



CENTER FOR COALFIELD JUSTICE

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Submitted Electronically

**RE: Center for Coalfield Justice Comments on Hill Top Energy Center's Title V Air Permit Application
TV-30-00233**

Thank you for the opportunity to provide input on Hill Top Energy Center's Application for a Title V Air Permit TV-30-00233. The Center for Coalfield Justice ("CCJ") respectfully submits the following comments to the Department of Environmental Protection, Air Quality Program ("DEP").

CCJ is a Pennsylvania-incorporated not-for-profit organization with federal Internal Revenue Service § 501(c)(3)-status recognition located in Washington, PA. CCJ serves the communities of Washington and Greene Counties. Our mission is to "improve policy and regulations for the oversight of fossil fuel extraction and use; to educate, empower and organize coalfield citizens; and to protect public and environmental health." CCJ has over three thousand members and supporters and is governed by a volunteer Board of Directors.

CCJ acknowledges the procedural history of this permit application, that this application does not create any new stationary sources of air emissions and is for the integration and consolidation of PA-30-00233B and PA-30-00233C (Auth #1536880 and #1536883) into a Title V Operating Permit. That notwithstanding, CCJ still believes that it is important for DEP to reevaluate Hill Top Energy Center's ("HTEC") position as a major emitter of air pollutants in Greene County. DEP must do this in response to changes in the community that have occurred since the initial Plan Approval for this facility was accepted on March 18, 2020, and in anticipation of the substantial increase in new sources of emissions from coming developments to the region. DEP cannot allow the procedural nature of this permit application to be a basis for delegating itself to the role of rubber stamper, merely checking if HTEC has sufficiently filled out the correct forms in order to continue to operate as it has been. The very fact that it was upon DEP's prompting that HTEC must apply to integrate their existing Plan Approvals into a Title V Air Permit, demonstrates the need for a deeper substantive analysis into the community and environmental impacts of this facility, maintaining its current operation. In support of this, CCJ offers the following comments.

1. The Continuous, Historical, and Anticipated Impacts from Air Emissions to the Environment and Communities Surrounding HTEC Necessitate a Cumulative Impact Analysis

Article I, Section 27 of the Pennsylvania Constitution, commonly referred to as the Environmental Rights Amendment, outlines the duties imposed on the Commonwealth and the protections afforded to its citizens, as well as their environment and natural resources. The text of Article I, Section 27 (“Section 27”) identifies two distinct yet related fundamental rights and corresponding duties. *Pa. Env’tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 931 (Pa. 2017) (“*PEDF*”). The first “inherent and inalienable” right guarantees “clean air, pure water, and the preservation of the natural scenic, historic and esthetic values of the environment.” *Id.* The second grants common ownership to “all the people” of “Pennsylvania’s public natural resources.” *Id.* The final clause of the Environmental Rights Amendment establishes a trust, designating the Commonwealth and all its subdivisions as the trustee, with the Commonwealth’s natural resources serving as the trustees, and all people and future generations as the beneficiaries. *Id.* The PA Supreme Court has further emphasized the importance of maintaining a robust evidentiary record to make informed decisions about regulating major air pollutant sources, thereby enabling the DEP to fulfill its constitutional duties. A well-reasoned decision requires a pre-decisional analysis, including careful consideration of public input from residents and a comprehensive account of the impacts that a major emitting facility will have, relative to its location. Requiring that DEP and HTEC conduct a complete and robust cumulative impact analysis of historical and projected air emissions impacts will allow for DEP to have sufficient information regarding the true state of the environmental health of the region when it evaluates the current permit application.

DEP can only make an informed decision regarding the environmental effects of its actions if it adequately understands what those effects are or will be. Likewise, DEP cannot be said to have acted with prudence when it acts on speculative or incomplete information. A trustee’s discretion does not extend to decisions based on speculation. In *re Cope’s Estate*, 50 Pa. D. & C. 189, 200 (1944); *Wood’s Estate*, 197 A. at 641; *Hart’s Estate*, 53 A. at 367. This is because speculation on the part of the trustee demonstrates negligence in “being ignorant of the facts which ordinary intelligence would have disclosed to him, or, if known, in not exercising his best judgment upon them.” *Hart’s Estate*, 53 A. at 367. Indeed, the Supreme Court remarked, “the trustee’s fiduciary duties . . . [do] not equate to mere subjective judgment.” *PEDF*, 161 A.3d at 933 (quoting *Robinson Twp*, 83 A.3d at 978).

When these constitutional duties are combined with DEP’s own policy, and the location and proximity of environmental justice (“EJ”) communities to HTEC, it necessitates that DEP conduct a deeper analysis into what the cumulative impacts from the emissions within the current permit application will be. DEP must do a broader analysis of how the continued operation of HTEC and its air emissions will contribute to the cumulative, historic, and future impacts on the surrounding environment and communities. Much has changed, both locally and regionally, since HTEC submitted its initial application for the Plan Approval in March 2020. The DEP developed its EJ Policy for permit review, and Greene County became a hot bed for new large-scale industrial development. Both of which deserve careful consideration in the current permit application.

In September of 2023, the DEP implemented its EJ Policy with this stated purpose: “*This policy outlines measures that DEP will take to proactively educate, engage, and empower Pennsylvanians living in EJ Areas across the Commonwealth; explains how DEP will prioritize Environmental Justice in its compliance and enforcement activities... identifies mitigation and restoration practices for consideration by applicants for projects in EJ areas that have been impacted by environmental issues.*” Many of the communities around HTEC are considered EJ communities by DEP’s own GIS data. In consideration of these policy priorities, in conjunction with the broad discretionary powers of the DEP to institute reasonable conditions on permit application approval, DEP has a clear opportunity to conduct a cumulative impact

analysis of how the continued operation of HTEC under its current operational standards will impact the environment and communities which surround it. DEP can do an analysis of the historical air emissions that have occurred in the region to allow for a fully contextualized assessment of true impact the emissions from HTEC will cause. DEP cannot make a constitutionally sufficient informed decision if it evaluates the emissions of HTEC in isolation from the other impacts occurring both currently and historically. The extreme industrial development and resource exploitation that has occurred across eastern Greene County requires analysis in order to be able to understand how HTEC's will contribute to the ever growing environmental impacts the region and its communities have been subjected to. Instituting this type of analysis is particularly necessary when accounting for the other proposed future developments that are quickly on the horizon for the region.

Massive industrial development, accompanied by substantial air emissions, is on the way to Greene County. Just a few miles south of HTEC, a proposal is progressing to transform the Roberson Coal Prep Plant into a hyperscale data center mega campus, known as Project Hummingbird. International Electric Power is planning to develop a 944-MW behind-the-meter, gas-fired plant to power the facility, which will become one of the most significant single-site sources of air emissions in the region. While CCJ acknowledges DEP's limits in being able to account for the emissions from the project that it has received no permit applications, Project Hummingbird highlights that the environmental position of the region is going to be shifting dramatically due to data center development. This project is just one of the many proposed data center developments coming to the region. They are coming here due to their access to high volumes of natural gas to support onsite behind the meter power generation. The inevitability of this presents DEP with no better opportunity to conduct a thorough cumulative impact analysis and inventory of the air emissions of the region, and see how HTEC will contribute to those impacts. When this is matched with the fact that HTEC will likely provide service for these data center developments, it only further supports the need to start accounting for them now.

2. The Rolling Sum 12-month Period TPY Standards for Regulating Air Emission Limits Does Not Adequately Protect Frontline Communities from Impacts

HTEC's current permit application for a Title V Air Permit exposes a systemic short-coming in how DEP accounts for and regulates air emissions from major sources. As is common practice, and is showcased clearly in the current application, DEP does not meaningfully treat sources of air emissions differently based on their size or short-term emission capability. While DEP does apply different mitigation standards, such as RACT or BACT, depending on the type of emissions source, and it does apply different Tons Per Year ("TPY") restrictions depending on the type of emission, DEP uses the same 12-month rolling sum basis for measuring allowable emissions for all sized sources. Meaning, an extremely large and powerful source of a particular air pollutant can stay within the proportionate allowable range within a 12-month period, in the same exact way that a much smaller and less powerful source can. As long as the cumulative emissions of a particular source remain under the yearly limit of the regulated pollutant, an operator can maintain regulatory compliance. This creates a practical gap which allows frontline communities to be disproportionately impacted by large-scale facilities that current standards do not adequately address.

From a macro policy perspective, this system makes sense. A stationary source's absolute cumulative emissions over a 12-month period for a specific pollutant is a discernible, definite standard that can be easily applied to regulate and determine a source's environmental impacts. However, in practice, this allows for high variability in the short-term emitting potential of large sources, with frontline communities experiencing significant impacts, while operators remain in compliance with current regulatory standards. Current standards do not account for if a source generates a substantial

amount of its yearly allotment of emissions in a condensed time period, and what that does to the adjacent environment and communities.

To illustrate this, let's use one of the emissions limits found in TV-30-00233. HTEC limit for Volatile Organic Compounds ("VOC") is 59.55 TPY, and the approximate maximum plant nominal generating capacity of the whole facility is 620 MW. Due to its exceptionally high power generation capacity, HTEC is capable of producing substantial air emissions over a condensed time period during periods of maximum output. Hypothetically, this creates a situation where HTEC uses a large percentage of its yearly allotment, let's say 10 tons, of VOC emissions within just a few days or weeks. Under the current standards, as long as HTEC has few enough of those events over the course of a given year, they remain in compliance. This is problematic as it exposes the adjacent communities and environment to levels of VOC which would in no way be allowed if the rate of emissions in that period was extrapolated to a 12 month scale. The community and environment's ability to withstand, address, process, or mitigate exposure to the air pollutants generated by HTEC is not evaluated solely on a yearly cumulative basis. It takes time for the environment to meaningfully process the introduction of these pollutants, and its ability to do that adequately is substantially hampered by large emission events. Dangerous air pollutants do not just cause significant impacts from prolonged continuous exposure to them. Impacts can be just as substantial, sometimes more so, through intermediate mass-emitting events, even when a facility's cumulative emissions are within allowable levels over a 12 month time period. This creates an imbalance between the explicit goals of setting emission limits and how those limits actually translate to protecting the environment and our communities.

What this hypothetical exposes is that the TPY standards appear to operate under the assumption that stationary sources will generate air emissions steadily over the course of a year, with reasonable week-to-week or month-to-month variation due to operational or market factors. This assumption is especially untrue for facilities like HTEC. Fossil fuel electricity generation facilities are most utilized for their ability to generate and deliver substantial amounts of power instantaneously during periods of peak demand. As a result, frontline communities are exposed to higher levels of air pollutants than the emission limits intended to avoid during periods of peak operation. But since they occur at infrequent enough intervals, operators are allowed to remain in compliance. This is an untenable standard which does not adequately protect frontline communities from the impacts of these emissions. The DEP should use this permit application as an opportunity to address and reconsider the timeframe in which it evaluates the maximum cumulative emissions of a specific facility. Breaking down the limits into quarterly, monthly, or even weekly limits would help mitigate the harms and impacts that come from mass emission events.

Thank you for your consideration. If you have any questions, please contact me anytime.

Respectfully,

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