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TO: Lisa Vest,
DNREC Hearing Officer

RE: Public Comment on Docket # 2020-P-A-0018
(Application of Croda for a Construction Permit)

DATE: August 13, 2020

Summary

The League of Women Voters of Delaware (LWVDE) has long supported the right of citizens to actively participate in decisions that will directly affect them. We find the virtual hearings held for the Croda permit (Docket # 2020-P-A-0018) to be in violation of Delaware's laws and inadequate to properly support public participation. Because the LWVDE has long supported the view that we must protect our natural resources, including clean air, for the benefit of current and future generations and because we are aware that some communities have suffered an undue burden of exposure to toxic air pollutants, we urge DNREC to deny the application.

The Need for Full Public Participation in Hearings on Environmental Issues

For those seeking to speak for the public interest, commenting on complex issues such as permits concerning chemical manufacturing, represent a particularly difficult problem. We understand the importance of chemical manufacturing and the jobs it brings to Delaware's economy. We also understand that such industries bring some risks to our environment and to the health and safety of the people living in close proximity to the manufacturing site.

An accurate and objective evaluation of these risks can best be made by an individual who has extensive experience in and knowledge of the processes involved and who also has no personal or financial involvement in the project under consideration. This situation is rarely found.

What we must do instead is to read the permit applications, listen to presentations, ask for clarification on issues that are unclear to us and then listen to the answers to these questions as well as to the questions asked by other audience members, particularly those from affected communities. Listening to such exchanges and discussing them with others can help immensely in our understanding the situation, This process has worked well at public hearings held in the past, but cannot work at hearings conducted under the process used in the July 16 and 23 hearings on Croda,

The virtual meeting platform selected by DNREC did not allow members of the public in attendance to see, or even see the names of, other electronic participants., thus putting them

at a disadvantage in determining a community position. Hearings held under the rules used on this docket are also in violation of the Governor's March 12, 2020 *Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat*, This order states that "The technology used [in public meetings conducted electronically] **must permit members of the public body to hear the comments of and speak to all those participating, and members of the public to hear the comments of and speak to such members of the public body contemporaneously**. Public participants must also be allowed to electronically access presentation materials and submit questions and comments. During any public meeting conducted by electronic means, each member of the public body will identify him or herself before speaking so that members of the of the public are able to hear the comments of the public body."

As explicated in comments by Kenneth Kristl of Widener University, the DNREC hearings held by a Hearing Officer clearly fall into the category of public meetings held electronically. The failure to allow members of the public to speak to comments made by a representative for Croda put this hearing (and any others conducted under the same rules) in violation of the March 12, 2020 order. Prof. Kristl went on to show that the recent hearings are also in violation of Chapter 100 of Title 29 of the Delaware Code (Freedom of Information Act) as well as DNREC's own regulations on public hearings on applications for air permits.

The League of Women Voters has long worked for the citizen's right to know and for broad citizen participation in government. On this basis, we find the virtual meeting protocol employed by DNREC in the Croda hearings, as well as others held since March 12, to be inconsistent with the League's positions on these fundamental issues. During this or future emergencies that make regular open hearings unsafe, all hearings on applications that are critically important to neighborhoods in the vicinity of chemical manufacturing or other heavy industries should be conducted in a manner that, as closely as possible, mimics the conditions in an actual open hearing:

1. Whenever possible small, in-person hearings that can accommodate about two dozen attendees should be held near affected neighborhoods in a facility large enough that all social-distancing rules can be followed.
2. Virtual attendees must be listed on a list of participants that is disclosed to all other virtual and in-person attendees.
3. If representatives of the entity requesting a permit are allowed to speak, audience members must be allowed to speak after being identified in a manner that is clear to all other attendees. Their comments and questions should be a part of the permanent record that can be accessed by all.
4. The period for comments on the application should remain open for at least 3 weeks (or 15 business days) to ensure that all concerned individuals have time to examine the hearing recordings or written transcripts and submit their own comments.

Environmental Aspects of Croda Permit

We are aware that the net environmental impacts of Croda's planned project are quite small in relation to the level of pollution already present in the area. However, the very fact that area residents have long borne this burden means that Delaware should be seeking ways to

ameliorate this situation rather than allowing it to be exacerbated. This is particularly relevant when any of the pollutants involved are listed by the EPA as probable carcinogens.

As is expressed in comments from residents of the Route 9 area, there is, quite understandably, a remaining concern about the massive release of highly flammable, toxic, and carcinogenic ethylene oxide in November 2018. The stress from concern about a possible repeat of such an accident adds to the health problems of residents already suffering from toxic air pollution.

Resolution 20-154, submitted by the New Castle County Council, notes that Croda failed to respond appropriately to certain inadequacies pointed out by the U.S. Occupational Safety and Health Administration (OSHA) following the 2018 incident. In addition this resolution lists some serious violations of DNREC regulations by Croda.

Because of its longstanding dedication to protecting our environment for the benefit of current and future generations and our strong advocacy for the rights of citizens to actively participate in governance, the League of Women Voters of Delaware supports the views expressed by the residents of the Route 9 area and the New Castle County Council. We therefore request that:

1. This permit application from Croda should not be granted until Croda a) takes clear steps to comply with OSHA regulations at the plant and b) establishes a clear mechanism to alert all area residents immediately upon any accidental release. The approach used for this needs to be acceptable to the great majority of residents that could be affected and, when appropriate, will result in timely closing of the Delaware Memorial Bridge.
2. Other applications from Croda to expand its capacity should not be permitted until Croda, either in advance or simultaneously makes certain changes in its processes. Such changes must reduce the levels of air pollutants that present high risk in terms of flammability, toxicity and/or carcinogenicity. The reduction in these pollutants should be demonstratively equal to or greater than the increased levels of relevant pollutants resulting from the permitted processes.

Sincerely,



Carol D. Jones
President, LWVDE



Coralie Pryde
Co-chair, Environmental Comm. LWVDE