



July 9, 2020

BY E-MAIL to air.pollution.control@tn.gov

Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243

Attn: Mrs. Michelle W. Owenby,
Director, Division of Air Pollution Control,

Re: Titan Partners' Bulk Fuel Depot, Burns, TN
Facility ID: 22-0222
Construction Permit Number: 978165
Public Meeting – July 8, 2020

Dear Ms. Owenby:

The Harpeth Conservancy (“HC”), on behalf of itself and its members, appreciates the opportunity to submit the following comments on the Tennessee Department of Environment and Conservation (“TDEC”)’s actions so far with respect to the proposed Titan Partners’ Bulk Fuel Depot, Burns, TN (the “Facility”).

HC has serious concerns about issues of public participation in the July 8, 2020 Public Meeting (“Meeting”) particularly as it was held in an internet-only format.

As importantly, because TDEC is soliciting and obtaining information from the applicant and comments from the public in “piece-meal” (yet rushed) fashion, neither TDEC, HC, nor the public generally can understand or properly comment on the cumulative environmental impacts of the Facility. As a result of this piece-meal and disjointed process, TDEC cannot fulfill its statutory duties and the public cannot effectively exercise its rights to participate in governmental environmental decision-making.

- 1) The internet-only based public meeting process in the middle of a pandemic deprives the public of its rights to participate in democratic public decision-making

The Meeting was conducted in the middle of a pandemic and the process for it short-circuited the public’s right to participate in governmental decision-making, which is the very essence of democracy, in numerous ways, including the following:

- The so-called public meeting was conducted during a (renewed) public health crisis when many members of the public are sick with the virus and simply cannot participate in any way.

- The distractions of the Covid-19 crisis likely prevented many people from learning about the hearings.
- Records and full and complete information regarding environmental impacts from the Facility and the permits required for it, are either not available on-line or are not complete on-line in TDEC’s dataviewers. Yet, TDEC expects the public to accept on-line only public meetings (and public hearings) when the public cannot access, let alone properly evaluate, such information. We further note that what information is currently posted on-line is not available to all members of the public. Various items are in .msg format, which is accessible only by those who have paid for a Microsoft Outlook subscription, for example.¹
- There were numerous technological glitches during Meeting, adversely affecting the public’s right to participate.
- Many people – particularly poorer and rural Tennesseans – were excluded because they lack access to the internet, or there are technological limitations to their access. This is a major issue very recently highlighted by *The Tennessean*.² Further, because of the significant increase in internet usage during the pandemic, the public’s rights to participate were also curtailed.
- The ability of the public to show its concern over the issues by demonstrating the number of people who show up at the Meeting was significantly limited. It effectively and improperly both limits the rights to citizens both to assemble and to petition their government for redress of grievances.³
- The ability of the media to cover the story and air public concerns is severely limited, also raising First Amendment issues.
- As also noted during the Meeting, the internet-only format deprives the public with similar views on the Facility to meet each other and to organize and coordinate their efforts.
- This project (and thus the Meeting) is not an essential governmental function. This project is not necessary to respond to the Covid-19 crisis – it has been long planned. Without effective public participation, TDEC and other governmental authorities simply cannot properly understand public sentiment and viewpoints.

In short, although it might be possible to supplement traditional in-person public meetings and hearings with internet and audio conference capabilities, they cannot take the place of in-person functions.

2) The Meeting process is substantively flawed and inadequate

¹ All items that are received in a proprietary format must be converted into a text or similar format accessible by all users.

² [‘Out in the dark’: Coronavirus highlights internet access inequality in Tennessee.](#)

³ U.S. Constitution, Amendment 1, “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

There are a number of other issues with the permitting and public participation process so far.

At numerous points during the Meeting, TDEC participants noted that various permit applications and related materials such as hydrologic determinations either had not yet been received or were not complete, or that various permits were not yet ready for public comment. Further, TDEC did not explain why the proposed ARAP permit was converted from an individual to a general permit.

We are also quite troubled by the fact that only two (2) days after the Meeting were allowed for submission of written comments.

All of this disjointed, piece-meal yet rushed process for the Meeting and otherwise obtaining and making available to the public information regarding the cumulative environmental impacts of the Facility means that TDEC cannot fulfill one of its principal duties, to ensure that “[u]nder no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others.”⁴ TDEC has similar duties under other environmental laws.

We note in particular that nowhere does TDEC propose – and indeed during the Meeting it disclaimed any duty -- to take into account what cumulative (but as yet unknown and unevaluated) environmental impacts the Facility will have on an area where the industrial zoning for the Facility property has been allowed to become incompatible with surrounding residential and similar uses.

In summary, TDEC simply cannot fulfill its statutory duties without obtaining and considering – and allowing the public to comment in a real, in-person public meeting or hearing – the full cumulative environmental impacts of the Facility. TDEC should return to the drawing board and design and implement a fair process that fulfills its statutory duties and allows the public to effectively comment on all of the environmental impacts of the Facility.

Respectfully submitted,

Harpeth Conservancy



By: _____
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VP & COO

cc: Dorene Bolze

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⁴ Tennessee Code Annotated (“TCA”) §69-3-108(g)(2).

TDEC:

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