

Ann Yates
Chair, Planning Board
Town of Wawayanda, N.Y.

Dear Ms. Yates:

I am writing to you as President of Orange Environment, Inc. to provide comment on the Draft Environmental Impact Statement prepared on behalf of the Valley Energy Center proposal. These comments reflect the input of a score of OE members who participated in this review.

Let me begin by commenting that, in the absence of an Article X process, we have concerns that a review for a project of this type and magnitude has fallen to a local board. That is a major responsibility. You have wisely hired experts to assist you. Nevertheless we do not believe that this is the proper level for this review for a project of regional significance and complexity. You have undertaken a major responsibility.

In this regard, the role of the Environmental Impact Statement, as envisioned by NEPA and SEQR, is to assure that a “hard look” is taken with regard to potentially adverse environmental impacts that would result from this action. This information is intended to inform your board, as the decision makers granting core permits for this facility. The goal is for the decision makers to be fully informed.

I will focus here are on only a few issues that we consider to be potentially of particular importance in a decision to either deny the permit or require substantive mitigation.

Air Quality

The applicant has not conducted and does not plan to conduct any pre-construction ambient air quality monitoring at the site, despite the fact that the plant will contribute close to a hundred tons per year of PM 2.5 emissions into the local environment. See DEIS at p. 9-18. Despite EPA requirements that such monitoring occur for potential PSD source emitters, CPV Valley is seeking a waiver from these requirements. Id.

According to EPA, Orange County is currently in non-attainment for fine particulate matter air pollutants (PM 2.5). As such, PM 2.5 pollution is a serious and growing health risk for Orange County residents. EPA’s own research highlights the danger to human health posed by PM 2.5 specifically: “Particulate matter . . . has been linked to a range of serious respiratory health problems . . . The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, included aggravated coughing and difficult or painful breathing, chronic bronchitis, and decrease lung function that can be experienced

as shortness of breath.” Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, 66 Fed. Reg 5002, 5018 (Jan 18, 2001). Indeed, in this preamble, EPA acknowledged that PM 2.5 is more strongly associated with some health effects than PM 10.

Given these serious and growing human health impacts from PM 2.5, CPV Valley should at least be required to conduct on-site, pre-construction ambient air quality monitoring to determine actual baseline levels and seasonal fluctuations for PM 2.5 in this area (the nearest monitoring station used for PM 2.5 by the applicant is in Newburgh). See DEIS at 9-8. In order for you to determine the potential human health impacts of this project under SEQRA, such pre-construction air monitoring is essential.

We have other air quality concerns. The plant will be located in a federal air quality non-attainment area for ozone and certain particulate matter. DEIS page 9-7. It is proposed that the plant will purchase non-attainment emissions offsets for nitrogen oxides and volatile organic compounds. However, these may be traded across state lines. Page 9-20. The air quality in and around Wawayanda and Orange County likely will suffer from further deterioration unless it is ensured that offsets are available and purchased in a manner such that existing emissions from sources in the Wawayanda area are reduced in appropriate amounts. Similarly the plant will have to purchase allowances for its sulfur dioxide emissions. Page 9-24. Once again, unless corresponding local reduction of existing emissions of this irritating and acid rain contributing gas are achieved, the air quality in and around Wawayanda will deteriorate.

It is noted on table 9-3 on page 9-17 that the plant will emit various gases, some in greater quantity than others. All of these gases, however, will have a cumulative effect over time on Wawayanda’s air quality. With sources from new business development and/or increased transportation (eg. more stores, and also more cars and trucks on the roads) that is likely to occur in the future in the Wawayanda area, the cumulative impact of these sources taken together likely will be significant for most if not all of the gases listed on table 9-3. This will be so even if no single source is considered significant. Therefore, all of the plants emissions, even those that meet present standards, could very well have a role in causing air quality deterioration in the future. When this point is reached, it may be necessary for the area to curb further development, even of the type that otherwise would be considered very desirable. So, a decision now to allow this plant that requires a variance, may be deciding now the fate of future development.

2. Greenhouse Gases

The greenhouse gases that will be emitted thereby contributing to global warming are problematic. It is claimed that the plant will add .037% to the national emissions of carbon dioxide. Page 9-70. This seems large for a single source when you consider that there are millions of sources nationwide. Nevertheless, it is claimed that the plant is a step forward since it will displace energy sources that emit more carbon dioxide. Page

The problem is that, even assuming that this is true now, will it remain true for years to come? The plant is projected to have a 30 year life. Page 9-69. With the ever accelerating development of green technology, it could be that this plant will be considered a dinosaur long before it is taken out of service. It would then be a liability with regard to global warming. The DEIS does not address this issue but it should be addressed.

3. Ammonia

Ammonia will be used to control some of the plants emissions. During this process some of the ammonia will slip into the air. Page 9-14. This should be of some concern. Perhaps of greater concern, however, is the storage of ammonia onsite in a 15,000 gallon tank. Page 9-57. When ammonia at a 20% concentration is stored, the Clean Air Act and federal regulations require that a catastrophic release model be developed. However, the plant will avoid this requirement by using a 19% concentration. Page 9-25. This smacks of attempting to “fly under the radar”. If indeed this was the tactic, then it is disappointing and justifiably raises a concern whether safety was of the highest priority in project planning. Whether a catastrophic release model should be required needs to be examined since the concentration is borderline. Under a general duty imposed by federal regulation this may be required. Page 9-25. There is a discussion in the DEIS of some modeling regarding a release. Page 9-57. However, whether it would be sufficient to satisfy the modeling requirement under all of the federal laws and regulations mentioned above, is unclear.

Water and Ecological Resources

1. With regard to Section 1.7, there are two possible options for the plant’s water waste discharge. One to the Middletown Sewage Treatment Plant or into the Wallkill River. If this project is built, what will the water temperature be leaving the plant, is there a chance it will be elevated and impact local waterways, including the Wallkill River? What are the impacts of returning this water to the Middletown STP, where does the Middletown STP drain to? Or will this water be cooled prior to leaving the plant? These options need to be studied and clarified and the applicant needs to specify which option is more likely. If there are any permit issues or contract issues with the Middletown STP which would prove it difficult to discharge water from the plant to this location, that needs to be discussed as well. Additionally, If there are any NY State permit requirements for the discharge into the Wallkill River due to elevated temperature levels or other turbidity/gray water issues, that needs to be addressed as well. These options need to be studied and clarified and the applicant needs to specify which option is more likely.

2. There was no real discussion and/or examination of impacts to local ground water resources or potable water sources in and around the applicant's property if there is ever a

contaminant leak from the diesel, ammonia or other specified contaminants planned to be stored on the property and used in the day to day or quarterly/bi-annual use of power plant operations. Additionally, what will be the impacts to the Wallkill River, its aquatic life, flora and fauna?

3. There was no real examination of existing local water resources, nearby private wells, the local aquifer, Wallkill River tributaries, Town of Wawayanda public wells, wetlands, vernal ponds and any wells being used on the applicant's property. We are concerned with preventing contamination to these significant resources and feel the applicant has not adequately addressed resource protection and mitigating possible contamination if the problem arises.

4. As far as Orange Environment is concerned, we proposed during the last Master Plan Review, about 3 years ago, that the Town should adopt more stringent watershed protection buffers and well head protection ordinances because as this community continues to grow and possibly allow for the expansion of heavier industrial operations like this plant, natural resource protection needs to increase as well. As far as we know, more stringent resource protection ordinances have not been adopted to date. This would be a perfect time to do so!!

5. There was no onsite study performed for existing vernal ponds, wetland disturbances or endangered species for the applicants property and what plans the applicant has in protecting them both during and after construction and for the life of the plant's operation.

Additional Facilities

Section 18.5 mentions the possibility of additional facilities to be built onsite in years to come. These facilities need to be delineated on a map, explanations need to be made with regard to what uses they would have, estimations need to be given as to what their size and height may be, etc, etc. and the public should be afforded the opportunity to comment on them in the FEIS. If there is a real intention to protect some of the onsite natural resources, including critical or endangered species within the creek, on land or in the trees, in wetlands, or vernal ponds once truly studied, then the town needs to force the applicant to keep these areas protected via a true delineation on the FEIS map and with a binding deed restriction which will protect them in perpetuity, especially from any additional facilities proposed for said property.

Payment in Lieu of Taxes

While we understand that this issue, PILOT, has somehow been relegated to the Town Board, we felt that because it was addressed in the DEIS that it was fair game to comment. It is a very risky proposition that the Town of Wawayanda is proposing to undertake, that by not collecting any taxes, that whatever is given by the Applicant to the

town (school, town or local service donations) will be enough to offset any probable costs. The charts provided by the applicant only show county/state, and employer taxes collected, etc, etc, but when really looking at what the true impacts a facility like this could have on a town over the course of 25 to 50 years or more, it is hard to understand why a town would make such a gamble. Additionally, from what we have read, there haven't even been any proposals for monies to be placed in escrow by the applicant in the event of any unforeseen expenses the town may and could incur. The Town of Wawayanda needs to do a study on how much money would be collected if taxed and what expenses could possibly be incurred by the Town for the life of the plant (contamination issues-air and water, emergency and police response, town engineer and other town employees time with regard to oversight and enforcement, neighborhood conflicts, traffic impacts to roads, infrastructure costs (waste water, water, roads, traffic lights, etc), to see if the negatives outweigh the benefits of housing this industrial facility within the Town of Waywayanda. This study needs to then be examined by the residents of Waywayanda, before the town makes any PILOT decisions. Additionally, when and if the plant ever closes, there is no mention in the DEIS of safe removal and remediation of any buildings, storage tanks or smoke stacks for said site. After properly being studied, monies in escrow could safe guard the Town of Wawayanda from any unforeseen plant closures and any expenses the town may have to incur with the removal of contaminated facilities or tanks and stacks left at the site.

Alternatives

Sustainability and greening up our communities have become important words for many communities and businesses world wide over the past decade. You mention in the DEIS that this facility could take off-line other higher contaminating/bigger green house gas guzzlers who have been operating in our area and generating energy for some time. There of course is no regional or statewide effort to take older facilities off-line at the moment. So when this applicant talks of burning greener than others in the area by using natural gas, Orange Environment, would like to see this facility take its "green talk" a little further because burning natural gas and diesel is not a carbon neutral activity. There will be many environmental impacts from this facility!!! The applicant should be mandated to do a study examining other green technologies it could incorporate into its day to day functions at the facility (solar, gray water, green building supplies, wind power, hybrid vehicles, planting trees etc.) It could also propose and purchase other green technologies for the town, its schools and community centers and emergency responders (police, fire and ambulance) facilities as part of its PILOT program.

Emergency Response Protocol

An evacuation plan or emergency response protocol needs to be established for this plant in the event of an emergency and shared with surrounding communities, schools and officials within Orange County Government. Whether it is the use of sirens or certain road ways for exiting, the FEIS needs to address and present a study on this important

issue. Over the years, Orange Environment has been concerned with and commented on Indian Point Nuclear Power Plants lack of evacuation plans for those leaving the east side of the Hudson River and heading north into Orange County and Sullivan County. There needs to be a real protocol in the event of an accident!

Public Participation

Discussion in the DEIS of public participation largely focuses on public involvement at this stage of the project. Page 7-27. Absent is any real examination of how the public would be involved should the project be approved and once it is up and running. Given what has been discussed above about safety issues and the project's impact on air quality, public oversight seems warranted. This could help to insure that emissions are controlled as planned, water resources are not defiled, and public safety is not compromised by the storage and/or use of hazardous substances. The Public would be "in the loop" and thus be in a position to advise of and help implement the use of new technologies and methods as they come along to further enhance public safety and reduce environmental impacts. This should benefit both the plant operators and the community. Therefore, a public oversight group should be funded and allowed reasonable access to the site and relevant information. It should be provided with the legal means to address before government authorities matters needing to be remedied, implemented and/or investigated.

Finally, allow me to note that Orange Environment was an active intervener in the administrative hearings that occurred for a predecessor to Valley Energy Center, Calpine's effort to build a similar plant in your town from roughly 1995-2002. In those hearings, our principle work occurred around three issues. Calpine reached settlement with OEI on these issues. We would like to offer similar arrangements in the current matter as means of mitigating some of the concerns that we have raised.