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July 18, 2012

**VIA ELECTRONIC MAIL AND  
CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

David L. Bimber  
Deputy Regional Permit Administrator  
Division of Environmental Permits  
New York State Department of  
Environmental Conservation  
Region 8  
6274 East Avon-Lima Road  
Avon, NY 14414-9519

Re: *Finger Lakes LPG Storage Project; Final Steps  
DEC Facility No. 8-4432-00085*

Dear Mr. Bimber:

This letter provides additional information and clarification on certain topics with respect to the above-referenced Project, in part in response to your April 2, 2012 letter, and sets forth our understanding of the steps for the New York State Department of Environmental Conservation ("Department") to complete the State Environmental Quality Review Act ("SEQRA") process and issue the final permit for the Project.

As the Department is aware, two public hearings on the Project were held last year and the public comment period ended on November 14, 2011. As a result of the public comments and discussions with the Department, Finger Lakes LPG Storage, LLC ("Finger Lakes") made changes to the Project that will reduce its environmental impacts; the SEQRA process has therefore worked. Since November 14, 2011, Finger Lakes has continued to cooperate fully with the Department including submitting additional Project information concerning stormwater; a revised Pre-Construction Notification; a revised set of brine pond plans and reports; an updated Stormwater Pollution Prevention Plan; further revisions to the brine pond plan and reports in response to Department comments; a water supply well survey; and additional background sampling results. This information and Project changes result in the Department possessing all the information it needs to finalize the SEQRA process so that an underground storage permit may be issued.

In addition to being compliant and otherwise responsible from an environmental standpoint, the Project is meritorious from other perspectives. Noting that comparable

gas storage activities have occurred in the area for over 40 years, the Project will bring much-needed tax revenue to the municipalities and area school district. The Project will help to preserve 100-130 local jobs, as conversion of salt caverns into gas storage was a primary reason Finger Lakes' parent company acquired US Salt, LLC (the largest employer in the County) in 2008. The Project will provide additional opportunities for Finger Lakes and its employees to be good neighbors, through public service, charitable contributions and other means.

There are also negative consequences from undue delay of the Project. Finger Lakes risks losing a \$500,000 grant of federal stimulus funds allocated to, and the customer contract that economically underwrites, the Project if approvals are not secured soon. Storage capacity for propane in the Northeast continues to be at historic lows and, consequently, the failure to add incremental storage capacity before the winter heating season could negatively impact local residents who depend on propane for heating and other needs. In addition, businesses considering infrastructure investments in New York will be reluctant to invest capital if the time required to obtain regulatory approvals continues to increase (particularly for activities that have long been conducted in the area, as the case here). When projects such as the Project are beneficial to residents, compliant with applicable laws and responsive to expressed concerns, New York should respond in a meaningful way that it is open for business.

**A. Final Responses to DEC April 2, 2012 Letter**

**1. Corps Authorization and Water Quality Certification**

On May 18, 2012, the U.S. Army Corps of Engineers ("Corps") issued to Finger Lakes authorization to affect certain wetlands and streams during construction under the Corps' Nationwide Permit ("NWP") program. We understand that the Department has received a copy of the authorization. Authorization under the NWP Program requires issuance of a water quality certification by the Department. The Department has issued a blanket water quality certification for the NWPs under which Finger Lakes' activities are authorized. Thus, an individual water quality certification is not necessary.

**2. Brine Pond Plans**

An Engineer's Report, Geotechnical Report and a complete set of plans for the two new brine ponds described in our January and February 2012 submissions was delivered by CT Male, Finger Lakes' engineers, to the Department on May 23, 2012. The plans show the significant reduction in the size of brine pond storage capacity and the relocation of Finger Lakes' brine pond storage. As a result of these changes, Finger Lakes has reduced Proposed Project impacts. The two ponds will have the same Part 360 compliant surface impoundment design as the initial, larger single pond – a very

conservative and protective design approach (since the brine ponds are not Part 360 facilities). This design will include a double liner with leak detection, three feet of free board, groundwater monitoring, etc., all as described in the revised Engineer's Report submitted by CT Male to the Department.

The plans and the field work conducted and described in CT Male's revised Geotechnical Report submitted to the Department provide all of the information requested in Attachment 1 to your April 2, 2012 letter and as discussed with the Department's engineering staff. In particular, kindly note that a full-time engineering inspector will be present on-site during construction of the ponds, including during installation of the geomembrane liner system, and the engineering inspector will be experienced in geomembrane installation.

Since CT Male's May 23 submission, the Department has provided informal comments to CT Male and conducted a telephone conference to discuss these comments. In response, CT Male provided the Department with: revisions to the Engineer's Report and Geotechnical Evaluation; the results of a water supply well survey; and a second round of groundwater monitoring well sampling. The information provided in these additional submissions further confirms that the operation of the brine ponds will not have an adverse impact on the environment. While the May 23 submission provided the Department with the necessary level of design to complete the SEQRA process,<sup>1</sup> submissions since then surely provide the Department with more than enough information to do so.

SEQRA and case law construing it (e.g., *Merson v. McNally*, 90 N.Y.2d. 742, 753 (1997)), encourage applicants to make project changes "as part of the 'give and take' of the application process" which result in lessened environmental impacts – as Finger Lakes has done here – and the SEQRA process is to move forward, not be stalled, as a result of such beneficial changes.

The most recent Engineer's Report, Plans and Geotechnical Report relating to the new brine pond locations demonstrate that any impacts from the brine ponds will be minimized to the maximum extent practicable. With the submission of the revised plans incorporating additional mitigation measures (e.g., additional monitoring wells) or providing clarification on the design, we believe we have responded to all Staff questions. With the DSEIS, which evaluated a larger and more impactful brine storage capacity for the Project, and the detailed information submitted by Finger Lakes this year, the Department possesses all the information it needs to issue the FSEIS for the

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<sup>1</sup> According to the Department's SEQRA Handbook, final drawings or plans are not necessary in order for the Department to complete its SEQRA review. See SEQRA Handbook, 3d. Edition, 2010, p. 119.

Project and conclude that the brine ponds will be designed to minimize potentially significant environmental impacts to the maximum extent practicable.

### **3. Finger Lakes' Brine Operations Plan Will Not Impact US Salt's SPDES Permit**

In our February 16, 2012 submission, we provided the Department an Operations Plan explaining how Finger Lakes would address the reduction of brine pond storage capacity as part of its injection and withdrawal operations. The Operations Plan provided the detailed procedures Finger Lakes will follow.

As explained to Department Staff in a telephone call on May 22, 2012, US Salt's operating, engineering and environmental personnel have confirmed that the implementation of the Operations Plan, during either the injection or withdrawal season, will not affect US Salt's State Pollutant Discharge Elimination System ("SPDES") permit.

Liquefied petroleum gas ("LPG"), including propane and butane, will typically be injected into Finger Lakes' storage caverns from March to September. When injections occur, brine will be displaced from the caverns and pumped first to the East Pond and then from the East Pond to the West Pond and to US Salt's existing Pond. When US Salt receives brine from Finger Lakes, it will curtail normal solution mining for brine to manufacture salt. Notably, brine receipts from Finger Lakes will not affect US Salt's production levels.

LPG will be withdrawn from the caverns for shipment to customers during the winter heating season (normally, from September to March). When withdrawals occur, brine from the East Pond and West Pond will be pumped from the ponds into the caverns to displace the product being withdrawn from the caverns. The additional brine needed to replace the brine sent to US Salt during the LPG injection season will be produced by US Salt by using more of the condensate that is continuously generated by US Salt to supplement solution mining injection flows. Most of the condensate (in terms of quantity) is typically discharged in compliance with US Salt's SPDES permit versus sent back to the brine well gallery as makeup water for solution mining and so this will actually decrease the amount of condensate that is discharged to the Lake at that time.

Overall, this operation will not impact the SPDES permit or the volume of water US Salt withdraws from Seneca Lake for its solution mining.

### **4. Scope of the "Action" Under SEQRA**

Comments have been made expressing concern that certain statements contained in Inergy's public securities filings regarding the potential storage capacity of the project

caverns somehow raise the specter of segmentation under SEQRA. In particular, comments have suggested that Inergy's use of the parlance "growth projects" and "growth opportunities" relating to the fact that the caverns have the capacity to store up to approximately 5 million barrels of LPG invokes segmentation. In short, there is no segmentation under SEQRA here.

Finger Lakes reconfirms that it has no existing plan to expand the permitted storage capacity of the Project beyond the 2.1 million barrels for which it has made application to the Department. There are no plans actually formulated or proposed for an expansion beyond 2.1 million barrels of storage capacity, and the proposed storage activity is independent from any future expansion (emphasizing that the pending application for the Project is proceeding in the absence of any hypothetical/ potential future expansion). The potential to increase the storage capacity of the caverns up to 5 million gallons is not in any capital budget for Inergy, and there are no agreements in existence for such capacity. Importantly, approval of the Project does not commit the Department to any course of action regarding any future request by Finger Lakes to expand the Project; indeed, the permit limitation of 2.1 million barrels of permitted storage capacity contemplated for the Project obviates such a determination. Again, the extent to which Finger Lakes might consider an expansion will depend on future market conditions (including customer demand), and any potential future expansion would be subject to its own application and attendant SEQRA process at such future time.

The caverns to be converted to gas storage for the Project have been proven to have physical storage capacity beyond 2.1 million barrels of LPG capacity, and that fact has been disclosed by Finger Lakes on several occasions. However, the discussion of potential growth opportunities for the 5 million barrel capacity in investor-related documents are forward-looking statements by nature and, consistent with the safe harbor disclosure of securities law that accompanies these public forward-looking statements, any potential expansion of the Project beyond 2.1 million barrels would be subject to market conditions, the creation of a proposal for the opportunities, an application being made for regulatory approvals, funding, and numerous factors beyond Finger Lake's control.

In addition, the application for the Project requests approval from the Department to store up to – and only up to – 2.1 million barrels of propane and butane in underground caverns. We assume, as would be customary for these types of projects, any permit issued by the Department for the Project would contain a condition establishing 2.1 million barrels as the maximum storage capacity.

Based on the foregoing, the scope of review of the Project for 2.1 million barrels of permitted storage capacity is entirely proper under SEQRA and applicable law construing its mandates. *See, e.g., Matter of Programming & Sys. Inc. v. New York*

*State Urban Dev. Corp.*, 61 N.Y.2d 738, 739 (1984) (“environmental impact statement is not required until a specific project plan for the development is actually formulated and proposed.”); *Matter of City of Middletown v. Town Board of the Town of Walkkill*, 54 A.D.3d 333, 337 (2d Dep’t 2008) (SEQRA lead agency erred where it required developer to require an EIS review “based on a speculative possibility of use of the property” “since no specific plan for the property had been officially submitted or a rezoning proposal made that would change the use of the property [.]”); *Matter of Village of Tarrytown v. Planning Bd. of Vil. of Sleepy Hollow*, 292 A.D. 2d 617, 620-621 (2d Dep’t 2002) (no segmentation found where “it is clear that any plans to develop those properties were speculative and hypothetical. In that regard, it cannot be said that the development [of the proposed project] was the first phase of a larger, unified project.”); see also *Matter of Viscio v. Town of Guilderland Planning Bd.*, 138 A.D. 2d 795, 797 (3d Dep’t 1988) (“It was improper to require [applicant] to prepare an additional plan for the development of a lot which he did not then intend to subdivide or develop.” A reviewing agency “may not force an individual to develop, or to plan to develop, lands which the individual has chosen not to develop. If, in the future, [applicant] decides to subdivide the large lot, [reviewing agency] will then have the opportunity to pass on his plan with an eye toward its effect on all adjoining land, including the lots he currently seeks to develop.”).

Accordingly, statements in Inergy’s public filings to the effect that the Finger Lakes development project is expandable to up to 5 million barrels of storage capacity do not result in the Department’s scope of review of the 2.1 million barrels associated with the Project being considered segmentation under SEQRA.

## **5. QRA Questions**

On April 3, 2012, we participated in a conference call with Staff and Quest Consultants so Quest could answer questions Staff had about the Quantitative Risk Assessment (“QRA”) submitted to the Department on February 16, 2012. Quest’s follow-up letter was submitted to the Department on April 12, 2012. Given that we have not received subsequent questions concerning the QRA, and that the QRA has been made public, we are under the impression no questions remain unanswered with respect to the QRA.

## **6. Stormwater Plans**

On May 31, 2012, Jess Engineering, on behalf of Finger Lakes, submitted a revised Stormwater Pollution Prevention Plan (“SWPPP”) to the Department, including a separate package sent to the Department’s regional water staff. The revised SWPPP addresses stormwater and erosion controls needed for construction of the brine ponds and the other aspects of the Project. The SWPPP also concludes that during operations there will be no opportunity for stormwater to become contaminated or for

there to be a discharge of a reportable quantity of hazardous materials. Therefore, coverage under the Department's Multi-Sector General Permit is not required.

**B. Steps to Finalize SEQRA and the Permit Process**

**1. Provide Draft Permit to Finger Lakes**

The Underground Storage Permit application was deemed complete in August 2011, and there is no requirement in the Environmental Conservation Law or the Department's regulations to publicly notice a draft permit. We thus request that the Department make available for our review the draft Underground Storage Permit. Given that the Application has been complete for over 10 months, a draft permit can be transmitted to Finger Lakes this week.

**2. Complete SEQRA Process**

We understand the Department is working on completing an FSEIS for the Project. We respectfully request that the Department finalize the FSEIS. Under the SEQRA regulations, the Department, as SEQRA lead agency, must prepare the FSEIS within 45 days after the close of the public hearing or within 60 days of the filing of the DSEIS, whichever occurs later. 6 NYCRR § 617.9(a)(5). As noted above, changes have been made to the Project (many at Staff's suggestion) as part of the SEQRA process that have reduced the Project's overall environmental impacts. In light of this and given the passage of time, we urge the Department to finalize the SEQRA process by issuing its FSEIS by July 15, 2012 and issue its Findings Statement 10 days thereafter. 6 NYCRR § 617.11(a) and (d).

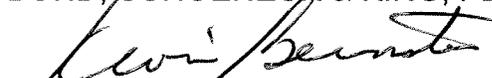
**3. Issue Final Permit**

Once the SEQRA Findings Statement is prepared, the Department is positioned to issue the final Underground Storage Permit immediately thereafter. Finger Lakes would then commence construction on this compelling energy project.

Thank you.

Sincerely,

BOND, SCHOENECK & KING, PLLC



Kevin M. Bernstein

David L. Bimber  
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cc: Lisa Schwartz, Esq.  
Paul D'Amato, Esq.  
Finger Lakes LPG Storage, LLC  
Robert J. Alessi, Esq.