

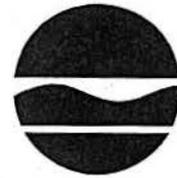
New York State Department of Environmental Conservation

Division of Environmental Permits - Region 8

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Alexander B. Grannis
Commissioner

Certified Mail/Return Receipt Requested # 7008 1140 000 2889 5287

October 28, 2009

Honorable Alexander B. Grannis, Commissioner
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233 -1010

Dear Commissioner Grannis:

REQUEST FOR LEAD AGENCY DETERMINATION

Inergy Midstream LLC/Finger Lakes LPG Storage LLC: Underground Storage Project
Finger Lakes Liquefied Petroleum Gas (LPG) Storage and Distribution Facility
Town of Reading – Schuyler County

This letter is to advise you that a dispute has arisen regarding SEQRA Lead Agency status for the referenced project. Presently, both the Department and the Town of Reading Planning Board wish to be designated Lead Agency. The Town Planning Board, represented by its Chairman, Gordon Wright, has advised Department staff that the Town Planning Board intends to seek Lead Agency designation. In accordance with the requirements of 6 NYCRR Part 617.6, we request that you designate a lead agency.

Description of Project

The proposed action is the construction and operation of an underground Liquefied Petroleum Gas (LPG) Storage and Distribution Facility on a portion of a number of applicant-controlled contiguous properties totaling 576 acres in the Town of Reading, Schuyler County.

Inergy Midstream LLC has acquired U S Salt Corp and its Watkins Glen Refinery, which currently holds a Title V Facility Permit (ID 8-4432-00001/00031) for operations producing salt from solution mined brine. Inergy is also the parent company of the newly formed Finger Lakes LPG Storage LLC, which proposes the operation of the LPG storage facility.

The present plans include utilization for LPG storage of two existing subsurface caverns at a below ground depth of approximately two thousand feet previously created by solution salt mining, drilling of five new storage wells into the existing subsurface caverns, conversion of several wells to storage service and plugging of several older wells that currently access the subsurface caverns, a connection to the existing interstate TE Products Pipeline Company LLC (TEPPCO) LPG pipeline, a railroad siding for loading and unloading LPG railroad tank cars, truck loading facilities, office and control facilities and related processing equipment, including storage tanks, pumps and compressors.

Saturated brine, currently filling the caverns, will be displaced through tubing from the bottom of the caverns by LPG pumped in at the top, and stored in a large brine pond on land between the caverns and the new loading facility. LPG will then be displaced from the caverns for rail, truck, or pipeline transport by reintroduction of brine into the bottom of the caverns.

Based on the Environmental Assessment Form Part 1 completed by the applicant and submitted to the Town and the Department, the project area is 67 acres, which after completion includes a 20 acre water surface (brine pond), 11 acres of roads, buildings, and paved surfaces, and 36 acres identified as "Mowed Stormwater Control." This area does not appear to include the caverns, wells, or the interconnected U S Salt facility, which has been identified as the destination of surplus brine to prevent any surface discharge from the brine pond

due to precipitation. Additionally, subsequent construction of an additional brine storage pond or ponds to eventually allow use of the current cavern capacity is not apparent in the materials submitted to the Department to date. While descriptions of some additional materials provided to the Town have been included in e-mail correspondence from the applicant, these have not yet been submitted to the Department, and do not refer to anything beyond the 67 acres indicated above. There is a concern that the Town is only considering part of the project, segmenting the SEQR review process.

Department Jurisdiction

The Department's permit jurisdiction consists of:

- 1) ECL Article 23 Underground Storage Permit;
- 2) ECL Article 23 Well Drilling Permits;
- 3) ECL Article 23 Well Conversion Permits;
- 4) ECL Article 23 Well Plugging Permits; and
- 5) Storm Water SPDES General Permit for Construction.

In addition, Department staff has indicated the project will most likely require an Article 17 SPDES permit for brine discharges related to the proposed brine pond due to precipitation falling on the pond, or modification of the SPDES permit currently held by US Salt Corp, if the excess brine volume from the brine pond or draining of the pond contents each winter, as indicated by the applicant, is to be directed to the US Salt production operations. Nevertheless, the applicant has indicated in correspondence that it believes no SPDES permit or modification will be needed.

Town Jurisdiction

Given the supersession provision under ECL §23-0303(2), it is our interpretation that the Town of Reading's jurisdiction is restricted to taxation of the property/facility, and local roads. The Town of Reading Planning Board has also asserted that it has Site Plan approval.

Potential Impacts

Potential environmental concerns for the proposed project that have been identified to date and listed in order of greatest magnitude and priority are:

- 1) Potential environmental and public safety impacts resulting from operation of two solution-mined underground caverns for the storage of LPG. Department evaluation, in concert with the New York State Geologist's review and approval, as required by ECL §23-1301.1, of cavern integrity and adequacy for hydrocarbon storage, is ongoing.
- 2) Potential impacts resulting from the drilling of new wells, and the conversion and plugging of existing wells.
- 3) Potential issues of health, safety, and welfare.
- 4) Impacts on surface and ground waters from construction, maintenance, and operation of the proposed 105 million gallon (2.5 million barrel) brine pond, including any brine discharges due to precipitation. The proposed brine pond location is on sloping terrain approximately 2100 feet west of, and 400 feet in elevation above, Seneca Lake.
- 5) Impacts on surface and ground waters from future anticipated construction, maintenance, and operation of additional brine pond capacity, which the applicant has indicated could total an additional 3 million barrels (126 million gallons).
- 6) Impacts on traffic levels and roads of the anticipated traffic increase due to proposed LPG truck loading operations.
- 7) Visual impacts in an area dependent on tourism revenues.

Reasons for Supporting the Department of Environmental Conservation as Lead Agency

The Department's desire to be the SEQRA Lead Agency for the proposed Inergy Midstream/Finger Lakes Underground Storage Facility is based upon the Department's responsibility in administering the Oil, Gas and Solution Mining Law, as set forth under Environmental Conservation Law (ECL) Article 23 and the substantial role the Department has in the approval process for the development of this project; the potential regional impacts of the proposed project; the Department's broad powers for investigation of the impacts; and the Department's capability and expertise to thoroughly review potential environmental impacts.

NYS Oil, Gas and Solution Mining Law (ECL Article 23)

The State, through the Department of Environmental Conservation, has exclusive authority to regulate the oil, gas and solution mining industry except for matters concerning local roads and real property taxation [ECL §23-0303(2)]. Under these circumstances, local government is without statutory authority to regulate any matters specific to local regulation of oil, gas or solution mining activities or general regulation which by application to oil, gas or solution mining activities would impair State policy to prevent waste, promote recovery, and protect correlative rights, including the rights of landowners and the general public [ECL §23-0301]. Furthermore, in July 1992, the Department issued a Final Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program (FGEIS). The FGEIS establishes the basis for environmental reviews and approvals, including underground storage permits and well permits, of Department actions subject to the Oil, Gas and Solution Mining Law. Therefore, we believe that the Department has principal environmental review responsibility for this action.

Potential Regional Impacts

The potential regional concerns associated with the development and operation of an underground gas storage facility (including increased traffic, protection of water sources, and visual impacts) cross municipal boundaries, potentially affecting the Town of Hector and the Village of Watkins Glen. Inadequately contained LPG or displacement brine could migrate underground and cause pollution or even a catastrophic explosion at some distance removed from the site should LPG escape underground. Improper well drilling/construction and cavern operation could potentially affect groundwater and surface waters, particularly Seneca Lake, and could potentially affect public safety off-site. Concerns regarding the roads and site plan issues, such as visual screening, have also been identified.

Broadest Governmental Powers

The breadth of jurisdiction and DEC's exclusive authority under the Oil, Gas and Solution Mining Law to regulate all aspects of the proposed underground storage project further substantiates the Department's request for designation as Lead Agency. The jurisdiction of DEC under the Oil, Gas and Solution Mining Law, as well as the SPDES permit, is much broader than the local government. As indicated above, the State's comprehensive regulatory scheme preempts local authority over any of the key components of the project.

Capability for Providing Thorough Environmental Assessment

Finally, the Department possesses the expertise to thoroughly review potential environmental impacts associated with the construction of the facility and operation of two underground LPG storage caverns. This is evidenced by the FGEIS which DEC prepared in 1992 for projects of this type. In addition, Department staff includes geologists, petroleum engineers and other engineers, analysts and technicians who have extensive experience in mineral resources, underground storage of hydrocarbons, well construction, environmental permitting, and impact assessment.

We have enclosed the following documents with this request for your consideration:

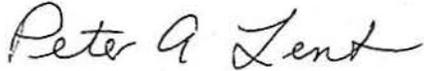
1. September 11, 2009 – Lead Agency Coordination Letter from Town of Reading Planning Board
This submission includes the following:
 - Town of Reading Application for Special Permit Approval completed by applicant
 - Environmental Assessment Form with Part 1 completed by applicant
 - Exhibit A – Project Plans (Black & white copies provided, Originals were in color)
 - Exhibit B – Tax Map Description
 - Exhibit C – Project and Process Description
 - Narrative Report - Application of Finger Lakes LPG Storage, LLC for a Special Permit
2. October 1, 2009 – Department staff response to Town of Reading Planning Board Chairman indicating that the Department seeks to be lead agency for the SEQRA review of the project. This correspondence also includes a summary of potential Department approval jurisdictions and other resource concerns.
3. October 7, 2009 – Department letter to the Town of Reading Planning Board Chairman with additional information of potential jurisdictions. The letter also includes a request to extend the SEQRA time-frames for establishment of Lead Agency to allow the Town of Reading Planning Board time to consider the Department's designation as Lead Agency.
4. October 9, 2009 – Town of Reading Planning Board Chairman's letter agreeing to extension of the Lead Agency establishment time-frame until October 28, 2009.
5. October 9, 2009 – Department Correction Letter to the Town of Reading Planning Board Chairman. The letter notifies the Planning Board that on further review the Department has determined that a Dam Safety Permit would not be required for the brine pond.
6. October 19, 2009 – Department letter to the Town of Reading Planning Board Chairman asking for status of a decision that the Planning Board would agree to the Department being Lead Agency. The letter also shares with the Planning Board a list of additional potential issues identified in the Department's initial review of the Underground Storage Permit Application received on October 13, 2009.
7. October 23, 2009 – Letter sent by applicant's attorney to the Department. The letter included additional information related to the issues identified in the Department's October 21, 2009 letter to the Town Planning Board Chairman. The letter also requested that the Department agree to let the Town be lead agency or agree to a segmented review pursuant to 6NYCRR 617.3(g).

Based on the above stated reasons and a review of the submitted documents, it is clear that the Department is the appropriate lead agency to conduct the coordinated SEQRA review. We have dedicated staff that are prepared to conduct a thorough and comprehensive review of all potential impacts. We feel we can work closely with the Town of Reading Planning Board to minimize adverse environmental impacts to the Town of Reading.

Copies of this request are being forwarded by certified mail to the applicant and the Town of Reading, which is the only other involved agency identified to date. In accordance with the provision set forth under 6 NYCRR §617.6(b)(5)(ii) and (iii), the project sponsor and involved agencies may submit comments to the Commissioner within 10 calendar days after receipt of this request.

Please contact me at 585-226-5390, if additional information is required.

Sincerely,



Peter A. Lent
Regional Permit Administrator

Enclosures

Cc: (Letter Only)

W. Moler – Finger Lakes Storage LPG, LLC, c/o Inergy Midstream LLC
Via Certified Mail (# 7008 1140 0000 2889 5263)
G. Wright - Chairman - Town of Reading Planning Board
Via Certified Mail (#7008 1140 0000 2889 5270)

ECc: (Letter Only)

K. Bernstein - Bond Schoeneck & King PLLC
J. Dahl/P. Briggs - Division of Mineral Resources - Albany
L. Collart/W. Glynn - Division of Mineral Resources - Region 8
N. Rice – Division of Water – Region 8
L. Schwartz - Legal Division - Region 8
P. D'Amato – Regional Director – Region 8
W. Adriance - Environmental Permits – Albany
R. McDonough, Environmental Permits – Region 8