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BEFORE THE ADMINISTRATOR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of the Proposed Operating Permit for

Camden County Energy Recovery Facility

to operate a incinerator plant located in Camden, New Jersey

Proposed by the New Jersey State

Department of Environmental Protection

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**PETITION REQUESTING THE ADMINISTRATOR OBJECT TO THE ISSUANCE
OF THE PROPOSED TITLE V OPERATING PERMIT FOR**

CAMDEN COUNTY ENERGY RECOVERY ASSOCIATES FACILITY

Dated: February 16, 2005

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on behalf of

South Jersey Environmental Justice
Alliance
New Jersey Public Interest Research
Group
New Jersey Environmental
Federation
South Camden Citizens in Action

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This petition is submitted pursuant to the Clean Air Act § 505(b)(2) and 40 CFR § 70.8(d), on behalf of the South Jersey Environmental Justice Alliance ("SJEJA"), the New Jersey Environmental Federation and the New Jersey Public Interest Research Group ("NJPIRG") and South Camden Citizens in Action (collectively referred to as "Petitioners" hereinafter). Petitioners are comprised of environmental, civil rights, public health, educational and other organizations concerned with the community members that live, work, pay taxes, and breathe the air in the Camden, New Jersey area.

Petitioners' request that the Administrator ("the Administrator") of the United States Environmental Protection Agency ("U.S. EPA") object to the final Title V Operating Permit issued to the Camden County Energy Recovery Associates Facility ("the facility") located in Camden, New Jersey. Additionally, Petitioners request that the

facility incorporate a compliance schedule to assure that the plant will comply with all applicable requirements under the Clean Air Act. Specifically, the compliance schedule must establish enforceable milestones by which the facility will come into full compliance.

On March 2, 2004, members of SJEJA, NJ Environmental Federation, NJPIRG the South Camden Citizens in Action and other community organizations testified at a public hearing held by the New Jersey Department of Environmental Protection("NJ DEP") and submitted written comments. On March 3, 2004, SJEJA through the Warren Environmental and Health Consulting Services, Inc., submitted additional comments on the draft permit to NJ DEP. (A copy of the comment letters are attached hereto as Attachment "A"). The comments letters are hereby incorporated into this Petition and Petitioners ask that all comments be addressed by U.S. EPA.

On or about November 1, 2004, NJ DEP issued a response document addressing the public comments, finalized the draft Title V permit, and sent a copy of the proposed final permit to the U.S. EPA. The NJ DEP Hearing Officer's Report is attached hereto as Attachment "B"). The U.S. EPA did not object to the permit within the forty-five day period in which to object. (A copy of the NJ DEP's letter to U.S. EPA is attached hereto as Attachment "C"). This petition is timely filed by Petitioners within the sixty day timeframe after the U.S. EPA's time and opportunity to review the permit.¹

If the U.S. EPA Administrator determines that this permit does not comply with applicable requirements or the requirements of 40 CFR Part 70, he must object to

¹ Petitioner's contacted EPA Region 2 and were advised by Steve Riva, Chief, Air Permitting Section, Region 2, that the final date to petition for this permit was February 22, 2005.

issuance of the permit. See 40 CFR § 70.8(c)(1) (“The [U.S. EPA] Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part.”). We hope that U.S. EPA will act expeditiously to respond to SJEJA’s petition, and in any case, will respond within the 60-day timeframe mandated in the Clean Air Act. The grounds for objection are set forth in the comment letters attached as Attachment A and discussed in greater detail below.

I. The NJ DEP Was In Violation Of 40 CFR §71.11 By Denying SJEJA Access To The Full Administrative Record When Preparing For The Public Notice And Extension Public Comment Period

The Warren Environmental and Health Consulting Services, Inc., (Warren Consulting), was denied access to the full administrative record. Warren Consulting was working with the SJEJA in preparing comments, but was never granted full access to all of the files. This denial was in violation of 40 CFR §71.11. Operating permit regulations under 40 CFR §71.11 require that the following be made available to the public.

- (c) Administrative record for draft permits. (1)The provisions of a draft permit shall be based on the administrative record defined in this section.
- (2) For preparing a draft permit, the administrative record shall consist of
 - i. The application and any supporting data furnished by the applicant.
 - ii. The draft permit or notice of intent to deny the application or to terminate the permit.
 - iii. The statement of basis.
 - iv. All documents cited in the statement of basis; and
 - v. Other documents contained in the supporting file for the draft permit.
- (3) Material readily available at the permitting authority or published material that is generally available, and that is included in the administrative record under paragraphs(b) and (c) of this section need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis.

40 CFR §71.11

In fact, Warren Consulting was unable to comment on the arsenic results from 2003, because “arsenic was not tested for in the most recent stack testing round in 2003.” Attachment A, April 7, 2004 Warren comment letter at 6. However, NJ DEP states in that “additional testing for arsenic was conducted in February 19-20-2003.” See Attachment B, NJ DEP Hearing Officer’s Report at 17. Warren Consulting specifically asked for copies of the stack tests and the arsenic results, but was denied access to these documents thereby hindering the ability to submit comprehensive comments on all aspects of the Title V Permit. (See Attachment “A”, April 7, 2004, Warren Comment letter at 1). Besides being a violation of the regulations, the harm in not allowing full and complete access to all documents is that a commentor may have been denied the opportunity to raise issues that may have caused a modification of the draft permit. In denying the public full access to all records the public’s opportunity to participate fully in the public comment period has been impeded. The U.S. EPA should remand the draft permit and all documents should be made available so that the public can adequately review the record and submit comprehensive and thorough comments on all aspects of the draft permit.

II. NJ DEP Violated 40 CFR § 70.7 (H)(2) When It Failed To Include Required Information In the Announcement Of The Availability Of The Draft

The required public notice announcement from the Camden Facility Permit announced the availability of the draft only, which violated 40 CFR § 70.7 (h)(2) which requires the public notice announcing the draft permit for public comment include information about how members of the public can obtain the draft permit, the application and all relevant supporting materials. (See Attachment A, March 3, 2004, Warren Comment letter at. 2).

III The Draft Permit Did Not Include The Statement Of Basis Required Under 40 CFR §71.11(B)

The draft permit for the Camden Facility did not contain a statement of basis. The New Jersey Department of Environmental Protection failed to provide a statement of basis as required by 40 CFR §71.11(b) which states that the permitting authority shall prepare a statement of basis for every draft permit. "The statement of basis is set forth at 40 CFR § 70.7(a)(5), which states that the permitting authority shall provide a statement of basis that sets forth the legal and factual basis for the draft permit conditions." In re: the Matter of the N.Y. Organic Fertilizer Co., U.S. EPA Order dated May 24, 2004 at 14. The statement of basis shall briefly describe the facility, the types and amounts of pollutants with their permitted potential to emit, and derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the decision.

In its response to public comments, the NJ DEP states "that by virtue of the form and content of New Jersey operating permits, they fulfill the federal requirement for the statement of basis. Putting the statement of basis in a separate document is unnecessary." See Attachment B, NJ DEP Hearing Officer's Report at 6 (emphasis added). Contrary to the NJ DEP's statement, the U.S. EPA has specifically stated that "[t]he statement of basis is not a part of the permit itself. It is a separate document which is to be sent to U.S. EPA and to interested persons upon request." Id at 15.

The statement of basis for this facility must specifically discuss the violations and the corrective actions taken, if any and the applicable fines that were paid. The permit must include a compliance schedule, and if not, the decision not to include a compliance schedule must be clearly outlined in the statement of basis. The statement of basis

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“should highlight elements that U.S. EPA and the public would find important to review[and it] should support and clarify items such as any streamlined conditions, the permit shield, and any monitoring required” under the Title V program. Id at 15. With the Camden facility’s apparent history of violations, there needs to be an explanation of the decision to include monitoring in regards to emissions. The NJ DEP offers no proof in the responses to comments that the facility was in compliance at the time of the application.

Contrary to U.S. EPA’s previous findings regarding a statement of basis, the failure to provide the public with a statement of basis does demonstrate that the Title V permit is substantially flawed. Id at 16. First, failure to issue a statement of basis is a violation of the Title V regulations and unnecessarily prohibits the public from adequately participating in the public review and comment period for the draft permit. Petitioners believe this to be a deficiency in itself of the permit, because not only did it not exist at the time of public comment, but allowing the permit to be issued as is, means that it will never exist and future interested parties will be denied the opportunity to ask for a statement of basis. Secondly, the issuance of the Title V permit under the Clean Air Act requires compliance with the procedural regulations as well as with the substantive regulations. Thirdly, if U.S. EPA and the public are not adequately appraised of past violations, the need for a compliance schedule or the reasons for certain conditions, then, the review by U.S. EPA and the comments by the public will not address all possible deficiencies of the final permit because they will not know what to look for in the record

Accordingly, U.S. EPA should remand object to this Title V permit and require NJ DEP to draft a separate statement of basis which is understandable, available to the public

and describes the numerous violations that have occurred at this facility and the decisions for current permit conditions.

IV. An Operating Permit Was Issued To a Facility That Is Currently Violating Applicable Requirements.

The Camden facility has a continuous pattern of non-compliance as well as past U.S. EPA high priority violations. (See Attachment B, April 7 Warren Comment letter at 5. Under 40 CFR 70.6 iii (C), it is required that the Compliance Certification submitted by the facility include the status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The compliance certification shall also identify each deviation and take into account in the compliance certificate or any period during which compliance is required and in which an excursion or exceedance as defined under part 64 of part 70 has occurred.

The facility's failure to provide a signed compliance certification and its history of violations as a result of past non-compliance, has placed the Camden Facility in violation of 40 CFR 70.6 (c) (1). The Compliance requirements under the Act states that "[c]onsistent with paragraph (A)(3) of this section, compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official that meets the requirements of §70.5(d) for this part."

The response letter from the NJ DEP states that facility is currently in compliance.

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The NJ DEP fails to offer any evidence to support this finding. The NJ DEP did not provide a compliance schedule that would indicate exactly how this facility would have come into compliance. In contrast, the SJEJA has submitted results prepared by an independent environmental consultant that contradicts this finding with specific results obtained from testing conducted at the facility. These results indicate that the facility is in continual violation of several permit conditions. (See Attachment A, April 7 Warren comment letter at 5-7.

Under the standard permit requirements of 40 CFR §70.6, the facility must provide a signed compliance certification evidencing that the facility is currently in compliance. The Camden Facility has not provided this certification as required under the Act, therefore the permit should be remanded back to NJ DEP for compliance by a responsible official with the compliance certification regulations pursuant to the applicable requirements of Title V.

V. An operating Permit Issued to a Facility that is Currently Violating Applicable Requirements Must Include a Compliance Schedule Designed to Bring the Facility Into Compliance With The Requirement Within a Reasonable Timeframe.

The Camden facility has had numerous violations and in reviewing the data there is no compliance schedule provided for and no discussion of any compliance schedule which should be provided in the statement of basis or otherwise throughout the permit application.

40 CFR 70.6 states specifically that a compliance schedule must include:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with § 70.6(a)(3) of this part, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable)

There is no evidence of any detailed evaluation of the compliance status of this facility, despite the extensive review of files following and an Open Records request by Petitioners. NJ DEP merely states that the facility is “in compliance with its existing air quality permits.” Attachment B, Hearing Officer’s Report at 1. However, NJ DEP mentions several exceedances and violations without any mention of how the facility came into compliance and what measures were taken to ensure that the facility is in compliance now. For instance, NJ DEP states:

The operating permit includes strict monitoring, recordkeeping and reporting by the facility in accordance with the requirements of federal and Department regulations and does consider any history of violations. The operating permit requires the facility to submit six month semi-annual deviation reports and an annual certification report to AQC & E detailing deviations from any permit or regulatory requirement that

occurred during the specified reporting period. These reports are certified by the facility to be true and accurate. Submitting false or inaccurate information would result in civil and criminal penalties, including the possibility of imprisonment. This reporting requirement is a new requirement that is included in this permit

Id. At 16 (emphasis added).

However, including monitoring and reporting and certification of compliance are not new requirements, they are mandated by 40 CFR Part 70 and are in accordance with federal and state requirements to ensure continuous compliance with the permit conditions. NJ DEP further states that

For the entire year of 2003, the Department assessed a total penalty of \$4,000.00 on the facility. The break down of this penalty is \$2,600 for exceeding the permit limit for visible emissions from the combustors and \$1,400.00 for exceeding the permit limit for CO (carbon monoxide) emissions from the combustors. To date in 2004 the Department has assessed a penalty of \$400.00 on the facility. This was for exceeding the permit limit for visible emissions from the combustors.

Id.

These are all evidence of violations of the permit which have not been properly addressed if they continue to occur. Given the continual violations at the Camden facility, NJ DEP must implement a compliance schedule to ensure that the facility is continually adhering to all applicable requirements. Since the facility in question was not in compliance at the time the facility submitted its application (or even during the public comment period), the facility needs to provide a compliance schedule under 40 CFR 70.6 (c) (3) which states that if the permit is granted, “[t]he permit must be consistent with paragraph (a)(3) of §70.6, compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit.”

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A. General Comments regarding Violations

Commentors outlined several exceedances and outstanding violations that were not addressed by NJ DEP. Following are several comments that have not been adequately addressed:

1. The 2003 enforcement actions related to malfunctions of the ESP were in a pending status with staff recommending denial of permittee's affirmative defense through the time period for public comment on this Title V permit. The Hearing Report at page 6 explains that all violations for 2003 were resolved for a total penalty of \$4000.00. This seems to indicate that despite the staff's recommendation for denial of an affirmative defense, that NJ DEP eventually accepted an affirmative defense. The malfunctions of the ESP and opacity exceedances are listed below:

1/8/03 opacity exceedance from a malfunction of ESP's fifth field. Violation was deemed to be part of a recurring pattern. Staff recommended denial of Affirmative Defense. 1/26/03 opacity exceedance from a malfunctioning double dump valve on the ESP. Violation was deemed to be part of a recurring pattern. Staff recommended denial of Affirmative Defense.

1/27/03 opacity exceedance from a malfunction of ESP's fifth field. Violation was deemed to be part of a recurring pattern. Staff recommended denial of Affirmative Defense.

2/1/03 opacity exceedance from a malfunction of ESP's fifth field. Violation was deemed to be part of a recurring pattern. Staff recommended denial of Affirmative Defense.

2/2/03 opacity exceedance from a malfunction of ESP's fifth field. Violation was deemed to be part of a recurring pattern. Staff recommended denial of Affirmative Defense.

2/6/03 opacity exceedance from a malfunction of ESP's fifth field. Violation was deemed to be part of a recurring pattern. Staff recommended denial of Affirmative Defense.

2/17/03 opacity exceedance from a malfunction of ESP's fifth field. Violation was deemed to be part of a recurring pattern. Staff recommended denial of Affirmative

Defense.

3/17/03 opacity excursion from Boiler A. The ESP's fifth field tripped offline due to a loss of control power releasing accumulated flyash to the atmosphere.

Violations of this magnitude and reoccurrence should be deemed to be part of a recurring pattern and the permit should have strict compliance conditions with shutdown ramifications for non-compliance. At a minimum, the opacity occurrences could be addressed by requiring the facility to install a baghouse. NJ DEP's claim that "it lacks the authority under Title V ...to require such a change" is not valid. If a facility is in continual violation of its permit conditions, the NJ DEP can enter into a consent order requiring the facility to install equipment that will be ensure compliance with all conditions.

The permit still fails to meet the following required permit conditions:

- a) No required reporting from the facility that attested to the maintenance and proper operation of equipment and to those steps to be taken in the future to prevent malfunctions from occurring. (In accordance with 1996 Air permit. D.1.) Reporting was focused on the event and immediate corrective actions only.
- b) No certification by the permittee that the malfunctions did not occur as a result of the following: 1) Improperly designed equipment, to the best of the facility's knowledge 2) Lack of preventative maintenance; 3) Careless or improper operation; or 4) Operator error; and.....certification that information in preliminary notice was accurate. (In accordance with 1996 Air permit. D.3.c.iii-iv.)

Failure to meet burden of proof requirements related to emergency malfunctions. (In accordance with 1996 Air permit. D.3.a. "Emergency malfunction means any sudden and unavoidable failure to the equipment or control apparatus to operate in a normal manner. Malfunctions that are caused entirely or in part by improperly designed equipment, lack of preventative maintenance, poor maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment or control apparatus breakdown shall not be considered emergency malfunctions. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an emergency malfunction has the burden of proof.")

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3. There is no record in the files or in NJ DEP's Hearing Report of major repairs or equipment replacement over the entire course of this facility's operation. No record in the files that the current facility is being properly maintained and repaired at regular intervals. Petitioners specifically asked that if such documentation existed, that it be provided. (See Attachment A, April 7 Warren comment letter.

4. There are continual arsenic exceedances in the stack tests which were provided to Petitioners(2001 and 2002). Arsenic testing was not repeated in 2003 to our knowledge based on our review of the stack test results provided to us. NJ DEP claims in their hearing report that arsenic was tested for and was not found to exceed the emissions limit in the permit. NJ DEP responded that the facility will have to perform annual stack tests for arsenic, however, there is not further evidence or monitoring that will ensure the facility will not continue to exceed its permit limits for arsenic. See Attachment B at 9.

5. Petitioners have requested a review of the cumulative impacts of all of the facilities in the Camden area. Absence of investigations by permittee and/or DEP into soot/ash incidences occurring in surrounding neighborhood and identification of whether this facility is the source will hinder any future reduction of the impacts from the soot. Given the continual violations of this facility, Petitioners request that the facility be penalized in a way that would reduce the exceedances and emissions from the facility. For instance, constantly asking the facility to pay monetary fines is of no consequence, as is evidenced by their continual violations,

however, a penalty which reduces operations may cause the facility to seriously consider strict adherence to the permit.

6. Petitioners requested that a Compliance Schedule be established for this facility that includes the following:

- A complete engineering review of the history of maintenance, repair and replacement for all major equipment at the facility, particularly the ESP
- A review of all manufacturer's specifications from major equipment and pollution control devices
- Based on the engineering review of the facility and manufacturers recommendations, establish an inspection, maintenance and repair schedule for this facility.
- Incorporate requirements for maintenance and repair and reporting and recordkeeping of same into the Title V permit as federally enforceable permit conditions. Note for example: The applicable requirements for the ESP include the preconstruction permit requirement related to maintenance of emission controls: "An operation, inspection and maintenance plan for the air pollution control and monitoring equipment must be submitted to the DEP at least 180 days prior to startup and approved by the DEP before waste combustion can begin." These requirements from the preconstruction permit related to operation, inspection and maintenance of the ESP should be written into the final Title V permit.

VI. The Facility is in Violation of the State and Federal Environmental Justice Executive Orders

State and Federal laws prohibit environmental discrimination against low-income, minority communities. The Camden community is a low income minority community consisting of Black and Hispanic residents. They suffer disproportionately from a high percentage of asthma and other lung related diseases. There exists high incidences of cancer as a result of the accumulation of toxins and dangerous pollutants that are emitted from the many facilities that are located in this community. Their effects are evident in the health of the residence in the Camden area, especially those in close proximity to the pollutants. In its letter to the NJ DEP dated March 3, 2004 the South Jersey Legal

Services representing the South Jersey Environmental Alliance outlined their concerns below:

1. Facility has been cited repeatedly for violations, including U.S. EPA high priority violations. These past violations call for increased monitoring of emissions and stricter penalties for non-compliance as outlined above.
2. There is evidence that the facility continues to remain in non-compliance with arsenic emission limits. These levels must be tested on a continuous basis.
3. Studies have indicated that there is an unusually high rate of respiratory diseases and elevated rates of lung, esophagus, liver, kidney and pancreas cancers among Camden City residence. As a result of on-going exposure to dangerously high levels of various contaminants the residence suffer from poor health.

Presidential Executive Order

“Executive Order 12898, signed on February 11, 1994, focuses federal government’s attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. The Order is intended to promote non-discrimination in federal programs substantially affecting human health and the environment, and to provide minority and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment. It generally directs federal agencies to “make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.”

THE MATTER OF ORANGE RECYCLING AND ETHANOL PRODUCTION FACILITY, PENCOR-MASADA OXYNOL, LLC, 2001 U.S. EPA CAA Title V LEXIS 4 (May 2, 2001)

Governors Executive Order

The Executive Order on Environmental Justice requires that agencies work collaboratively to address environmental health and quality of life issues that effect low-income and communities of color. It calls for the NJ DEP to use available environmental and public health data to identify existing and proposed industrial and commercial facilities and address the impact of those facilities.

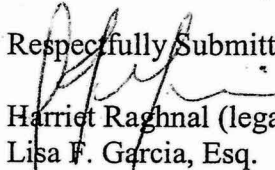
The Petitioners brought these Environmental Justice Violations to the attention of the NJ DEP and in its response NJ DEP only affirmed its commitment to the community by providing information and conducting studies. See Attachment B at 19. Yet it still fails to address the fact that this is a clear example of environmental injustice.

There are no deadlines or specifics included in the permit application that provides for the alleviation of the high levels of dangerous air pollutants. The NJ DEP does not explain or implement any procedures that are or will be taken to protect or alleviate the conditions that those citizens who live by the Camden Waterfront must contend with. There have been adequate studies in this regard to confirm that the community has dangerously high levels of air and soil pollutants that are generated as a direct result of the 50 industrial plants and their supporting activities. Granting a permit to a habitual violating facility, like the Camden Incinerator without stricter monitoring, reporting and penalty phases, only demonstrates to the residents of the community that the Governmental and Presidential Executive Orders are not being adhered to by approving agencies.

CONCLUSION

This facility has been and remains a habitual violator of the Clean Air Act, and has received numerous fines as a result of its violations. Yet the Camden Incinerator permit has been approved by the New Jersey Department of Environmental Protection and has now been seemingly approved by the U.S. EPA without any comprehensive review of the comments by Petitioners, herein. This is unacceptable not only to the citizens of New Jersey, but specifically to the residents that continue to suffer as a result of this facilities callous disregard for the poor and minority community members who are forced to live and breath the dangerous pollutants due to the lack of finances required to move to a healthier community. Numerous health problems have been uncovered and linked directly to some of the dangerous levels of pollutants present in the area. The U.S. EPA should object to Camden Incinerator Title V permit and remand the permit to NJ DEP to modify the permit to ensure compliance with all applicable requirements and take aggressive action in permitting industrial facilities such as this one in Camden, NJ.

Respectfully Submitted,


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