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NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Application of:

FINGER LAKES LPG STORAGE, LLC  
Underground Storage Facility Town of Reading,  
Schuyler County; DEC Facility. 8-4432-00085

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Application No:  
8-4432-00085

ALJ McClymonds

SUR-REPLY BRIEF

By

SCHUYLER COUNTY LEGISLATORS  
VAN A. HARP AND MICHAEL L. LAUSELL

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**I. Introduction**

This sur-reply brief is submitted by Schuyler County Legislators, Van A. Harp and Michael L. Lausell, in response to the allegations of the New York State Department of Environmental Conservation (DEC) and Finger Lakes LPG Storage, LLC (FLLPG) in their reply briefs.

**II. Adequacy of the Quest Transportation QRA**

The DEC reply brief states that FLLPG has submitted sufficient documentation to overcome petitioners' burden of persuasion that issues exists for adjudication. On August 26, 2015 the Schuyler County Legislature sent a letter to Mitchell Dascher, President of U.S. Salt asking for clarification on three issues regarding the Quest QRA. Attachment A. Mr. Dascher responded by letter on August 31, 2015. Attachment B.

The first issue is the discrepancy on page 54 of the QRA regarding the height of the trestle over the Watkins Glen Gorge. The QRA states that the height is 75 feet, when the actual height is 175 feet. Remarkably, U.S. Salt responded that the 75 foot figure came from the conservative estimate Legislator Lausell used in his letter to

the Schuyler County Legislature of May 12, 2014 to establish that a tank car falling off the trestle would fall a sufficient height to rupture and release its contents. The response from U.S. Salt attempts to explain the error away as insignificant, relating to a rebuttal of Dr. Mackenzie's Independent High Level Quantitative Risk Analysis. The error demonstrates a lack of academic rigor or actual inspection of the trestle.

The Schuyler County Legislature also questions the discrepancies between the projected rail and truck traffic and the size of the proposed loading facilities. The Quest QRA states on Page 54 that the likelihood of a derailment at the trestle is one chance in about 205,000 per year, based on 1,785 railcars per year. This artificially low projection of rail traffic as compared to the capacity of the loading facility throws into question the accuracy of the risk estimate. In similar fashion, the abrupt removal of all traffic from FLLPG's plans while reserving the right to build the truck loading facility at the Issues Conference casts doubt on the credibility of the safety conclusions of the Quest QRA.

The DEC brief questions Legislators Harp and Lausell's assertion that an accident at the trestle would cause a massive explosion. Even with the incorrect height of the trestle from the bottom of the gorge, the Quest QRA concludes that an LPG railcar's fall into the gorge will likely result in catastrophic failure of a railcar.

### **III. Proximity of the Gorge Trestle to the Watkins Glen State Park**

The DEC brief states that the trestle is in proximity to the Watkins Glen State Park. The rail line actually passes right next to the North Entrance to the state park, location of a parking area for cars and buses, restrooms, a gift shop and the beginning of the trail that descends through the park. The park runs a shuttle

allowing visitors to ride to the North Entrance and descend through the entire gorge. As visitors descend the initial 180 steps of the trail, they can pause to admire the trestle towering above them.

The specific surroundings adjacent to the trestle greatly increase the probability that an accident will entail significant fatalities. Many of the assumptions that the Quest QRA states lead to risk overprediction do not apply; the southbound trail will transport the loaded cars in the afternoon when the park is at its fullest, there are no buildings to provide protection, there is no human response time and there is no possibility of emergency response activities moving members to a safe location before the full hazard is realized.

#### **IV. Regulation of Rail Activity**

FLLPG argues that rail traffic is exclusively a matter of federal jurisdiction. Yet, Schuyler County Legislators' initial amicus brief cites *In the Matter of Applications Requested Pursuant to Environmental Conservation Law Article 23, Article 17 and Article 15 for an Underground Salt Mine by Akzo Nobel Salt Inc., et al Project Application NOs 8-2428-00019/00001-0;/00002-0/00003-0/00005-0/00007-0*. In the relevant case the Commissioner considered a pipeline alternative to rail transport of salt to avoid loss of agricultural land. Alternatives were thoroughly examined and a seriously hard look was taken, including a cost analysis of the pipeline alternative. In the present case the potential consequences are significantly greater than the loss of agricultural land, an accident of the magnitude envisioned would be devastating to the community.

## **V. Conclusion**

FLLPG's proposed facility in Schuyler County poses significant public safety risks to the local community. These dangers have not been sufficiently addressed by FLLPG in the Quest QRA.

Dated: Burdett, NY  
September 21, 2015

Respectfully submitted,

Van A. Harp  
Schuyler County Legislator  
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Burdett, NY 14818  
(607) 329-2169

Michael L. Lausell  
Schuyler County Legislator  
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**SCHUYLER COUNTY LEGISLATURE**

105 Ninth Street Unit 6, Watkins Glen, NY 14891

Phone (607) 535-8100

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Old District I

Van A. Harp  
New District II

Stewart F. Field, Jr.  
Old District I



Michael L. Lausell  
New District III

Barbara J. Halpin  
New District I

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Philip C. Barnes  
New District VI

Stacy B. Husted, Clerk/County Auditor  
Jamee L. Mack, Deputy Clerk

Carl H. Blowers  
New District V

*"An Equal Opportunity - Affirmative Action Employer"*

August 26, 2015

Mr. Mitchell Dascher, President  
US Salt  
P.O. Box 110  
Watkins Glen, NY 14891

RE: Quest Risk Analysis Report

Dear Mr. Dascher:

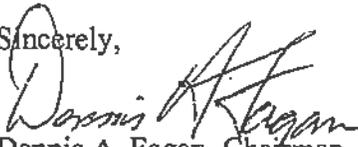
It has come to our attention that the Quest Risk Analysis report on Page 54 incorrectly states that the Watkins Glen Gorge railroad trestle is 75 feet from the bottom of the gorge at its deepest section. Our local records confirm that the actual distance is 175 feet.

There also appears an apparent discrepancy in the Quest report tied to the volume of traffic used in calculating the risk. For example, the Quest report uses a railcar transport estimate that is only 20% of the capacity of the proposed railcar loading facility. If the railcar loading facility is based on future potential market demand, shouldn't the risk analysis be based on the future design demand as opposed to the initial market demand estimate?

Finally, the Quest report states there will be no gas transport by truck. However, testimony at the DEC Issues Conference confirms that the permit application includes a truck loading facility. Again, shouldn't the risk analysis include the potential future demand of truck transport of propane?

Thank you in advance for your prompt response to this request.

Sincerely,

  
Dennis A. Fagan, Chairman  
Schuyler County Legislature

Attachment A



August 31, 2015

Mr. Dennis Fagan  
Chairman  
Schuyler County Legislature  
105 Ninth Street  
Unit 6  
Watkins Glen NY 14891

Dear Mr. Fagan;

We shared your letter with Quest. Quest pulled the 75-foot gorge height from a letter circulated by Michael Lausell to the other county legislators on May 12, 2014 (attached) and the amicus brief submitted by Lausell and Harp for the issues conference held for Crestwood's proposed LPG storage project in February 2015. Quest also noted that the error does not impact its Quantitative Transportation Risk Analysis, as Section 8 thereof qualitatively explains mistakes within Rob Mackenzie's purported "Independent High-Level Quantitative Risk Analysis."

The fact that Crestwood's product movement assumptions (from 2012 and 2014, respectively) do not match the maximum operating capacities of the rail and truck facilities is not a discrepancy. Crestwood was required to make assumptions about how product would economically move into and out of the proposed facility at two different times, and at neither time did Crestwood believe customers would move product in a way that required the full operational capacity of the rail or truck rack. In most cases, sizing equipment appropriately does not mean purchasing equipment that's expected to run at 100% of its operational capacity; here, it just means a single rail facility and a single truck loading rack were believed to provide sufficient capacity based on the capital costs of purchasing and installing the same.

Please contact me with any further questions.

Sincerely;

A handwritten signature in black ink, appearing to read 'Mitchell P. Dascher', written in a cursive style.

Mitchell P. Dascher  
President

SCHUYLER COUNTY  
Received

SEP 4 2015

LEGISLATURE

Attachment B