

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

625 Broadway  
Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED PART 570 OF TITLE 6 OF THE OFFICIAL COMPILATION OF CODES,  
RULES AND REGULATIONS OF THE STATE OF NEW YORK (LIQUIFIED NATURAL  
GAS FACILITIES)

HEARING REPORT

by

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Molly T. McBride  
Administrative Law Judge

March 13, 2014

## PROCEEDINGS

The New York State Department of Environmental Conservation (“Department” or “DEC”) scheduled a public hearing to provide an opportunity for comment on the Department’s proposed new liquefied natural gas storage facility regulations.

The Department proposes to establish a permitting program for the safe siting, construction, and operation of liquefied natural gas (“LNG”) facilities and transportation of LNG in New York State, as required in Article 23, Title 17 of the Environmental Conservation Law. LNG facilities are those that either store LNG in a tank system or convert LNG into natural gas through vaporization. The two types of facilities that DEC expects to permit most frequently include facilities to fuel trucks and facilities that store LNG as a backup heating fuel.

A notice of hearing was published in the Department’s Environmental Notice Bulletin on September 11, 2013. The public comment period for the proposed rulemaking also began on September 11, 2013, with publication of the notice of proposed rulemaking in the *State Register*.

DEC conducted public information meetings on October 16, 2013 at the New York State Fairgrounds in Syracuse, NY and on October 30, 2013 at NYSDEC, 625 Broadway, Albany, NY, prior to the start of the comment session. These meetings were held to present the proposed rulemaking and respond to questions prior to the public hearing. A public comment session for comment by the public was held on October 30, 2013, beginning at 2:00 p.m., at the Department’s central office, located at 625 Broadway, Albany, New York.

The November 4, 2013 deadline for written comments, as stated in the notices of hearing and notices of rulemaking, was extended to December 4, 2013.

Approximately 200 persons attended the October 30, 2013 hearing. Due to the size of the crowd, and to allow for more speakers to comment, Department staff did not give a presentation summarizing the proposed regulations at the start of the public comment session. A presentation had been given by staff at the information session that immediately preceded the comment session. Approximately 75 people spoke at the hearing. Due to the size of the crowd, speaker comments were limited to three minutes. Those in attendance were reminded that equal weight is given to oral and written comments.

### Summary of public comments

There were two topic areas that were addressed by many speakers and can be summarized generally. One main topic discussed by the majority of the speakers at the hearing was whether the proposed LNG regulations are related to the issue of hydraulic fracturing (“hydrofracking”). Many speakers expressed concern that the regulations are being proposed so infrastructure can be put in place to support hydrofracking. The proposed regulations regarding hydrofracking in New York State are still under consideration by the Department and are not related to the proposed regulations regarding LNG. However, many of the speakers voiced concern that hydrofracking is

imminent and that these regulations are directly related to hydrofracking. Some speakers suggested these proposed regulations are evidence that the State is going to permit hydrofracking in the near future. Many speakers represented established “anti-fracking” groups who have been vocal in their opposition to hydrofracking. The speakers voiced their concerns as to the safety of hydrofracking and identified commonly voiced concerns as to the potential dangers of hydrofracking. Many of these speakers did not address the LNG regulations specifically.

Another topic discussed by many speakers was whether the State should be focusing on clean, renewable energy initiatives such as solar and wind power rather than natural gas. Speakers provided information regarding the benefits of various sources of renewable energy.

Several speakers who stated that they are in the over-the-road trucking business spoke in favor of the regulations. These speakers voiced support for the regulations that their groups have been requesting for several years. The benefits of LNG as a means of fueling trucks used for transporting goods through New York State were addressed. Comments were made that LNG is a cheaper and environmentally cleaner fuel than diesel, the most common alternative. Also, trucking industry representatives spoke about the added expenses of operating trucks in New York State when their vehicles cannot be refueled with LNG while in New York.

The following speakers commented specifically on the LNG regulations:

Brian Sampson, Executive Director of Unshackle Upstate, spoke in favor of the regulations, stating that they will put in place appropriate health and safety criteria for LNG and will be the most stringent in the country. The regulations would allow the business community to use natural gas as a transportation fuel providing significant cost savings. He also spoke to environmental benefits of this fuel, and, allowing LNG facilities will provide for the building and operation of LNG discharging facilities throughout the State, creating jobs.

Darren Suarez, Business Council of New York State, spoke in favor of the regulations. The Business Council supports the promulgation of the regulations as they will have a positive environmental and economic benefit by permitting an alternative fuel source that is safe, affordable and clean. He noted that local zoning will control the placement of the facilities and owners and operators will need to demonstrate the project is needed and in the public interest. He also said that the Business Council is in favor of the regulations as natural gas, in any form, is one of the cleanest burning hydrocarbon fuels.

Keith Schue, Sustainable Otsego, voiced concern that the proposed regulations do not have a robust set of enforceable rules with clear, measurable requirements, and that the regulations as written, defer to the industry fire codes.

Roger Downs, Conservation Director for Sierra Club Atlantic Chapter, noted that LNG is extremely volatile, highly flammable and dangerous. Sierra Club asked the DEC to rescind the negative declaration and conduct a full environmental review. Also, the Sierra Club is concerned

that the regulations are incorporating by reference the National Fire Protection Association (NFPA) standards.

Brendan Neill of Green Buffalo Fuel, which is developing a vehicular LNG solution for heavy trucking markets, spoke in favor of the regulations. The regulations open the door for improved air quality and overall quality of life as this is a cleaner fuel, with vehicles which operate on natural gas having a 20-30 percent reduction in overall emissions.<sup>1</sup>

Jim Donovan, Buffalo firefighter and engineer, said LNG is no more unsafe than other fuel types and is easier to clean up as it is easier to contain and safer for the emergency personnel who have to clean up a spill.

Rob Desjardins, design engineer for a company that focuses on cryogenic storage vessels, spoke in favor of the regulations, stating that natural gas has the best safety record of any fossil fuel. He spoke to the safety of the storage vessels used to contain natural gas.

Maria Tedford noted that LNG is the same fuel used to cook, heat homes, power generators. LNG has lower emissions and is safer in case of an accident in that it has lighter auto ignition temperature and higher minimum flammability limit.

Don Cazer noted that over the next 10 years most trucking on national interstate highways will be fueled by LNG. LNG saves trucking companies money and New York will need fueling stations in the State to stay current.

Karin White of the NYS Motor Truck Association stated the proposed regulations allow for the safe siting and operation of LNG facilities and finally enable the trucking industry and consumers to realize the benefits already seen in the other 49 states. Using LNG reduces greenhouse gas emissions by up to 30% compared to conventional fuel. She noted the safety features of LNG voiced by other speakers. Allowing LNG facilities in the State would bring more business into the State and allow New York trucking companies to be more competitive with out of state companies.

Leo Cortizo, business development manager for Clean Energy Fuels, a member of NGV America, which represents 200 companies in the natural gas components and vehicles industry, spoke in favor of the regulations.

Brett Barry, policy and regulatory advisor to Clean Energy Fuels, supported the regulations stating that LNG has cleaner emissions and will provide savings to businesses that others noted. He also noted that the company, which is the predominant manufacturer of natural gas burning engines, is located in New York State and increasing the use of those engines would benefit the State's economy in that way as well. He added that LNG is the only option now for a replacement fuel for diesel.

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<sup>1</sup> This statistic was repeated by several speakers.

Denis Ding of Clean Energy also spoke in favor of the regulations. He spoke about the fire/emergency personnel training and noted for the record that his company sends groups to various fire training programs throughout the country to train for LNG emergencies.

Russ Haven, legislative counsel with the New York Public Interest Research Group (“NYPIRG”), stated NYPIRG does not believe New York’s higher threshold for fire safety standards is being met as the regulations are currently written since the regulations reference minimum standards. He stated that NYPIRG is shocked that the State would allow LNG facilities of any type.

Clark Rhoades noted safety concerns, potential terrorism threats related to LNG facilities and the potential widespread damage from an explosion at an LNG facility. He cited several quotes, without identifying the author, to support his statement that LNG facilities are desirable terrorist targets.

Nicole Dillingham, President of Otsego 2000, an environmental group, objected to the regulations as they fail to address the siting of LNG facilities. She stated the regulations fail to comply with Title 17 of the Environmental Conservation Law (“ECL”) related to siting such a facility in a residential neighborhood. Title 17 requires the DEC to prohibit the siting of such a facility in a residential area or in adjacent contiguous populations.

Allegra Schecter of Cherry Valley, New York commented on the issue of zoning and LNG facilities. She noted the facilities will be sited in areas with lower populations which often means areas with no local zoning laws. This could result in either local municipalities incurring great expense to enact local zoning laws to protect themselves, or facilities being placed with no zoning restrictions, where they “in effect, will make their own zoning rules.”

Corinne Rosen, an organizer with Food & Water Watch and a member of New Yorkers against Fracking, asked that the regulations be withdrawn as they do not limit what types of LNG facilities would be allowed, i.e. limiting it to the permitting of vehicle refueling and storage only.

Monica Hargraves objected to the regulations. She was concerned that the proposed regulations open the doors to LNG facilities of unlimited size, with unclear or non-existent limitations on location or emissions. Matthew Lemke, a project coordinator with NYPIRG, and several other speakers objected to the regulations on the same basis. Concern was voiced that local governments will be responsible for determining where the LNG facilities can and cannot be sited.

John Dennis, chair of the Tompkins County Environmental Management Council’s Environmental Review Committee, requested the regulations include a requirement that a surety be posted for storage facilities to be permitted to provide for proper decommissioning.

Mary Finneran asked that the regulations include penalties for any damages that occur as a result of LNG facilities and also would like the regulations to mandate that all spills be reported to local fire departments.

Laura Danna objected to the regulations because they do not address impacts from increased truck and rail traffic. She was also concerned these facilities will damage tourism in the State, especially in the wine country areas.

The hearing session concluded at 5:20 p.m. after all speaker cards had been called.