



April 28, 2020

Via Email

Michael Gordon, Senior Advisor
New Jersey Department of Environmental Protection

Gary Wolf, Chief, Environmental Enforcement Section
New Jersey Office of the Attorney General

Re: Purple Plume Violation by Covanta Essex Company on April 7, 2020

Dear Mr. Gordon and Mr. Wolf:

On behalf of the Ironbound Community Corporation (“ICC”), Earthjustice and the Environmental Advocacy Clinic at Vermont Law School submit this letter to inform the New Jersey Department of Environmental Protection (“DEP”) and the Office of the Attorney General (“AG”) that the Covanta Essex Company’s (“Covanta”) Essex County Resource Recovery Facility (“Incinerator”) in Newark continues to violate its air permit by emitting purple plumes and other air pollution. In light of the recent recurrence of purple plume emissions and the possibility of further purple plumes and other violations under DEP’s new compliance advisories, ICC renews its request to DEP and the AG to take immediate steps to stop this ongoing threat to public health and the environment.

On April 7, 2020, a Covanta representative informed ICC by telephone that the Incinerator emitted a purple plume from its smokestack earlier that day for approximately 30 minutes. As DEP and the AG are aware, the Incinerator has violated its air permit hundreds of times in recent years and emitted purple plumes at least ten times last year. These purple plumes may indicate the presence of unpermitted medical waste containing iodine in Covanta’s waste stream, which are violations of its air permit and solid waste permit. Furthermore, these violations imply a lack of oversight and knowledge about what type of waste Covanta is burning. On October 23, 2019, ICC notified your offices of its concerns about the purple plumes and requested enforcement action. After our meeting on December 3, 2019, DEP shared a draft Purple Plume Prevention Plan (“Plan”) for the Incinerator. On January 30, 2020, ICC submitted extensive questions and comments on the Plan.

ICC appreciates the open channel of communication with DEP and the AG on this issue, but for over six weeks, we have not received any new information on the source of the purple plumes or updates about the status of finalizing the Plan. We are concerned that DEP may be delaying its review and finalization of the Plan until after the completion of the permitting process for Covanta’s proposed sodium thiosulfate injection testing. We urge DEP to separate its review of the sodium thiosulfate testing from its review of the rest of the Plan. Doing so can ensure that

DEP addresses ICC's comments and approves the other Plan provisions so that they can be implemented—and enforced by DEP—without delay. Covanta's delay in implementing necessary precautionary measures threatens the health and safety of the Newark community and the environment.

In addition, ICC is gravely concerned that Covanta may seek waivers of its statutory, regulatory, and permit requirements under DEP's recently issued COVID-19 compliance alerts, such as alterations of its operational limits and allowances under Compliance Alert #2020-07 or extensions for submitting its monitoring and deviation reports under Compliance Alert #2020-09. ICC is also concerned that the Ironbound community will not be alerted of any noncompliance notification or similar notification sent to DEP pursuant to Compliance Alert #2020-08. DEP must make publicly available all such notifications and requests it receives from any facility, including Covanta, and make available DEP's disposition of such a request, as other States like Minnesota are doing.¹ At the very least, DEP must forward to ICC any notification or request that Covanta sends to DEP pursuant to any current or future compliance alert, and notify ICC of DEP's disposition.

Covanta's daily emissions of air pollution have dire consequences for Ironbound residents—consequences amplified by the COVID-19 crisis. New research shows a link between exposure to particulate matter and nitrogen dioxide air pollution and COVID-19 fatalities.² According to DEP DataMiner, Covanta emits more particulate matter and nitrogen oxides (“NOx”) than any other stationary source in Newark, emitting over seven times more NOx than the next largest emitter. This means that the Ironbound community—which historically has suffered more air pollution than other New Jersey communities—may face a greater risk of health harms and death from COVID-19 because of Covanta's emissions and its repeated air permit violations. This is unacceptable.

DEP and the AG have a duty to protect New Jersey residents from polluters and enforce environmental regulations. Thus, ICC urges DEP and the AG to take the following steps to address this issue: (1) respond to ICC's questions and comments on the draft Plan dated January 30, 2020; (2) separately consider sodium thiosulfate testing from the rest of the Plan, and move forward on improving and approving the other Plan provisions, such that they are incorporated into upcoming Title V air permit and solid waste permit amendments and enforced; (3) take enforcement action against Covanta for ongoing violations of its Title V air permit, including assessing a penalty for

¹ See Minnesota Pollution Control Agency, Requests for MPCA regulatory flexibility due to COVID-19, <https://www.pca.state.mn.us/covid-19/requests-mpca-regulatory-flexibility-due-covid-19>.

² See Xiao Wu et al., Exposure to air pollution and COVID-19 mortality in the United States 11 (2020), <https://projects.iq.harvard.edu/covid-pm> (“[A] small increase in long-term exposure to PM2.5 leads to a large increase in COVID-19 death rate of a magnitude that is 20 times the one estimated for all-cause mortality.”); see also Yaron Ogen, Assessing nitrogen dioxide levels as a contributing factor to coronavirus fatality, 726 *Sci. Total Environ.* (2020), <https://www.sciencedirect.com/science/article/pii/S0048969720321215?via%3Dihub> (“[L]ong-term exposure to [nitrogen dioxide] may be one of the most important contributors to fatality caused by the COVID-19 virus.”).

the latest purple plume incident; and (4) make public any notification, request, or other communication sent to DEP pursuant to any current or future compliance alert, as well as DEP's disposition of such request. In addition, we request a follow-up meeting with DEP and the AG on these issues. A February 14, 2020 email from Michael Gordon at DEP indicated that a follow-up meeting should be scheduled as soon as the middle of March, and while we recognize that the COVID-19 crisis changed business-as-usual, we have not yet received further communication about setting up a meeting.

If DEP and the AG do not take corrective action by June 1, 2020, ICC will explore other legal avenues to achieve these results.

Thank you for your consideration.

Sincerely,

/s/ Jonathan Smith

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On behalf of the Ironbound Community Corporation

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