been a deterrent to participation. A public meeting should be held north of the mountain to make it easier for the elderly to participate.

* This is the average for Frackville Boro, Shenandoah Boro, Gilberton Boro, Mahanoy Twp, and Mahanoy City Boro. West Mahanoy Twp was not included because its census numbers are skewed by the presence of SCI Frackville and by the mistaken inclusion of SCI Mahanoy in West Mahanoy Twp (as reported in the Pittsburgh Tribune-Review on 3/20/2001 by Tom Aikens).

Lack of Access to Documents

There has been a general lack of access to documents throughout the process to date.

On May 1st, 2003, Mike Ewall, a Clean Air Council member, inquired by phone message to DOE's NETL office in Pittsburgh, seeking a copy of the WMPI project application and any related documents, including correspondence documents. On May 2nd, 2003, Diane Revay Madden responded and informed Mr. Ewall that all such documents were proprietary since the applicant has been selected, but not yet awarded, and that the *only* document available to the public is the 4 page abstract of the project.

At the time, Mr. Ewall already had a copy of the abstract, but was not aware of the public Notice of Intent (NOI) document in the Federal Register or the project's quarterly reports, all of which are available on the DOE website, but very hard to locate. Ms. Madden failed to inform Mr. Ewall that these documents on the project were already available, subsequently delaying Mr. Ewall's ability to learn about and comment on the project in a timely manner.

Aside from the NOI, none of these documents (not even the 4 page abstract) were made available to the members of the public who attended the scoping hearing on May 5th, 2003.

Section 1021.216 (h) of DOE's NEPA regulations require that DOE prepare an environmental synopsis of the environmental critique and – after the selection has been made – make that synopsis publicly available. The selection has been made (as confirmed by Project Manager Madden on May 2nd), yet the environmental synopsis was not made known or available to the public at the May 5th hearing.

Sec. 1021.301 (a) of DOE's NEPA regulations require that DOE make its NEPA documents available to local governments, interested groups, and the general public. NEPA documents are defined broadly to include a Notice of Intent and "any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations." Sec. 1021.340 of the regulations require that DOE shall "to the fullest extent possible" segregate exempt information and "allow public review of the remainder of a NEPA document."

40 CFR 1506.6 (b) requires federal agencies to provide public notice of the availability of NEPA-related environmental documents. This wasn't done in the public notice printed in the Pottsville newspaper and also wasn't made known to Mr. Ewall.

40 CFR 1506.6 (f) requires that any "underlying documents" used in the NEPA process be made publicly available under FOIA.

Clean Air Council expects DOE to fully comply with these legal requirements.

CEQ's NEPA Environmental Justice Guidance suggests several pieces of information that agencies ought to make available during the scoping process if the public is to have enough information to be well informed and to provide constructive input. These include:

- An outline of the anticipated schedule for completing the NEPA process, with key milestones;

- An initial list of alternatives (including alternative sites, if possible) and potential impacts;
- An initial list of other existing or proposed actions, Federal and non-Federal, that may have cumulative impacts;
- Maps, drawings, and any other appropriate material or references;
- Examples of past public comments on similar agency actions.

Most of these have not been made available. Such information as maps and alternative sites would be particularly useful in informing public comment.

Public Notice was Misprinted

The Public Meeting notice invited people to submit comments or suggestions via Electronic mail to lorenzi@metl.doe.gov. However, messages sent to that address have bounced, as the address is invalid. The error messages state “metl.doe.gov: host not found.” This alone is reason to reprint the public notice with a working email address.

Public Notice was Insufficient and Poorly Timed

The only public notice the Clean Air Council is aware of is one that was published in the Pottsville Republican on Easter weekend. As with all official public notices, this was in small print in the back of the paper, thus attracting little attention. Given the above-average elderly population in the area, the small print involved is a barrier to adequate public notification. This, combined with the poor timing of its publication, justifies more thorough outreach for an additional public meeting with an extension of the comment deadline. Perhaps most significant was the omission of a notice in the Hazleton Standard-Speaker, which is based closed to the affected communities.

Also note that 40 CFR 1506.6(b)(3)(iii) allows the federal government to adopt the more stringent public notice procedures developed by states for comparable actions. The state’s public-notice requirements are stronger than those followed by DOE to date and the Clean Air Council expects that such requirements will be followed.

When a new public notice is issued, the Council asks:

- that DOE take out notices in both the Pottsville Republican and the Hazleton Standard-Speaker, both of which are read by local residents in the communities north of Broad Mountain;
- that the notice be printed multiple times and spaced out over 2-3 weeks (similar to the PA DEP’s public notice requirements**) rather than running it on 3 consecutive days; and
- that advertisements be placed in both the Pottsville and Hazleton papers, so that the majority of resident have a chance of actually seeing the public notice.

** Pennsylvania’s public notice requirements for many environmental permitting processes involve placing a public notice, or in some cases a newspaper advertisement, once a week for 2-3 consecutive weeks in a paper of general circulation in the area. See the following sections of PA Code for reference: 25 Pa. Code § 271.141, § 272.241, § 287.151, § 86.125.

Proposed Facility Location Unspecified

The Public Meeting notice described the project as being near Gilberton. It is our understanding that the most likely sites are in West Mahanoy and Mahanoy Townships, yet no specific parcels or tracts of land have been identified and it's still unclear as to which township(s) would host the proposed facility. It is also unclear whether alternative sites are being considered and where these sites are. The NEPA process is flawed until the public knows exactly which sites are being considered, since some environmental impacts are inextricably connected to the location and we cannot properly comment on locations that are undisclosed. Likewise, members of the public are prevented from assessing the true impact of the facility, and therefore from feeling a personal stake in the process, until they are advised of its proximity to their community.

The Clean Air Council urges DOE to follow both the legal requirements and spirit of the law by extending the public comment period and by engaging in adequate public notice and outreach. If you have any questions on the Council's position, please contact Joseph Minott, Esq. at (215) 567-4004, ext. 223.