Kacy C. Manahan, Esq. (N.J. Bar No. 275122018)
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007
215-369-1188 x115
kacy@delawareriverkeeper.org

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DELAWARE RIVERKEEPER NETWORK, and MAYA VAN ROSSUM, the DELAWARE RIVERKEEPER,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF ENGINEERS, RYAN D. MCCARTHY, Secretary of the Army (in his official capacity), R.D. JAMES, Assistant Secretary of the Army for Civil Works (in his official capacity), LIEUTENANT GENERAL TODD T. SEMONITE, Commanding General of the U.S. Army Corps of Engineers (in his official capacity), MAJOR GENERAL JEFFREY L. MILHORN, Commander and Division Engineer of the U.S. Army Corps of Engineers North Atlantic Division (in his official capacity), LIEUTENANT COLONEL DAVID PARK, Commander of the U.S. Army Corps of Engineers Philadelphia District (in his official capacity), and EDWARD E. BONNER, Chief of the Regulatory Branch of the U.S. Army Corps of Engineers Philadelphia District (in his official capacity),

Defendants.

Civ. No.: 1:20-cv-4824

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE COURT:

Plaintiffs Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper, by and through their undersigned counsel, allege as follows:

INTRODUCTION

1. In this action, Plaintiffs the Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper (collectively, "DRN"), 925 Canal Street #3701, Bristol, Pennsylvania 19007, challenge the United States Army Corps of Engineers' ("Corps" or "Army Corps"), 441 G Street NW, Washington, District of Columbia 20001, February 28, 2020 Public Notice ("Notice") regarding the issuance of a permit to Delaware River Partners, LLC ("DRP") pursuant to Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344, for the construction of a proposed new docking facility ("Dock 2 Facility"), which will transfer liquefied natural gas ("LNG") to docked vessels.

2. This action by the Army Corps is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. The Corps violated the APA by failing to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–4370h, which requires a "detailed statement by the responsible official" regarding "major Federal actions significantly affecting the quality of the human environment[.]" The Corps' public interest review pursuant to its own regulations at 33 C.F.R. § 320.4 was arbitrary and capricious because it did not give sufficient weight and analysis to climate change impacts and safety concerns. Finally, the Corps violated the APA by failing to comply with the Clean Air Act, 42 U.S.C. §§ 7401–7671q, by failing to determine whether the Dock 2 project will conform to the state implementation plan in a nonattainment area for ozone.

3. Until Defendants comply with the requirements of the APA by completing and complying with all applicable federal and state laws, rules, and regulations, Plaintiffs will seek temporary, preliminary, or permanent injunctions against any activities in furtherance of the Dock 2 Project, and any other such relief as Plaintiffs deem appropriate.

4. This relief is necessary to preserve the status quo, to prevent illegal agency action, and to forestall irreparable injury to the environment and to Plaintiffs' interests.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 5 U.S.C. § 702 (APA); and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory and injunctive relief).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims occurred in this District. Venue is also proper in this District because Plaintiffs and a substantial number of the members of Plaintiff organization Delaware Riverkeeper Network reside, work, and/or recreate in the District. Venue is also proper in this District because the Dock 2 facilities are located in Greenwich Township in New Jersey, and the adverse effects of the facilities will substantially affect New Jersey.

7. Plaintiffs have no adequate remedy at law. Unless this Court grants the requested relief, the Defendants' actions will continue to cause irreparable harm to the environment, to Plaintiffs, and to the public in violation of state and federal law and the public interest. No monetary damages or other legal remedy could adequately compensate Plaintiffs or the public for these harms. Plaintiffs are persons adversely affected or aggrieved by federal agency action within the meaning of Section 702 of the APA. 5 U.S.C. § 702.

PARTIES

A. Plaintiffs

8. Plaintiff Delaware Riverkeeper Network was established in 1988 to protect and restore the Delaware River, its tributaries and habitats. To achieve these goals, Delaware Riverkeeper Network organizes and implements stream restoration projects, volunteer water quality and ecosystem monitoring, educational programs, community technical assistance projects, environmental advocacy initiatives, community/member action and involvement projects, recreational activities, and environmental litigation throughout the entire Delaware River watershed, including the Delaware Estuary and Delaware Bay, and at a state or national level when necessary to advance the organization's mission. The watershed includes portions of New Jersey, New York, Pennsylvania, and Delaware. Delaware Riverkeeper Network is a not-for-profit membership organization with over 25,000 members, including members who live in, work in, and/or recreate in the State of Delaware, the State of New Jersey, and the Commonwealth of Pennsylvania. Delaware Riverkeeper Network members fish, canoe, kayak, boat, swim, birdwatch, hike, bike, and participate in other recreational activities in the Lower Delaware River Watershed, including in the State of New Jersey. Delaware Riverkeeper Network undertakes numerous activities and initiatives that take place in, directly benefit from, and/or directly impact State of New Jersey waters, habitats, ecosystems, and communities.

9. Plaintiff the Delaware Riverkeeper, Maya K. van Rossum, is a full-time privately-funded ombudsman who is responsible for the protection of the waterways in the Delaware River Watershed. The Delaware Riverkeeper advocates and works for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its estuary, bay, tributaries, and habitats. The Delaware Riverkeeper regularly visits the Delaware River for

personal and professional reasons. The Delaware Riverkeeper is the chief executive officer of the Delaware Riverkeeper Network.

10. Delaware Riverkeeper Network brings this action on behalf of its members, including many who live in the vicinity of the Delaware River and Estuary, or rely on them for recreational, professional, personal, or aesthetic uses, and will suffer injuries from the ecological and/or economic damage and the safety concerns caused by the Dock 2 Project. The Corps' violation of the APA causes Delaware Riverkeeper Network members to also suffer procedural and substantive injuries from the Corps' arbitrary and capricious action, which fails to comply with state and federal law.

11. Delaware Riverkeeper Network also brings this action on behalf of itself. The Corps' violation of the APA causes Delaware Riverkeeper Network to suffer substantive and procedural injuries from the Corps' arbitrary and capricious action, which fails to comply with state and federal law.

B. Defendants

12. Defendant Army Corps is a Federal agency of the United States of America, within the Department of the Army of the United States Department of Defense. The Corps has been delegated responsibility by the Department of the Army for, among other things, construction, management, and operation of various rivers, lakes and other water resources of the United States of America, and the issuance, modification and revocation of permits relative to various activities taken or proposed to be taken on waters of the United States and its tributaries. The Corps issued a permit to DRP allowing it to construct the Dock 2 Facilities. Army Corps Headquarters are located at 441 G Street NW, Washington, DC 20314-1000.

13. Defendant the Honorable Ryan D. McCarthy is named in his official capacity as the Secretary of the Army. Secretary McCarthy is responsible for implementing the policies, procedures and requirements of the Corps and applicable statutes and regulations relative to all water resources and Corps-owned or operated properties within the United States of America.

14. Defendant the Honorable R.D. James is named in his official capacity as the Assistant Secretary of the Army for Civil Works. Assistant Secretary James establishes policy direction and provides supervision of the Department of the Army functions relating to all aspects of the Army Corps' Civil Works program, including programs for conservation and development of the nation's water and wetland resources, flood control, navigation, and shore protection.

15. Defendant Lieutenant General Todd T. Semonite is named in his official capacity as the Chief of Engineers and Commanding General of the Army Corps. As Chief of Engineers, an Army Staff Principal, Lt. Gen. Semonite advises the Secretary of the army and other Principal Officials on matters related to general, combat, and geospatial engineering; construction, real property, public infrastructure and natural resources science and management. As the Army Corps Commanding General, he is responsible for more than 32,000 civilian employees and 700 military personnel who provide project management, construction support and science and engineering expertise in more than 110 countries.

16. Major General Jeffrey L. Milhorn is named in his official capacity as Commander and Division Engineer of the U.S. Army Corps of Engineers, North Atlantic Division. Major General Milhorn oversees an annual program of more than $5 billion to plan, design, and construct projects to support the military, protect America's water resources, mitigate risk from disasters, and restore and enhance the environment. He is also responsible for a variety of Division engineering and

construction activities for international, federal, state and local governments and agencies in more than a dozen Northeastern states as well as overseas.

17. Lieutenant Colonel David C. Park is named in his official capacity as the Commander of the U.S. Army Corps of Engineers, Philadelphia District. Lieutenant Colonel David C. Park leads a 500-person District with missions that include dredging waterways for navigation, protecting communities from flooding and coastal storms, responding to natural and declared disasters, regulating construction in the nation's waters and wetlands, remediating environmental hazards, restoring ecosystems, building facilities for the Army and Air Force, and providing engineering, contracting and project management services for other government agencies upon request.

18. Edward E. Bonner is named in his official capacity as the Chief of the Regulatory Branch and District Engineer of the U.S. Army Corps of Engineers, Philadelphia District.

19. The Delaware River and Bay is a part of the water resources of the United States overseen and managed by the Philadelphia District of the Army Corps. Authority to issue the permit described herein has been delegated to the District Engineer of the Philadelphia District.

STATUTORY FRAMEWORK GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

A. NEPA and Implementing Regulations

20. NEPA's essential purpose is "to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 C.F.R. § 1500.1(c).

21. To accomplish that purpose, NEPA requires that all agencies of the Federal government must prepare a "detailed statement" regarding all "major Federal actions significantly affecting the quality of the human environment[.]" 42 U.S.C. § 4332(2)(C).

22. This statement, known as an Environmental Impact Statement ("EIS"), must describe (1) the "environmental impact of the proposed action"; (2) any "adverse environmental effects which cannot be avoided should the proposal be implemented"; (3) any "alternatives to the proposed action"; and (4) any "irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented." *Id.*

23. "Major Federal actions" requiring preparation of an EIS include projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies. 40 C.F.R. § 1508.18(a).

24. The Council on Environmental Quality ("CEQ") is an agency within the Executive Office of the President and has promulgated regulations implementing NEPA. 40 C.F.R. §§ 1500-1508.

25. CEQ regulations direct Federal agencies to adopt their own regulatory procedures to supplement CEQ regulations. 40 C.F.R. § 1507.3. The Army Corps' NEPA regulations are found at 33 C.F.R. Part 230.

26. CEQ regulations describe the process by which a Federal agency must decide whether to prepare an EIS. 40 C.F.R. § 1501.4.

27. First, a Federal agency must determine whether the proposed action is one which normally requires an EIS or whether the proposed action is categorically excluded by the Federal agency's supplemental NEPA regulations. 40 C.F.R. § 1501.4(a).

28. If the proposed action does not belong in either category, CEQ regulations direct the Federal agency to "prepare an environmental assessment [("EA")]" and to "involve environmental agencies, applicants, and the public, to the extent practicable, in preparing" the EA. 40 C.F.R. § 1501.4(b).

29. CEQ regulations direct the Federal agency to "make its determination whether to prepare an [EIS]" based on the EA. 40 C.F.R. § 1501.4(c).

30. If the Federal agency "determines on the basis of the environmental assessment not to prepare an [EIS]," then it should "[p]repare a finding of no significant impact," also known as a FONSI. 40 C.F.R. § 1501.4(e).

31. CEQ regulations delineate factors that must be considered in determining the significance of an action, including context and intensity. 40 C.F.R. § 1508.27.

32. In evaluating the intensity of an action, "[r]esponsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action." 40 C.F.R. § 1508.27(b). Relevant factors include:

> (2) The degree to which the proposed action affects public health or safety.
>
> . . . .
> (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
>
> (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
>
> (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
>
> (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
>
> 40 C.F.R. § 1508.27(b).

33. An EIS must "provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1.

34. When more than one Federal agency "[p]roposes or is involved in the same action" or "[i]s involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity[,]" then a "lead agency shall supervise the preparation of an environmental impact statement[.]" 40 C.F.R. § 1501.5.

35. The scope of an EIS includes connected actions, cumulative actions, and similar actions, as well as the direct, indirect, and cumulative impacts of the action. 40 C.F.R. § 1508.25(a), (c).

36. CEQ regulations require Federal agencies to consider "direct effects," defined as effects "which are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a).

37. Federal agencies must also consider "indirect effects," which are defined as "effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b).

38. Cumulative impacts "result[ ] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7.

39. Also within the scope of an agency's NEPA review are connected actions, cumulative actions, and similar actions. 40 C.F.R. § 1508.25(a).

40. "Connected actions" are "closely related and therefore should be discussed in the same impact statement." 40 C.F.R. § 1508.25(a)(1).

41. Actions are considered connected if they "automatically trigger other actions which may require environmental impact statements," "cannot or will not proceed unless other actions are

taken previously or simultaneously," or "[a]re interdependent parts of a larger action and depend on the larger action for their justification." *Id.*

42. CEQ regulations also require that "cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts" be considered in a single EIS. 40 C.F.R. § 1508.25(a)(2).

43. "Similar actions, . . . when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." 40 C.F.R. § 1508.25(a)(3).

44. "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration." *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

45. The rule against segmentation "prevent[s] agencies from dividing one project into multiple individual actions each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Id.* at 1314 (quoting *NRDC v. Hodel*, 865 F.2d 288, 297 (D.C. Cir. 1988)) (alteration in original).

46. Regulations governing the preparation of Environmental Assessments ("EAs") are found at 40 C.F.R. § 1508.9 and 33 C.F.R. § 230.10.

47. EAs are "concise public document[s]" intended to "provide sufficient evidence and analysis for determining whether to prepare" an EIS or a FONSI. 40 C.F.R. § 1508.9(a)(1).

48. An EA "[s]hall include brief discussions of the need for the proposal, of alternatives . . . , of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." 40 C.F.R. § 1508.7(b).

49. The Corps is required to "prepare an environmental assessment . . . when necessary under the procedures adopted by [the Corps] to supplement [CEQ] regulations[.]" 40 C.F.R. § 1501.3(a).

50. Corps regulations state that "regulatory actions," such as permits, are "[a]ctions normally requiring an EA, but not an EIS[.]" 33 C.F.R. § 230.7(a).

51. The district commander is responsible for making the determination whether to prepare an EIS or a FONSI and for "keeping the public informed of the availability of the EA and FONSI." 33 C.F.R. § 230.10.

52. CEQ's "Forty Questions" Guidance strongly encourages circulation of a draft EA "where there is either scientific or public controversy over the proposal." Coun. On Envtl. Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Ref. 18026 (Mar. 23, 1981), as amended (1986).

53. The district commander must prepare a record of decision "for the signature of the final decisionmaker[.]" 33 C.F.R. § 230.14.

54. CEQ regulations direct agencies to prepare a FONSI if the agency determines on the basis of the EA not to prepare an EIS, 40 C.F.R. § 1508.13, and, at a minimum, make the FONSI available to the affected public. 40 C.F.R. § 1506.6; 40 C.F.R. § 1501.4(e).

55. CEQ regulations require the agency to "[m]ake diligent efforts to involve the public in preparing and implementing [its] NEPA procedures" and "[p]rovide public notice of . . . the availability of environmental documents so as to inform those persons and agencies who may be interested or affected." 40 C.F.R. § 1506.6(a), (b).

B. The Army Corps' Regulatory Public Interest Review

56. The Corps' public interest review applies to Clean Water Act Section 404 permits as well as Rivers and Harbors Act Section 10 Permits. 33 C.F.R. § 320.4.

57. During the public interest review, the Corps engages in "an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use" by "weighing . . . all . . . factors which become relevant in each particular case." The Corps weighs the "benefits which reasonably may be expected to accrue from the proposal" against its "reasonably foreseeable detriments." 33 C.F.R. § 320.4(a)(1).

58. The Corps' decision "should reflect the national concern for both protection and utilization of important resources" and must include the consideration of "[a]ll factors which may be relevant to the proposal . . . including the cumulative effects thereof[.]" *Id.*

59. Among those relevant factors are "conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people." *Id.*

C. Clean Air Act and Implementing Regulations

60. The Clean Air Act was enacted to, among other things, "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" and "to encourage and assist the development and operation of regional air pollution prevention control programs." 42 U.S.C. § 7401(b)(1), (4).

61. To that end, the United States Environmental Protection Agency ("EPA") has identified air pollutants "the emissions of which . . . cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare," known as criteria pollutants. 42 U.S.C. § 7408(a)(1)(A).

62. For each of the criteria pollutants, EPA has promulgated primary and secondary ambient air quality standards which are requisite to protect the public health and welfare. 42 U.S.C. § 109; *see also* 40 C.F.R. Part 50.

63. The Clean Air Act requires states to adopt implementation plans, which "provide[] for implementation, maintenance, and enforcement of" the primary and secondary air quality standards promulgated by EPA. 42 U.S.C. § 7410; *see also* § 7407.

64. Under the Clean Air Act, the United States is divided into geographical air quality control regions, which may be designated as nonattainment (does not meet air quality standards), attainment (meets air quality standards), or unclassifiable. 42 U.S.C. § 7407(b), (d).

65. The Clean Air Act prohibits any "department, agency, or instrumentality of the Federal Government" from licensing, permitting, or approving "any activity which does not conform to an implementation plan" if the activity is to take place in a nonattainment area. 42 U.S.C. § 7506(c)(1), (5).

66. The head of the Federal "department, agency or instrumentality" is responsible for assuring that the activity conforms to the state implementation plan. *Id.*

67. "Conformity" means that the activity "conform[s] to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards" and that the activity will not "cause or contribute to any new violation of any standard in any area," "increase the frequency or severity of any existing violation of any standard in any area," or "delay timely attainment of any standard or any required interim emission reductions or other milestones in any area." 42 U.S.C. § 7506(c)(1)(A)–(B).

68. The EPA's regulations governing the conformity determination process are found at 40 C.F.R. §§ 93.150–93.165.

69. According to EPA regulations, a "Federal agency must make a determination that a Federal action conforms to the applicable implementation plan . . . before the action is taken." 40 C.F.R. § 93.150(b).

70. A Federal agency must first engage in an applicability analysis to determine whether a conformity determination is required for the Federal action. 40 C.F.R. § 93.153(b).

71. "[A] conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions caused by a Federal action would equal or exceed" the rates specified in 40 C.F.R. § 93.153(b)(1) or (2). *Id.*

72. "Caused by . . . means emissions that would not otherwise occur in the absence of the Federal action." 40 C.F.R. § 93.152.

73. "Direct emissions" are "those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable." *Id.*

74. "Indirect emissions" are "those emissions of a criteria pollutant or its precursors: (1) That are caused or initiated by the Federal action and originate in the same nonattainment or maintenance area but occur at a different time or place as the action; (2) That are reasonably foreseeable; (3) That the agency can practically control; and (4) For which the agency has continuing program responsibility." *Id.*

75. Continuing program responsibility "means a Federal agency has responsibility for emissions caused by: (1) Actions it takes itself; or (2) Actions of non-Federal entities that the Federal agency, in exercising its normal programs and authorities, approves, funds, licenses or

permits, provided the agency can impose conditions on any portion of the action that could affect the emissions." *Id.*

76. If the applicability analysis reveals that a conformity determination is needed, the Federal agency must make a conformity determination and must provide public notice and allow for public comment. 40 C.F.R. §§ 93.154, 93.156(b).

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

A. Overview of the Dock 2 Project

77. DRP is a subsidiary of Fortress Transportation and Infrastructure Investors, LLC ("FTAI"), a company that invests across a number of major sectors within the transportation industry, including aviation, energy, intermodal transport and rail.

78. DRP is developing a site located at Block 8, Lots 1, 2, 3, 4, 4.01, and 4.02 in Greenwich Township, Gloucester County, New Jersey, commonly known as 200 North Repauno Avenue (the "Gibbstown Logistics Center").

79. The Gibbstown Logistics Center is located on the site of a former DuPont facility, which was in use for over one hundred years for explosives manufacturing, anhydrous ammonia production, and the manufacturing of organic compounds.

80. DuPont's operations ceased in 1986, and the site began remediation in 2002.

81. The subject of this Complaint is the proposed Dock 2 Project, a new marine terminal consisting of two loading platforms, eight breasting dolphins, eleven mooring dolphins, walkways to provide access between the loading platforms and dolphins, a trestle supporting a one-lane vehicular roadway with adjacent pedestrian access and an internal pipe system for the transfer of bulk liquid product, including LNG, and mechanical dredging in the Delaware River.

82. The LNG operations at the proposed Dock 2 Facility will involve the arrival of LNG by truck (approximately fifteen trucks per hour, twenty-four hours per day, seven days per week, carrying 12,000 gallons of LNG per truck based on information submitted to the Corps by DRP), and by railcar pursuant to a special permit from the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration ("PHMSA") (up to 100 railcars per day according to the PHMSA special permit conditions).

83. The LNG will be pumped directly from the truck or railcar into a LNG vessel docked at Dock 2. It will take approximately two weeks to fill each LNG vessel.

84. The plan is for LNG trucks to access the site via a new by-pass proposed by Gloucester County, which will divert the truck traffic from Route 44 and avoid residential areas of Gibbstown.

B. The Army Corps' Approval of the Dock 1 Project

85. In a May 14, 2015 filing with the United States Securities and Exchange Commission describing its acquisition of the Gibbstown Logistics Center, FTAI stated that it "intend[s] to utilize the existing infrastructure for our development plans, including constructing refrigerated warehouses for perishable goods, building a dock and using remaining acreage for additional warehouse space, bulk storage and a liquid natural gas facility."

86. In a July 24, 2016 Philadelphia Inquirer article, FTAI's managing director was quoted as saying that an LNG facility was "no longer in [FTAI's] designs[.]"

87. On March 7, 2017, the Army Corps issued a Public Notice regarding receipt of an application under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344, submitted by DRP for "installing docking structures, performing dredging and installing 6 outfall structures" (the "Dock 1 Project").

88. On November 16, 2017, in a Letter of Intent to the United States Coast Guard, Sector Delaware Bay, a consultant for DRP described the Gibbstown Logistics Center as a "multi-use, deep-water port and logistics center that may include a variety of separate uses including handling of imported and exported automobiles, other bulk freight and liquid energy products including, but not limited to liquefied petroleum gas ("LPG") and liquefied natural gas ("LNG")."

89. The November 16, 2017 Letter of Intent also stated that DRP would be seeking authorization from the United States Department of Energy "to export LNG to both Free Trade Agreement and Non-Free Trade Agreement countries[.]"

90. On December 8, 2017, pursuant to the Endangered Species Act Section 7 consultation requirement, 16 U.S.C. § 1536(a)(2), the National Marine Fisheries Service ("NMFS"), of the United States Department of Commerce's National Oceanic and Atmospheric Administration issued a Biological Opinion concluding that construction of the Dock 1 project would not adversely affect the listed species shortnose and Atlantic sturgeon, sea turtles, and whales, and that it would not adversely affect Atlantic sturgeon critical habitat. The Biological Opinion also concluded that vessel traffic due to operation of the Dock 1 project would result in adverse effects to listed sturgeon, but concluded that the effect would not jeopardize their continued existence.

91. On December 21, 2017, the Army Corps issued a permit with special conditions to DRP for the construction of the Dock 1 Project.

C. The Army Corps' Approval of the Dock 2 Project.

92. Over a year later, on March 6, 2019, the Corps received an Application for Individual Permit ("Application") under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344, submitted by DRP for the Dock 2 Project.

93. The Application described the project site as "Dock 2 at Gibbstown Logistics Center, Block 8, Lots 2, 3, 4.01, 4.02, Portions of Lot 4, Greenwich Township, Gloucester County, New Jersey."

94. The Application describes the project purpose as: "to construct a dock and berths that will provide safe navigational access, mooring, and loading equipment for two vessels up to 173,400 cubic meters in capacity."

95. The Dock 2 project is further described in the Application as "a deep-water facility for the export of bulk liquid products."

96. The Application acknowledges that the Dock 2 project will require "[Department of Energy ("DOE")] Part 590 Approval."

97. The Natural Gas Act ("NGA") prohibits the import or export of liquefied natural gas from or to a foreign country without prior approval from the DOE. 15 U.S.C. § 717b. Those who wish to import or export LNG must file for authorization pursuant to DOE regulations found in 10 C.F.R. Part 590.

98. On March 15, 2019, following an inquiry by DRN, the Corps asked DRP whether the Gibbstown Logistics Center would be considered an LNG facility.

99. On March 19, 2019, DRP's consultant answered that the Gibbstown Logistics Center was not an LNG facility "within the meaning of the applicable regulations" because there "will be no on-site manufacturing or processing of liquefied natural gas . . . nor will LNG be transmitted by pipeline to or from the GLC. LNG will simply be transloaded from truck or rail car, through on-site infrastructure, and onto vessels for export."

100. On April 4, 2019, the Corps issued a Public Notice No. CENAP-OR-R-2016-0181-39, which described the Application and solicited comments from the public.

101. The April 4, 2019 Notice stated that "[c]omments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act."

102. The April 4, 2019 Notice stated that "[t]he site will be designed to handle a multitude of products including butane, isobutane, propane, liquefied natural gas (LNG) and ethane, as well as a variety of other liquid products."

103. On May 30, 2019, in a comment provided to the Army Corps, NMFS expressed a concern that the Dock 2 project was not included in the original Dock 1 permitting process, despite that the "applicant had intended from the outset of the development at this site to construct more than one wharf[.]" Accordingly, NMFS stated that "the full environmental effects of the total action at the site have not been fully evaluated and it appears that the project has been segmented in order to avoid the appearance of significance of the total action as part of the [NEPA] review."

104. NMFS's May 30, 2019 comment also stated that the Dock 2 project was a modification of the Dock 1 project, therefore consultation under the ESA needed to be re-initiated.

105. On June 14, 2019, DRN sent a letter to the Army Corps requesting that it re-open the public comment period for 90 days regarding the Dock 2 project.

106. DRN's June 14, 2019 request was based on the April 4, 2019 Notice's failure to include the fact that the Dock 2 project would allow the Gibbstown Logistics Center to export LNG.

107. On July 16, 2019, the Corps issued a Supplemental Public Notice regarding the Dock 2 project.

108. The Supplemental Public Notice was to "provide[ ] additional information not included in the original public notice and expand[ ] [the Corps'] discussion of the public interest

factors relevant to the Corps of Engineer review which will also be considered for preparation of an Environmental Assessment prepared under [NEPA]."

109. The Supplemental Public Notice stated that "[LNG] will not be processed or stored on the project site. This product will arrive at the proposed structure via truck or tanker railcar."

110. The Supplemental Public Notice solicited additional public comment for a fifteen-day period.

111. During that additional public comment period, DRN commented that an EIS must be prepared by the Corps due to the magnitude of the impact the proposed LNG export operations would have on the human environment, including:

a. Increased ship traffic and increased docking

b. Storage of liquefied hazardous gas ("LHG") on site

c. Additional equipment and facilities on site

d. Increased motor vehicle traffic, including trucks

e. Increased rail traffic

f. Impact of port construction

g. Harm to marine fish and fisheries from both construction and operation

h. Increased impermeable surfaces creating stormwater runoff

i. Dredging activity in the Delaware River at a site with known contaminants

j. Impact on submerged aquatic vegetation

k. Impacts on endangered and threatened wildlife

l. Impacts on state and federal protected critical wildlife habitats

m. Development of a known contaminated site

n. Impacts on the scenic and recreational values of the naturally-restored site

o. Development within a floodplain

p. Unique safety risks and dangers of LNG and LHG transport and handling

q. Impacts of transporting LNG by motor vehicle from Pennsylvania to the facility

r. Impacts of transporting LNG by railcar from Pennsylvania to the facility

s. Impacts of ballast water releases from vessels

t. Climate change impacts of exporting LNG, including onsite, downstream use, and upstream/induced production

u. Air quality impacts of construction and operation

v. Potential release of PCBs due to construction or operation of the site

112. DRN also highlighted in its comment that the Dock 2 project may require "approvals from the U.S. Coast Guard, the Federal Energy Regulatory Commission, the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation, and the Federal Railroad Administration."

113. On August 19, 2019, the EPA's Region 2 office submitted a comment to the Corps advising it that the Dock 2 project was "within the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area for the ozone National Ambient Air Quality Standards" and that the project must undergo a "general conformity applicability analysis" pursuant to 40 C.F.R. § 93.153.

114. On August 21, 2019, Energy Transport Solutions, LLC applied to PHMSA for a special permit to "authorize the transportation in commerce of methane, refrigerated liquid in DOT specification 113C120W tank cars" between Wyalusing, Pennsylvania, and Gibbstown, New Jersey.

115. On September 26, 2019, the Army Corps re-initiated consultation with NMFS because the Dock 2 project was a modification of the Dock 1 project. The Corps prepared a "Biological Assessment of Effects to Endangered Species Act Listed Species."

116. On November 19, 2019, NMFS informed the Army Corps that "the effects of the currently proposed action are not likely to adversely affect any ESA-listed species or critical habitat under our jurisdiction" and that the Biological Opinion remains valid based on NMFS's evaluation of the impacts of both Dock 1 and Dock 2, collectively.

117. On December 5, 2019, Energy Transport Solutions, LLC received a special permit from PHMSA authorizing "the transportation in commerce of methane, refrigerated liquid in DOT specification 113C120W tank cars."

118. On February 28, 2020, the Army Corps issued a public notice stating: "Based on all available information, it is the determination of this office that the project is Not Contrary to the Public Interest, and as such, a Department of the Army permit has been issued to Delaware River Partners LLC for the work as proposed."

119. The Army Corps' February 28, 2020 Public Notice did not mention NEPA.

120. On March 5, 2020, in response to a Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, request by DRN, the Army Corps produced a "Memorandum for Record" from CENAP-OP-R-2016-0181-39 titled "Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application" ("Memorandum for Record").

121. The Memorandum for Record was not "Approved by" Defendant Edward E. Bonner, District Engineer and Chief of the Regulatory Branch of the Army Corps Philadelphia District.

122. Mr. Bonner is the "final decisionmaker" as to the Dock 2 permit, as his signature was required to make the permit effective.

123. The Corps' own NEPA regulations require Mr. Bonner's signature on any record of decision under NEPA. 33 C.F.R. § 230.14.

124. As of the date of this filing, the Army Corps has not published a draft EIS, EA, or EA/FONSI, nor has it published a final EIS, EA, or EA/FONSI.

125. The Memorandum for Record contains the Corps' public interest review.

126. In addressing "conservation," the Corps stated that "[i]mpacts for resources outside the control of the Corps are being addressed by the appropriate state/Federal resource agency."

127. In addressing "general environmental concerns," the Corps stated that "[w]hile impacts will result from the development and operation of the facility, overall impacts on the environment will be mitigated with the inclusion of special conditions."

128. In addressing "safety," the Corps stated that "[t]he applicant has stated that all state and Federal regulations as required by law will be followed at the project site."

129. In addressing the "needs and welfare of the people," the Corps notes that "[a]s previously stated, petroleum products will be required [by] the world for years to come. As with all industrial sites, there [is] the potential for accidents that can affect the surrounding community. The applicant has stated that all safety measures as required by law will be followed at the project site."

130. In addressing "climate change," the Corps concluded that "[t]he proposed activities within the Corps federal control and responsibility likely will result in a negligible release of greenhouse gases into the atmosphere when compared to global greenhouse gases emissions."

131. The Corps further stated that "authorized impacts to aquatic resources can result in either an increase or decrease in atmospheric greenhouse gas" and that those "impacts are considered de minimis."

132. The Corps went on to admit that "[g]reenhouse gas emissions associated with the Corps federal action may also occur from the combustion of fossil fuels associated with the operation of construction equipment, increases in traffic, etc. The Corps has no authority to regulate emissions that result from the combustion of fossil fuels."

133. However, the Memorandum for Record later states that "[t]he decision to issue this permit was partially based upon the proposal for truck traffic accessing the port via the Gloucester County Route 44 by-pass in order to minimize traffic impacts to the community. As such, trucks containing Liquefied Natural Gas or other liquid petroleum products shall not access the site other than from the by-pass. Should the development of the by-pass be delayed or abandoned, you shall contact this office and no work shall begin until this office has re-evaluated traffic impacts to the community."

134. In the Memorandum for Record the Corps stated that the Dock 2 project "has been analyzed for conformity applicability" pursuant to the Clean Air Act and "[i]t has been determined that the activities proposed under this permit will not exceed deminimis levels of direct or indirect emissions of a criteria pollutant or its precursors."

135. The Memorandum for Record goes on to say that "[a]ny later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps."

COUNT I: RELIEF SOUGHT PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT FOR VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

136. Plaintiffs hereby repeat and incorporate by reference all of the above allegations, set forth in paragraphs 1 through 135.

137. The Army Corps' action in issuing a permit for the Dock 2 Project without preparing an EA as required by NEPA and its implementing regulations is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law.

138. NEPA requires that all agencies of the Federal government must prepare a "detailed statement" regarding all "major Federal actions significantly affecting the quality of the human environment," also known as an EIS. 42 U.S.C. § 4332(2)(C).

139. If an action is neither categorically excluded from NEPA nor is the type of action typically requiring an EIS, CEQ regulations direct the Federal agency to prepare an EA and to "involve environmental agencies, applicants, and the public, to the extent practicable, in preparing" the EA. 40 C.F.R. § 1501.4(b).

140. Corps regulations state that "regulatory actions," such as permits, are "[a]ctions normally requiring an EA, but not an EIS[.]" 33 C.F.R. § 230.7(a).

141. Thus, DRP's application for a permit to construct Dock 2 triggered the Corps regulation requiring an EA.

142. The district commander is responsible for making the determination whether to prepare an EIS or a FONSI and for "keeping the public informed of the availability of the EA and FONSI." 33 C.F.R. § 230.10.

143. CEQ's "Forty Questions" Guidance strongly encourages circulation of a draft EA "where there is either scientific or public controversy over the proposal." Coun. On Envtl. Quality,

Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 23, 1981), as amended (1986).

144. At no point during the permit process did the Corps make available a draft or final EA to the public, despite the considerable controversy surrounding this first LNG export facility proposed in the region, thus circumventing the requirements of NEPA.

145. The district commander must prepare a record of decision "for the signature of the final decisionmaker[.]" 33 C.F.R. § 230.14.

146. The final decisionmaker is District Engineer and Chief of the Regulatory Branch Edward E. Bonner, as his signature was required to make the Dock 2 permit effective.

147. Although the Corps' Memorandum for Record, which purportedly includes an EA/FONSI, has a signature line for Edward E. Bonner, his signature was not affixed to that document.

148. CEQ regulations direct agencies to prepare a FONSI if the agency determines on the basis of the EA not to prepare an EIS, 40 C.F.R. § 1508.13, and, at a minimum, make the FONSI available to the affected public. 40 C.F.R. § 1506.6; 40 C.F.R. § 1501.4(e).

149. The Memorandum for Record, purportedly including an EA/FONSI, was not made available to the affected public, and was obtained in its incomplete form via a FOIA request from DRN.

150. CEQ regulations require the agency to "[m]ake diligent efforts to involve the public in preparing and implementing [its] NEPA procedures" and "[p]rovide public notice of . . . the availability of environmental documents so as to inform those persons and agencies who may be interested or affected." 40 C.F.R. § 1506.6(a), (b).

151. Throughout the permit process, the Corps has failed to involve the public in preparing and implementing its NEPA procedures. NEPA was mentioned in the April 4, 2019 Public Notice and the July 16, 2019 Supplemental Public Notice, but a draft EA was never circulated, and when the permit was ultimately issued, the February 28, 2020 Public Notice made no mention of the outcome of the Corps' NEPA process.

152. The Corps' issuance of the permit, without engaging in a NEPA analysis, constitutes a final agency action reviewable by this Court under the APA. 5 U.S.C. § 704.

153. The Corps' issuance of the Dock 2 permit without following the procedures required by NEPA was arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA. 5 U.S.C. § 706.

154. The Corps must re-initiate the NEPA process and circulate a draft EA for public comment, due to the highly controversial nature of this being the first LNG export facility in the region, which will be using trains (pursuant to a special permit) and trucks to bring LNG to the facility rather than pipelines.

155. Ultimately, the Corps should prepare an EIS that includes within its scope the environmental impacts of both the Dock 1 and Dock 2 facilities, as well as the environmental impacts of the scheme to transport LNG by truck and railcar from Pennsylvania to the Gibbstown Logistics Center for export. The Corps should also analyze the effects of upstream induced fracking and downstream consumption of LNG.

156. This Court should declare the Corps action to be arbitrary and capricious, an abuse of discretion, and not in accordance with law, and enjoin the effectiveness of the Dock 2 permit pending the Corps' full and complete compliance with NEPA.

COUNT II: RELIEF SOUGHT PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT DUE TO AN ARBITRARY AND CARPICIOUS PUBLIC INTEREST REVIEW

157. Plaintiff hereby repeats and incorporates by reference all of the above allegations, set forth in paragraphs 1 through 156.

158. The Army Corps' action in issuing a permit for the Dock 2 Project was based on an inadequate, arbitrary, and capricious public interest review in violation of the APA.

159. The Corps' public interest review applies to Clean Water Act Section 404 permits as well as Rivers and Harbors Act Section 10 Permits. 33 C.F.R. § 320.4.

160. During the public interest review, the Corps engages in "an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use" by "weighing . . . all . . . factors which become relevant in each particular case." The Corps weighs the "benefits which reasonably may be expected to accrue from the proposal" against its "reasonably foreseeable detriments." 33 C.F.R. § 320.4(a)(1).

161. The Gibbstown Logistics Center's Dock 2 Facility will be the first LNG export facility in the region, utilizing a new method of transporting and transloading LNG by rail, and increasing the demand for fracked gas in the region.

162. The Corps acknowledged in its Memorandum for Record that although it knows that approximately fifteen trucks carrying LNG will enter the Gibbstown Logistics Center per hour, the incoming volume of railcars carrying LNG was never provided to the Corps by DRP.

163. The Corps acknowledged in its Memorandum for Record that greenhouse gases will be emitted from construction activities and traffic at the Dock 2 Facility, but states that the Corps does not have the authority to regulate these emissions.

164. At the same time, the Corps has chosen to condition the Dock 2 permit on the construction and utilization of the Gloucester County by-pass, which is based on off-site traffic concerns, without explaining why this area of regulation is not beyond the Corps' purview.

165. Even if the Corps' assertion that it cannot control emissions was correct, the Corps' public interest review is not limited to factors that are within its direct regulatory control, as those factors include "conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people." 33 C.F.R. § 320.4(a)(1).

166. The Corps' decision "should reflect the national concern for both protection and utilization of important resources" and must include the consideration of "[a]ll factors which may be relevant to the proposal . . . including the cumulative effects thereof[.]" Id.

167. Accordingly, the Corps arbitrarily and capriciously refused to consider the foreseeable greenhouse gas emissions that would result from the construction and operation of the Dock 2 Facility.

168. The Corps should not have issued the Dock 2 permit without first obtaining all necessary information from DRP to determine the amount of greenhouse gases that will be emitted by the Dock 2 Facility, both through its construction and operation, and through upstream induced fracking and downstream combustion of natural gas.

169. By considering only the benefits of LNG export and refusing to acknowledge its detrimental effects, the Corps has abdicated its responsibility to holistically determine whether the Dock 2 Project is contrary to the public interest.

170. The Corps' issuance of the permit, without completing a comprehensive public interest review, constitutes a final agency action reviewable by this Court under the APA. 5 U.S.C. § 704.

171. The Corps' issuance of the Dock 2 permit without completing a comprehensive public interest review was arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA. 5 U.S.C. § 706(2).

172. This Court should declare the Corps action to be arbitrary and capricious, an abuse of discretion, and not in accordance with law, and enjoin the effectiveness of the Dock 2 permit pending the Corps' full and complete public interest review of the proposed project.

COUNT III: RELIEF SOUGHT PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT FOR VIOLATIONS OF THE CLEAN AIR ACT

173. Plaintiff hereby repeats and incorporates by reference all of the above allegations, set forth in paragraphs 1 through 172.

174. The Army Corps' action in issuing a permit for the Dock 2 project without complying with relevant federal and state law regarding the control of air pollution for the Dock 2 project is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law.

175. The Clean Air Act prohibits a Federal agency from licensing, permitting, or approving any activity that does not conform to a state's implementation plan if the activity is to take place in a nonattainment area. 42 U.S.C. § 7506(c)(1), (5).

176. The Dock 2 project is to take place in the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area for the ozone National Ambient Air Quality Standards.

177. In its Memorandum for Record, the Army Corps arbitrarily and capriciously concluded that emissions from the Dock 2 project would be de minims, without identifying the sources of the emissions, the pollutants or precursors to be emitted, or the quantities of emissions.

178. The Corps further stated that indirect emissions resulting from the Dock 2 facility are not within the Corps' control, which was an arbitrary and capricious conclusion and directly contrary to the EPA's regulatory definition of "indirect emissions." 40 C.F.R. § 93.152.

179. That the Corps has chosen to exercise control over the traffic flow into the Gibbstown Logistics Center as a condition of the Dock 2 permit is directly contrary to its assertion that it cannot control emissions from the Dock 2 facility, thus, the assertion is arbitrary, capricious, and not in accordance with the Clean Air Act and its implementing regulations.

180. The Army Corps is in violation of the APA because it has violated the Clean Air Act and state law by issuing the Dock 2 permit without having conducted an applicability analysis to determine whether a conformity determination is necessary.

181. The Corps' issuance of the permit, without a valid applicability analysis, constitutes a final agency action reviewable by this Court under the APA. 5 U.S.C. § 704.

182. The Corps must re-initiate the applicability analysis as required by 40 C.F.R. § 93.153, and quantify the amount of direct and indirect emissions to be caused by the Dock 2 facility in order to determine if they will exceed the rates listed in 40 C.F.R. § 93.153(b)(1) and (2).

183. This Court should declare the Corps action to be arbitrary and capricious, an abuse of discretion, and not in accordance with law, and enjoin the effectiveness of the Dock 2 permit pending the Corps' full and complete compliance with the Clean Air Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a declaratory judgment that, pursuant to the Administrative Procedure Act, the Army Corps' action of issuing the Dock 2 Permit is arbitrary and capricious, and not in accordance with law. The declaration is warranted and should further declare:
    a. Under NEPA, the Defendants failed to follow its procedures by failing to involve the public in the drafting of an EA, and failed to provide a record of decision; therefore, the Dock 2 Permit is vacated and remanded to the Corps so that it may comply with NEPA prior to granting or denying DRP's permit application.
    b. Under the Corps' own public interest review regulations, Defendants' decision that the Dock 2 Project was not contrary to the public interest was arbitrary, capricious, and an abuse of discretion because it failed to account for the detrimental effects of greenhouse gas emissions and safety risks associated with the Dock 2 Project; therefore, the Dock 2 Permit is vacated and remanded to the Corps so that it may engage in a comprehensive public interest review prior to granting or denying DRP's permit application.
    c. Under the Clean Air Act, the Defendants improperly limited the scope of emissions to be included in its applicability analysis thereby avoiding the requirement to engage in a conformity determination as required by 42 U.S.C. § 7506; therefore, the Dock 2 Permit is vacated and remanded to the Corps so that the agency may perform an applicability analysis that includes all direct and indirect emissions of pollutants caused by the Dock 2 Project, prior to granting or denying DRP's permit application.

2. For a preliminary and permanent order enjoining the effectiveness of the Dock 2 Permit pending full and complete compliance with:
    a. Administrative Procedure Act, 5 U.S.C. §§ 701–706.
    b. National Environmental Policy Act, 42 U.S.C. §§ 4321–4370h.
    c. Public Interest Review Regulations, 33 C.F.R. § 320.4(a); and
    d. Clean Air Act, 42 U.S.C. §§ 7401–7671q.
3. For this Court to retain continuing jurisdiction to review Defendants' compliance with all judgments and orders entered herein;
4. For an award of Plaintiffs' costs of litigation, including reasonable attorney's fees; and
5. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

Respectfully Submitted,

s/ Kacy C. Manahan
Kacy C. Manahan, Esq.
Delaware Riverkeeper Network
925 Canal Street #3701
Bristol, PA 19007
215-369-1188 x115
kacy@delawareriverkeeper.org

Attorney for Plaintiffs Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper

DATE: April 22, 2020