



NEW YORK STATE SENATOR

Brian Kavanagh

Kavanagh Joins Krueger, Colleagues Calling for Denial of Permits for New Fossil Fuel Power Plants

BRIAN KAVANAGH September 13, 2021

| ISSUE: **CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT**, **FOSSIL FUELS**, **CLIMATE CHANGE**, **POWER PLANT**, **CLEAN ENERGY**



Senator Brian Kavanagh joined Senator Liz Krueger and dozens of their colleagues in both houses of the Legislature to call upon Governor Kathy Hochul and Department of Environmental Conservation Commissioner Basil Seggos to deny permits that would be required under Title V of the federal Clean Air Act by the proposed Danskammer and Astoria NRG fossil fuel power plants. The new plants appear to violate New York's Climate

Leadership and Community Protection Act, enacted in 2019. The full text of the letter is below; the original may be viewed via the link above.

September 10, 2021

Kathy Hochul
Governor of New York State
State Capitol Building
Albany, NY 12224

Basil Seggos
Commissioner
NYSDEC
625 Broadway
Albany, New York 12233-0001

Dear Governor Hochul and Commissioner Seggos:

In 2019 the Legislature passed nation-leading climate legislation, codifying in law the goal of eliminating New York's adverse climate impacts by 2050 and achieving this transition in a manner that is equitable and prioritizes benefits for disadvantaged communities. The Climate Leadership and Community Protection Act (CLCPA) explicitly put New York on a path to a 100 percent zero emission electric sector by 2040, while aggressively promoting clean energy solutions including rooftop solar, energy storage, and offshore wind.

We are deeply troubled to see the Department of Environmental Conservation (DEC) considering approving air permits for fossil fuel power plants that represent exactly the type of dangerously outdated approach our State was trying to move beyond in enacting the CLCPA.

Under the CLCPA, DEC can only approve a permit for a new fossil fuel project if that project is consistent with the CLCPA or if that project is justified and its impacts adequately mitigated. (CLCPA 7(2)). Additionally, the CLCPA requires that state agencies prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities, and not disproportionately burden those communities.

The proposed gas power plants currently being considered by DEC fail on all fronts. Indeed, as DEC's comment notices appropriately observe, "[b]ased on the information currently available, it appears that the proposed [projects] would be inconsistent with or would interfere with the attainment of the Statewide GHG emission limits established in the Climate Act." Construction of new fossil fuel generation resources is inconsistent with the CLCPA because it prolongs our grid's reliance on climate-altering and greenhouse-gas emitting generation at a time when we need to be taking steps to reduce that reliance. The generating capacity on New York's grid remains nearly 70 percent fossil fuel powered. We're past the point when we can afford to add even more fossil fuel plants that have no role to contribute in a post-2040 emissions-free grid.

Current gas power plant applicants have not provided adequate statements of justification given this inconsistency with state law, have not adequately identified alternatives or GHG mitigation measures, and are located in or near environmental justice communities.

We also have serious concerns about the CLCPA consistency of the proposed air

permit language. DEC's draft air permits purport to authorize facilities to demonstrate CLCPA compliance by submitting greenhouse gas mitigation plans within 120 days after permit issuance. This approach suffers from multiple critical defects. First, DEC cannot issue an air permit without first determining that a facility will be consistent with the CLCPA or that any inconsistencies are adequately mitigated or justified. Consequently, allowing a greenhouse gas mitigation plan to be submitted after permit issuance plainly violates Section 7 of the CLCPA. Moreover, such an approach contravenes basic principles of fairness and public process, as the public is being asked to comment on CLCPA consistency without any knowledge of the applicant's greenhouse gas mitigation plan. Finally, the permit provision itself is fatally flawed because the mitigation strategy options identified by DEC in the permit would do little to actually reduce the harmful climate impacts of the projects. Any greenhouse gas mitigation plan should be required to be filed prior to issuance of a draft Title V air permit. Because current proposed projects are inconsistent with the CLCPA and lack any compelling justification, it would be entirely inappropriate for DEC to issue approvals on the mere condition that a mitigation plan will be filed in the future.

We urge the DEC in the strongest possible terms to deny Title V air permits for any proposed facility that fails to meet these minimum standards of compliance with the CLCPA. With only 19 years to transition our electric sector completely off of fossil fuels, New York must stop permitting fracked gas power plants and commit to climate solutions like renewable energy, battery storage, energy efficiency, and transmission upgrades.

Actions to ensure that we have a reliable, resilient, equitable, and 100% zero-emission grid in 2040 must begin today, and should be geared towards rapidly transitioning off of all fossil fuels. Permitting such projects is not in the public interest, would lock in fossil fuel pollution in contravention of the Climate Act, and would harm disadvantaged and environmental justice communities with local air pollution.

Sincerely,

Liz Krueger, State Senator

Zohran Mamdani, Assembly Member

Alessandra Biaggi, State Senator

Jabari Brisport, State Senator

Samra G. Brouk, State Senator

Michael Gianaris, State Senator

Andrew Gounardes, State Senator

Michelle Hinchey, State Senator

Brad Hoylman, State Senator

Todd Kaminsky, State Senator

Brian Kavanaugh, State Senator

John C. Liu, State Senator

John W. Mannion, State Senator

Rachel May, State Senator

Shelley B. Mayer, State Senator

Jessica Ramos, State Senator

Gustavo Rivera, State Senator

Julia Salazar, State Senator

James Sanders Jr., State Senator

José M. Serrano, State Senator

Toby Ann Stavisky, State Senator

Brian Barnwell, Assembly Member

Charles Barron, Assembly Member

Chris Burdick, Assembly Member

Kenny Burgos, Assembly Member
Patrick Burke, Assembly Member
Robert C. Carroll, Assembly Member
Harvey Epstein, Assembly Member
Phara Souffrant Forrest, Assembly Member
Emily Gallagher, Assembly Member
Jessica González-Rojas, Assembly Member
Anna Kelles, Assembly Member
John McDonald III, Assembly Member
Marcela Mitaynes, Assembly Member
Daniel O'Donnell, Assembly Member
Nick Perry, Assembly Member
Karines Reyes, Assembly Member
Linda Rosenthal, Assembly Member
Nily Rozic, Assembly Member
Rebecca Seawright, Assembly Member
Jo Anne Simon, Assembly Member
Michaëlle Solages, Assembly Member
Fred W. Thiele, Jr., Assembly Member