



# Pinelands Preservation Alliance

Bishop Farmstead ♦ 17 Pemberton Road ♦ Southampton NJ ♦ 08088  
Phone: 609-859-8860 ♦ ppa@pinelandsalliance.org ♦ www.pinelandsalliance.org

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since 1989

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Via Email and Fax

December 13, 2013

Mark Lohbauer  
Chair  
New Jersey Pinelands Commission  
15 Springfield Road  
P.O. Box 359  
New Lisbon, NJ 08064

**Re: Improper Removal of Commissioner from SJ Gas Pipeline Matter**

Dear Mr. Lohbauer,

I am writing to supplement PPA's comments on the SJ Gas pipeline MOA matter because I have learned today that Commissioner Edward Lloyd has been forced from participation in this matter on the basis of an erroneous and unsubstantiated claim of conflict of interest. This action shows how far the proponents of the pipeline will go to prevent open, rigorous discussion of the issue, to diminish the role of the Commissioners, and to avoid implementing the Pinelands CMP as written. It seems they are terribly afraid of a smart, well-informed and articulate voice on the Commission.

This action is also yet another reason the public reasonably concludes the fix is in.

The forced recusal shows disrespect for the Commissioners, but it also adds another legal defect to any decision the Commission may make on the proposed MOA. In addition to preventing Mr. Lloyd from a final vote on the MOA, the recusal prevents him from participating in the deliberations of the Commission, and therefore may affect the course and outcome of those collective deliberations. If the forced recusal proves incorrect or improperly imposed, as we believe will be shown in time, then any vote on the draft MOA will be invalid, and the Commission would have to start all over again.

Some key points are already clear:

1. There is no precedent or legal authority being provided to support recusal. Nor has the recusal process established by state law been followed in this case. It appears instead to be another *ad hoc* decision motivated not by ethics, but by the desire to keep a person with both expertise and independence from discussing and voting on the outcome.

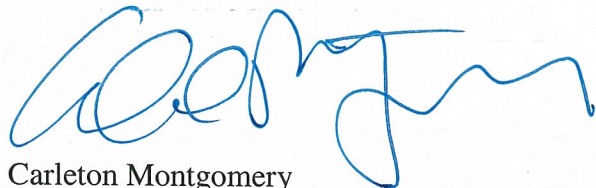


2. No genuine investigation or documentation of the facts and law has taken place, making it impossible to understand, much less analyze or challenge, the forced recusal action in this case.
3. There is no claim of *financial* conflict here. Instead, the claim seems to be based on an un-defined problem arising from Mr. Lloyd's role on the board of the Eastern Environmental Law Center (EELC), because an employee of EELC asked the Commission to reschedule the public hearing in the MOA matter. The EELC request was innocuous, has been withdrawn, and did not create any violation of the ethics rules for Mr. Lloyd with respect to whether or not the Commission should not enter the MOA.
4. If such association is now the standard for recusal, then many Commissioners would need to be investigated for recusal in this and so many other matters. For example, the Cape May County government has formally endorsed the pipeline as proposed, so shouldn't Mr. Brown have to be recused? Ms. Wittenberg says the National Park Service has formally endorsed the project (though the Commission has so far been unwilling or unable to provide us with documentation of this), so must not Mr. DiBello be recused due to his employment with that agency? What's sauce for the goose must be sauce for the gander.

We urge you to suspend further consideration of the pipeline MOA until a full, public, definitive and legal evaluation of the recusal situation has been completed.

Please include this letter in the formal public comment record on the South Jersey Gas pipeline MOA matter, which closes at the close of business today.

Sincerely,



Carleton Montgomery  
Executive Director