

Assessment of Public Comment Proposed 6 NYCRR Part 570 - Liquefied Natural Gas

Introduction

On September 11, 2013, the New York State Department of Environmental Conservation (DEC) proposed the adoption of 6 New York Codes, Rules and Regulations (NYCRR) Part 570 to implement requirements for a program for the safe siting, construction, and operation of liquefied natural gas (LNG) facilities, and the transportation of LNG in New York State (State). The promulgation of this regulation by DEC is authorized and required by Article 23, Title 17 of the Environmental Conservation Law.

DEC had previously invited all stakeholders DEC was aware of (96 invitees) to a meeting to describe the concepts included in the draft Part 570 on February 27, 2013 and to request feedback and comments on the concepts in the draft regulation. Three public information meetings were held to provide interested citizens with information about the proposed regulation and to answer questions, as follows:

- October 16, 2013 at the New York State Fairgrounds in Syracuse, New York
- October 30, 2013 (morning) at DEC's Central Office, 625 Albany, New York
- October 30, 2013 (afternoon) at DEC's Central Office, 625 Albany, New York

A public hearing was held to formally receive comments on the proposed regulation on October 30 at DEC's offices in Albany. Approximately 75 persons made statements at the meeting. In response to requests, the public comment period was extended from November 4 to December 4, 2013. By the end of the comment period, approximately 57,000 submittals were provided to DEC representing approximately 131,000 individual comments, a large majority of which were duplicates. One hundred ninety five unique comments were identified. All comments received were reviewed, categorized, and counted.

The comments and responses were organized into five broad groups:

1. General Comments in Support of the Proposed Rule;
2. General Comments in Opposition to the Proposed Rule;
3. General Comments on the Proposed Rule;
4. Specific Comments on the Proposed Rule; and
5. General Comments on the Rulemaking Documents and Process.

Within the five broad groups, comments were divided into 35 categories. The groups and categories are shown below in bold. Groups have a one-digit index (e.g., Group 1: General Comments in Support) and categories have two-digit indices (e.g., Category 1.1: Part 570 Adequately Protects Public Health/Safety and the Environment) and represent the "theme" of that category. Actual comments are given a three-digit index (e.g., Comment 1.1.1). DEC's responses to each comment are given the same index number (e.g., Response 1.1.1). In some cases, similar comments were made regarding both the express terms and the supporting rulemaking documents. These were recorded as separate comments, but to avoid duplication, only one response is provided.

One of the most frequent comments received during the public comment period was that an upper limit should be set on the volume of LNG that can be stored at facilities. Although DEC could not find any study or data that shows that facilities with higher storage capacities have greater risk for fire or

explosion than facilities with smaller capacities, an accident involving a facility with large capacities would have the potential to result in greater damage than a smaller facility. After careful consideration of the issue, DEC has revised the proposed regulation to include an upper limit of 70,000 gallons as an allowable facility capacity. As DEC gains experience with permitting LNG facilities and more information becomes available regarding the relationship between facility capacity and the risk of fire or explosion, DEC may reconsider the capacity limit in revisions to Part 570. This is discussed in more detail in the response to Comment 4.1.1.

1. General Comments in Support

1.1. Part 570 adequately protects public health/safety and the environment.

Comment 1.1.1. The initial 1978 moratorium and biennial renewals of the New York City (NYC) moratorium on permitting LNG facilities were and have been unnecessary.

Response 1.1.1 Comment noted.

Comment 1.1.2. The use of natural gas provides pollution reductions in comparison to petroleum and coal including lower air emissions, as well as essentially the elimination of threats to groundwater.

Response 1.1.2 DEC recognizes that burning natural gas produces lower air emissions in comparison to the combustion of petroleum or coal. "Because natural gas is a low-carbon, clean-burning fuel, a switch to natural gas in these applications can result in substantial reductions of hydrocarbon, carbon monoxide, oxides of nitrogen, and greenhouse gas emissions" (United States Department of Energy, 2013, http://www.afdc.energy.gov/vehicles/natural_gas_emissions.html). Since gaseous materials do not present a threat to groundwater and LNG quickly volatilizes to a gas, DEC acknowledges the reduction in the threat to groundwater quality from LNG in comparison to petroleum or coal. See also Responses 1.1.8 and 1.1.9.

Comment 1.1.3. We support the proposed regulation and believe that it provides appropriate safety measures. The ban on the use of natural gas as a transportation fuel is bad for State companies, consumers, and the environment. The ban defies common sense and sound economics.

Response 1.1.3 Comment noted.

Comment 1.1.4. The safety of LNG transportation is demonstrated by the fact that it is already transported across the State regularly.

Response 1.1.4 DEC is aware that LNG is and has regularly been transported across the State for many years without incident.

Comment 1.1.5. Part 570 would be the most stringent regulation in the nation.

Response 1.1.5 DEC's understanding is that other states do not require permits for the storage of LNG. DEC acknowledges that when that fact is viewed in conjunction with the incorporation by reference into Part 570 of the relevant National Fire Protection Association (NFPA) standards, and the imposition of a facility capacity limit of 70,000 gallons, the oversight of LNG facilities in the State would very likely be the most comprehensive in the nation.

Comment 1.1.6. The 1973 Staten Island accident was maintenance accident, not a LNG accident since the tank was empty for about one year before the accident.

Response 1.1.6 This comment reflects DEC's understanding of the 1973 accident.

Comment 1.1.7. The fire hazard presented by an LNG facility would be less than a comparable gasoline/diesel storage facility.

Response 1.1.7 The fire hazard presented by a specific facility depends upon several factors. In comparison to gasoline and propane, natural gas has higher (less dangerous) flammability limits (natural gas: 5% to 15%; gasoline: 1.4% to 7.6%; propane: 2% to 10%). A spill of LNG will result in a vapor cloud that quickly warms to the ambient temperature and disperses because methane has a vapor density about one-half that of air. By comparison, the vapor density of propane, an alternative fuel in wide use in the State, is about 1.5 times that of air, meaning that it will tend not to disperse and remain at ground level absent wind. Unless confined (e.g., in a building or sewer), natural gas tends to burn (deflagrate) rather than explode (detonate). However, the actual risk of a fire or explosion depends upon a series of specific circumstances (temperatures, source of ignition, confinement, volumes, material spilled, availability of oxygen, etc.).

Comment 1.1.8. LNG is a cleaner fuel than diesel or gasoline. LNG powered trucks have historically been used as an air quality mitigation strategy since the emissions produced by these vehicles have 50 percent less smog-forming oxides of nitrogen. Additionally, they do not produce diesel particulates that are identified by the California Office of Environmental Health Hazard Assessment as a toxic air contaminant with over 40 constituents that can cause cancer or reproductive harm. Natural gas as a transportation fuel can also produce up to 30 percent less carbon emissions according to the California Air Resources Board.

Argonne National Laboratory's GREET model estimates the life cycle petroleum use and greenhouse gas (GHG) emissions of light-duty vehicles running on compressed natural gas (CNG) and liquefied natural gas (LNG). Based on this model, natural gas emits approximately 6% to 11% lower levels of GHGs than gasoline throughout the fuel life cycle. When comparing the life cycle emissions of the two types of natural gas, CNG and LNG are nearly identical.

In 2007, a study for the California Energy Commission (CEC) found that both CNG and LNG reduce life cycle GHG emissions in both light- and heavy-duty vehicles compared to their gasoline and diesel counterparts. (The U.S. Department of Energy's alternative Fuels Data Center, http://www.afdc.energy.gov/fuels/natural_gas_benefits.html)

Response 1.1.8 Comment noted. The DOE also states: "Natural gas burns cleaner than conventional gasoline or diesel due to its lower carbon content. When used as a vehicle fuel, it can offer life cycle greenhouse gas (GHG) emissions benefits over conventional fuels, depending on vehicle type, drive cycle, and engine calibration. In addition, using natural gas may reduce some types of tailpipe emissions. Tailpipe emissions result from fuel combustion in a vehicle's engine. The emissions of primary concern include the regulated emissions of hydrocarbons, oxides of nitrogen (NOx), carbon monoxide (CO), as well as carbon dioxide (CO2). Due to increasingly stringent emissions regulations, the gap has narrowed between tailpipe emissions benefits from natural gas vehicles (NGVs) and conventional vehicles with modern emissions controls. That's because the U.S. Environmental Protection Agency (EPA) is requiring all fuels and vehicle types to meet the same thresholds for tailpipe emissions of air pollutants. Still, NGVs continue to provide emissions benefits—especially when replacing older conventional vehicles or when considering life cycle emissions. Natural gas is increasingly being used to replace gasoline in smaller applications, such as forklifts and commercial lawn equipment. Because natural gas is a low-carbon, clean-burning fuel, a switch to natural gas in these applications can result in substantial reductions of hydrocarbon, carbon monoxide, oxides of nitrogen, and greenhouse gas emissions. In addition, natural gas is

nontoxic, so it isn't harmful to soil or water."

http://www.afdc.energy.gov/vehicles/natural_gas_emissions.html

Comment 1.1.9. The life-cycle carbon footprint of LNG is less than that of coal.

Response 1.1.9 Comment noted.

1.2. Part 570 would not lead to an increase in demand for high volume hydraulic fracturing (HVHF).

Comment 1.2.1. The use of LNG in transportation is insignificant in comparison to overall use of natural gas.

Response 1.2.1 DEC agrees that the amount of natural gas that would be liquefied as a result of the adoption of Part 570 is very small in comparison to the total amount of natural gas consumed for all purposes in the State.

Comment 1.2.2. Promulgating this regulation to permit LNG facilities should move forward whether or not HVHF is approved.

Response 1.2.2 Comment noted.

Comment 1.2.3. Part 570 would not lead to an increased demand for HVHF.

Response 1.2.3 DEC agrees that the adoption of Part 570 would not significantly increase the demand for additional natural gas, regardless of the method of production.

1.3. Part 570 provides other benefits.

Comment 1.3.1. This regulation would provide consistency with how all other states regulate LNG.

Response 1.3.1 DEC agrees with this comment, except that DEC notes that no other state is known to require the permitting of LNG facilities, or to impose capacity limits. In that way, Part 570 is more protective/extensive than other states' approaches. DEC's understanding is that the other states with LNG facilities rely upon the NFPA standards or the principles of LNG storage and handling incorporated into the NFPA standards. See also Response 1.1.5.

Comment 1.3.2. Allowing LNG facilities will assist the State economy and businesses in that using LNG as both a transportation fuel and a heating fuel will make them more competitive.

Response 1.3.2 Comment noted.

Comment 1.3.3. The use of LNG promotes national energy independence.

Response 1.3.3 Comment noted.

Comment 1.3.4. Providing access to LNG would create the opportunity to reduce energy costs for transportation and space heating.

Response 1.3.4 Comment noted.

Comment 1.3.5. Allowing the siting of LNG facilities would increase the reliability of fuel supplies.

Response 1.3.5 Comment noted. DEC did not develop a definition of fuel supply "reliability" or data to compare the reliability of the various fuel types as part of this rulemaking.

Comment 1.3.6. Government use of LNG would lead to opportunities for cost savings and tax reductions by passing along savings to taxpayers.

Response 1.3.6 Comment noted.

Comment 1.3.7. Taxing LNG as a transportation fuel would provide revenues needed to maintain and improve State roads and bridges. A study should be performed to evaluate road tax needs.

Response 1.3.7 Comment noted. DEC did not evaluate potential tax revenues from the use of LNG as a motor vehicle fuel as part of this rulemaking, as this issue is beyond the scope of the rulemaking.

Comment 1.3.8. The promulgation of Part 570 will produce jobs.

Response 1.3.8 Comment noted. The 2011 New York State Energy Research and Development Authority (NYSERDA) report projected that over the first five years after promulgation of Part 570, 17 new jobs would be created associated with the estimated 21 new LNG facilities. These results are reflected in the Job Impact Exemption Statement.

Comment 1.3.9. We support DEC's proposal to issue facility-specific permits because that provides opportunities to exert facility-specific controls.

Response 1.3.9 DEC acknowledges that by issuing permits to LNG facilities under Part 570, DEC would be able to include special conditions to address facility-specific issues. See also Responses 1.1.5 and 1.3.1.

Comment 1.3.10. LNG fuel tanks are safer than petroleum fuel tanks in part because they are double-walled tanks as opposed to typical single-walled fuel tanks.

Response 1.3.10 Comment noted. DEC also notes that LNG fuel tanks are also designed and constructed to meet pressure vessel standards.

Comment 1.3.11. LNG vehicle fuel tanks do not vent methane in normal use (contrary to statements by commenters at the hearing).

Response 1.3.11 Comment noted. Information received by DEC from operators of large and small LNG storage tanks/facilities indicate that these tanks also do not vent methane during normal operation; boil-off is most often recaptured. LNG can be stored in large tanks for months and smaller tanks for weeks without the need for venting. Vehicle LNG tanks can be idle for 10 or more days without venting.

2. General Comments in Opposition

2.1. Withdraw Part 570 because it promotes HVHF which presents risks to public health/safety and/or the environment.

Comment 2.1.1. Any connection of LNG use with HVHF is unacceptable.

Response 2.1.1 This regulation does not address the production of natural gas; there is no connection to HVHF. The potential increase of natural gas usage in the State resulting from this regulation is insignificant in comparison to the total usage of natural gas in the State (less than one percent). Therefore, promulgation of this regulation will not increase the demand for natural gas to a noticeable degree or result in increased HVHF, if HVHF were to be approved in the State. See also Response 1.2.1.

Comment 2.1.2. Part 570 creates NG and fracking demand by creating a transportation infrastructure.

Response 2.1.2 While some elements of a transportation infrastructure, e.g., fueling stations, would be likely to be created, this would result in a very low increase in demand for natural gas. See also Responses 1.2.1 and 2.1.1. Any increase in demand for NG would be offset by a

similar decrease in demand for diesel fuel, which would result in net environmental benefits to the State.

Comment 2.1.3. Part 570 creates NG and fracking demand by allowing large storage facilities.

Response 2.1.3 See Responses 1.2.1, 1.2.3, 2.1.1, and 2.1.2. This comment is now addressed by the imposition of a 70,000 gallon facility capacity limit in the revised proposed regulation. As indicated in the Regulatory Impact Statement (RIS), no large storage facilities are anticipated within the first five years of the program. Large storage facilities would be associated with either a peak shaving plant, a terminal that would deliver LNG to facilities to dispense as a transportation fuel, or import-export facilities. The 2011 NYSERDA report projected no new demand for LNG peak shaving plants within the limits of the projection (five years). In order for an in-state terminal to exist and provide LNG to facilities to dispense as transportation fuel, there would need to be certified transportation routes, which do not exist at this time. DEC does not have projections regarding the likelihood of new peak shaving plants or LNG terminals beyond the five years evaluated under the report. LNG import or export facilities are expected to be outside of DEC's jurisdiction and would require permits from federal agencies, potentially including Federal Energy Regulatory Commission (FERC), the Coast Guard, United States Department of Transportation (USDOT), and/or others. Any LNG facilities constructed, large or small, would likely be developed in lieu of facilities using other fuels that would have more significant adverse environmental impacts than natural gas.

Comment 2.1.4. Once Port Ambrose is licensed as an import facility, nothing stops it from switching over to export. A new license is not required by law. An import license can be amended without any further environmental review or public oversight. Given the ongoing gas boom in the Marcellus Shale, given low domestic prices for natural gas in the United States, and higher prices for natural gas abroad, it makes economic sense for the gas industry to want a deepwater LNG terminal off the coast of the State for export.

Response 2.1.4 This issue is outside the scope of this rulemaking. This proposed facility is under federal jurisdiction, both because it is proposed to be for the import of LNG, and also because it is located in federal waters, out of New York's jurisdiction. The proposed project does not involve onshore storage or onshore regasification of LNG, so Part 570 would not apply. However, the State would have significant input into the Port Ambrose project under the Deepwater Ports and Coastal Zone Management Acts. See Response 2.1.3.

2.2. Part 570 should be withdrawn because storage of LNG presents unacceptable risks to public health/safety and/or the environment, beyond perceived HVHF-associated risks.

Comment 2.2.1. There are general concerns about the risks to health, safety and the environment from storing and transporting LNG in the State. These proposed regulations are incomplete and need to be revised. Then another public comment period needs to be held prior to promulgation.

Response 2.2.1 The NFPA standards for LNG, which are incorporated by reference into Part 570, address fire and safety requirements and have been in wide use nationally and internationally for many years. There has been an excellent safety record in the LNG industry as documented in the 2011 NYSERDA report. The State's approach under Part 570 will be more protective than that undertaken by any other state since, above and beyond NFPA requirements, DEC will review each application on a case-by-case basis, denying applications or imposing special permit conditions where appropriate. It should also be noted that three multi-million gallon LNG liquefaction, storage and regasification facilities have been operating in the State for over

40 years without incident. Inclusion of a 70,000 gallon limit in the revised proposal addresses this concern. See also Responses 1.1.5 and 1.3.1.

Comment 2.2.2. Critical to considering the Draft LNG Regulations is the "Legislative Findings" wherein the Legislature laid out the standard for how LNG regulation in the State must proceed:

The legislature finds that it is necessary for the protection of the public health, the environment and the economic welfare of the people of this state to regulate and control the siting of liquefied natural and petroleum gas facilities in this state because of the hazards posed by liquefied natural and petroleum gas storage and transportation, particularly in populated areas. The legislature finds that liquefied natural and petroleum gas is an extremely volatile, highly flammable and dangerous substance which if released into the air is capable, under unfavorable atmospheric conditions, of causing severe damage even in areas distant from the point of release. The legislature further finds that the use of imported and domestic liquefied natural and petroleum gas is increasing, making its regulation in the public interest essential; and requiring particular caution in its storage transportation and conversion, to be carried out other than in residential areas or in dangerous proximity to contiguous population, with the imposition of strict liability in the handling thereof.

It is the purpose of the legislature, subject to the provisions of this act, that liquefied natural or petroleum gas facilities not be sited in residential areas or in dangerous proximity to contiguous populations, and that transportation of liquefied natural or petroleum gas be effected under maximum safeguards to protect such areas and populations against possible catastrophic danger in the mishandling or possible escape thereof. [Emphasis added.]

Thus the legislature made it clear at the very outset of the law that LNG was extremely dangerous; and therefore, that the siting of LNG facilities was incompatible with and is to be prohibited from taking place in residential areas or in "dangerous proximity" to nearby population areas. With respect to LNG transportation, the Legislature made it clear that it may only take place under "maximum safeguards."

Despite the comprehensive statute and high threshold for public safety, the Legislature revisited the issue of LNG in the State in 1978, when it imposed a decade-long moratorium on the siting and operation of new LNG facilities.¹

In enacting the 1978 moratorium, the Legislature declared the following:

Section 1. Legislative finding. The legislature finds that in order to protect the public health, safety and the environmental and economic welfare of the state, it is necessary that the within action of imposing limited moratoriums on the construction of storage or conversion facilities for the transportation of liquefied natural or petroleum gas is prompted of necessity because of the known and yet to be discovered hazards posed by the transportation and storage of such gases. Recent studies conducted under the auspices of the federal government have concluded, at least preliminarily, that storage facilities for and transportation activities involving these gases are highly vulnerable to accident, severe storms, earthquakes and terrorist attacks....²

¹ Laws of 1978, Chapter 395, sections 1-5.

² The Legislature allowed the statutory moratorium to sunset as of April 1, 1999 with respect to areas outside NYC, despite the concerns about terrorism, severe weather, and operator error. NYC's moratorium has been extended periodically and currently is effective through April 1, 2015.

The heart of the LNG Statute is section 23-1709, "Criteria for Siting." This section lays out the explicit standard the DEC and New York State Department of Transportation (NYSDOT) are to meet in crafting regulations. In this section the Legislature provided that:

1. The department shall, after investigation and opportunity for public comment ... adopt ... regulations establishing criteria for the siting of liquefied natural and petroleum gas facilities. Such siting criteria shall be designed to insure the maximum safety of the public from hazards associated with the liquefied natural or petroleum gas storage, transportation and conversion. [Emphasis added.]

In section 23-1709(2), the Legislature directed that DEC and NYSDOT "shall take into account" and establish criteria that would address key public health and safety concerns, including:

- §23-1709(2)(a): the density of population in areas neighboring an LNG facility.
- §23-1709(2)(b): the density of population in areas neighboring delivery routes to LNG facilities, whether delivery is by rail, barge or truck.
- §23-1709(2)(c): the risk of accident during the transportation to or from an LNG facility "which could result in a release of liquefied natural ... gas from containment and the safeguards necessary to reduce such risk."

Underscoring the high standards the Legislature established in law for LNG activities and as an additional protection, the Legislature imposed *strict liability* on LNG activities, *i.e.*, liability for deaths, injuries and damages, regardless of fault. The Legislature stated in Article 23-1717:

The storage, transportation, and conversion of liquefied natural and petroleum gas within the state, in view of its extreme volatility, high flammability, and dangerous qualities if mishandled resulting in accidental release, is determined to be hazardous and entails strict liability on the part of any person, as defined under this title, that undertakes such activities in the state. Neither compliance with the requirements of this title, not the exercise of due care, shall excuse any such person from liability for personal or property damage determined to be caused by the accidental release of liquefied natural or petroleum gas within the state, and neither proof of means of ignition nor distinctions between direct and consequential damage shall relive such person of absolute liability without regard to intent or negligence for any personal or property damage thereby caused. [Emphasis added.]

Simply put, DEC has failed to draft regulations that meet the high standards set out by the Legislature. Accordingly, they must be withdrawn.

Response 2.2.2 To comply with the statutory requirement to develop a regulation for the storage of LNG, DEC has taken into account the various hazards presented by LNG, reasonable worst case scenarios, the need to establish clear and feasible permitting and operational requirements for those seeking permits, and the various options for balancing each of these sometimes competing factors. An important part of this evaluation has been to consider the approaches taken by the other states to address these issues. The result was a finding that all other states with significant LNG storage have adopted the NFPA standards to establish the requirements for the safe siting, storage, and handling of LNG. The value of the NFPA standards for LNG has already been recognized in the State by the long-standing incorporation of these same standards (NFPA 52 and 59A) into the State building/fire codes.

The hazards of LNG are similar to, or less than, those presented by other volatile fuels that are present throughout the state (e.g., gasoline, propane, fuel oils; see Response 1.1.7). LNG

presents a fire hazard when the liquid is converted into the gas phase (i.e., natural gas). If the gas is confined (e.g., in a building or sewer line), it then presents a risk of explosion.

Natural gas is in very widespread use in the State for space heating, cooking, and other purposes in millions of residences, commercial/industrial buildings, schools, hospitals, and other structures. The State's primary consumption of natural gas exceeded petroleum for the first time in 2011 with 1,247 trillion British thermal units of natural gas consumed, which represents 33.7% of total primary energy consumption and the largest energy source in the State (NYSERDA, Patterns and Trends, New York State Energy Profiles, 1997-2011, June 2013).

In compliance with the statute, and in recognition of the dangers noted in the comment, DEC has provided more protective requirements for the storage and transportation of LNG under revised proposed Part 570 than any other state addressing this issue. Other states rely solely on the NFPA standards that are incorporated by reference into Part 570. DEC goes further, and has proposed adding the requirement that all new LNG facilities in the state operate under environmental safety permits issued by DEC. In addition, the inclusion of a 70,000 gallon limit on facility capacity in the revised proposal addresses this perceived concern. If DEC determines that risks posed by a proposed facility are unacceptable, it can deny the permit application. The strict liability provision in the LNG statute stands alone and does not need to be repeated in the regulation.

For facilities that meet permitting requirements, DEC could and would impose special conditions in permits that sufficiently mitigate potential risks. To ensure the maximum safety of LNG facilities permitted under Part 570, DEC has incorporated into the permitting process the review of the New York State Office of Fire Prevention and Control (OFPC, within the Division of Homeland Security and Emergency Services). OFPC is the State agency with the most expertise in this area, and would work with DEC with regard to the safety issues. This approach is reasonable. See also Response 2.2.1.

Comment 2.2.3. Part 570 does not adequately address the connection between the proposed regulations and climate change. Climate change should be part of the analysis of the regulations. To claim that Part 570 should not address this national policy issue is not relevant to this particular regulation is not acceptable. A clear separation between this policy issue and this regulation further expose the major deficiencies in the analyses and justification for the proposed regulations; this serves as a basis to nullify to proposed regulations and to create ripeness for legal challenges in the State Environmental Quality Review Act (SEQRA) areas for segmentation, and with respect to substantive compliance.

Response 2.2.3 DEC recognizes that climate change is an important public policy issue. The life-cycle greenhouse gas emissions from LNG are lower than those from the fuels it will replace under Part 570 (see Response 1.1.8). The applicability of SEQRA is addressed later in this document. See also Response 5.3.2.

Comment 2.2.4. DEC should “[m]aintain the long-standing moratorium on Liquefied Natural Gas infrastructure that has protected the people of New York State since a horrific explosion on Staten Island killed 40 people in 1973. Withdraw the fatally flawed draft LNG regulations.”

Response 2.2.4 The moratorium on LNG facilities was imposed by and lifted (except in NYC) by the State Legislature. The 1973 explosion was a maintenance accident at a tank that had been empty of LNG for about 12 months. See also Responses 1.1.1 and 2.2.1.

Comment 2.2.5. The Division of Remediation (DER) is the janitorial branch of the DEC. It's charged with overseeing the discharge and disposal of radioactive waste. Under its purview are all the State's brownfields, toxic waste dumps and petroleum spills. In short, the Division of Remediation cleans up messes. Relegation of rule-making to the Remediation Division of DEC would seem to reflect, on the part of DEC, tacit acknowledgement that LNG accidents are inevitable. It suggests that accident management, rather than avoidance of harm altogether, is the paramount concern. The homepage for the Division of Remediation features a picture of a drill rig? Why is that? Who is that visual for? For citizens? Or for industry?

Response 2.2.5 DER is responsible for and has extensive expertise in regulating and inspecting the bulk storage of many hazardous materials and substances, including petroleum and hazardous chemicals, and not just the remediation of releases and discharges. The picture of a drill rig on DER's website simply reflected the very large number of environmental investigations, including sub-surface investigations, carried out by the Division while carrying out its responsibilities to investigate and clean up thousands of hazardous waste, brownfields, and spill sites. Throughout the development of the proposed regulation, DEC has enlisted assistance and collaboration from other involved agencies including the NYSDOT, the OFPC, New York State Department of Public Service (NYSDPS), NYSERDA, and New York State Department of State (NYSDOS). In evaluating LNG facility permit applications regarding the capabilities of local fire response agencies, DEC (DER) will be working closely with the OFPC.

Comment 2.2.6. Because DEC permits cannot be challenged, this rule creates unacceptable risks.

Response 2.2.6 The permitting process would always include public notice. When appropriate, a public hearing may be held prior to any permit being issued. All interested parties, including any opposed to the issuance of a permit, or desirous of having special conditions imposed in such permits, may make comments and seek to participate in hearings. All resulting comments would be considered in making a decision to issue any permit. In addition, all final DEC actions, including those issuing or denying permits, may be challenged in court under Article 78 of the State Civil Practice Law and Rules by any party adversely impacted by the decision, including applicants and intervenors.

2.3. Withdraw Part 570 because it is unnecessary.

Comment 2.3.1. Many facilities that produce and store cryogenic fluids without permits already exist. Permits are not needed for LNG facilities.

Response 2.3.1 The requirement for permits is set forth in state law. Not requiring an LNG facility permit would require a change to or rescission of that law.

Comment 2.3.2. Part 570 is unnecessary given other existing regulatory requirements for LNG facilities and is contrary to Governor Cuomo's directive to streamline administrative processes. We question whether or not the promulgation of this Part 570 is necessary or desirable from the standpoint of managing the safe operation of LNG facilities. In March of 2001, DEC's Director of the Division of Environmental Permits indicated that "...most of the statutory requirements governing LNG facilities relate to matters such as safety, maintenance and transportation issues, which fall outside the mission of this department and which have already been more appropriately placed elsewhere."³

³ See letter of Jeffrey J. Sama, DEC Director of the Division of Permits to Mr. Pascual Vilaro dated March 1, 2001.

In fact, there is an extensive set of federal rules found in 49 Codes of Federal Rule (CFR) 193 that set forth requirements for LNG facility operators. Notably, this company's facility is already subject to 16 NYCRR 259 which incorporates the Federal requirements and is enforced through annual inspections by the State Public Service Commission (PSC) staff.

Although the company's LNG facility is not subject to the first four subparts of 49 CFR 193 dealing with siting, design, installation and construction⁴, it is subject to Subparts E through J dealing with equipment replacements, operations, maintenance, personnel training and qualifications, fire protection and security. It is the company's adherence to these Subparts that the PSC staff members evaluate as part of their ongoing assessment process.

Additionally, as noted in DEC's 1979 findings, the company's facility is monitored closely and routinely by the New York Fire Department (NYFD). The NYFD witnesses an annual demonstration of the fire suppression systems at the company's facility.

In light of Governor Cuomo's directive to State agencies to streamline administrative processes and to eliminate duplicative regulatory requirements⁵, the company suggests that DEC re-evaluate this rulemaking effort and address any concerns with the existing LNG regulatory paradigm with those agencies—specifically, the PSC—that have been regulating this sector for many decades.

Response 2.3.2 Comment noted. However, the LNG statute mandates the promulgation of regulations before LNG may be stored or converted in New York, except for pre-existing facilities.

3. General Comments on Part 570

3.1. Part 570 is expansive and adequate.

Comment 3.1.1. Part 570 includes the relevant NFPA standards and federal transportation/navigation regulations.

Response 3.1.1 Comment noted.

Comment 3.1.2. Part 570 also recognizes that other rules, i.e., building/fire codes and zoning codes, would also apply.

Response 3.1.2 DEC is aware that the NFPA standards are already incorporated by reference into the State Building/Fire Code.

Comment 3.1.3. DEC should consult with the State Fire Marshall's office on fire prevention issues.

Response 3.1.3 DEC would work with the OFPC on response capabilities of local emergency responders. See also Response 2.2.5.

3.2. Part 570 is inadequate to protect public health/safety and/or the environment.

Comment 3.2.1. The existence of LNG facilities creates security/terrorism risks.

Response 3.2.1 All fuel facilities present certain risks. The NFPA standards require that security/terrorism risks be addressed in the design and operation of facilities regulated by Part 570. Large import/export facilities that could represent larger risks are primarily under the jurisdiction of federal agencies. See Response 2.1.3. Across the nation and world, large LNG facilities, including three in the State, have operated for decades without significant

⁴ 49 CFR 193 was promulgated after the siting, design, installation and construction of the Company's facility.

⁵ See, for instance, <http://www.governor.ny.gov/mandatereliefcouncil>

security/terrorism incidents. See also Responses 1.1.5 and 1.3.1. The inclusion of a 70,000 gallon limit on facility capacity in the revised proposal addresses these perceived concerns.

Comment 3.2.2. The proposed Regulations fail to address the effects of the emission of methane, which is a greenhouse gas many times more potent as a contributor to global warming than carbon dioxide for decades after its release into the atmosphere. Emissions from LNG facilities are of particular concern because the venting ("boiling off") of unburned methane is an inherent aspect of LNG storage. The storage of liquefied natural gas is a cryogenic process in which methane is maintained at an extremely low temperature, typically -161°C (-259°F). Although storage tanks are heavily insulated, they continuously absorb heat from the surrounding environment; therefore, methane must be routinely vented to relieve pressure in the tanks. Venting is also done as part of a process known as "auto-refrigeration" which uses the change of state caused by evaporation to cool contents that remain in the tank. For this reason, LNG tanks—whether in transit or storage at a facility—are regular emitters of methane to the atmosphere.

Response 3.2.2 DEC and the State continue to investigate strategies to reduce methane loss in the production, transportation, liquefaction and storage of natural gas. The three existing "grandfathered" facilities in the State (multi-million gallon peak-shaving plants in Astoria, Greenpoint and Holtsville) all either recapture or flare natural gas in accordance with fire code requirements, and do not vent it during normal operations. Nevertheless, this and related issues are addressed in proposed subsection 570.2(a), which provides, in part, that: "Nothing in this Part exempts a facility from compliance with any other applicable State, federal, or local requirements." DEC's Division of Air Resources provides oversight of air emissions at all facilities. Where appropriate, LNG facilities would have to apply for and comply with any such air permits. In addition, each application would undergo SEQRA review. When necessary, applicants will be required to conduct a full Environmental Impact Statement, which will, as appropriate, address air and climate change issues. See Commissioner Policy-49, Climate Change and DEC Action. As noted, however, LNG storage tanks do not routinely vent. Depending upon the size of the tank, venting is not needed under normal use and even if idle, may not be needed for extended periods. The inclusion of a 70,000 gallon limit on facility capacity in the revised proposal addresses these perceived concerns. See also Responses 1.1.8, 1.1.9, 3.2.4, 3.3.6, 5.3.2 and 5.3.3.

Comment 3.2.3. The impacts of flaring are not adequately considered. Emissions are common as part of re-gasification, which is why flare stacks are often present at LNG facilities. Flare stacks at LNG facilities located near homes and businesses could be in operation indefinitely without any requirement for methane capture, thereby damaging air quality, impacting public health and contributing to climate change. At LNG facilities that serve as equipment or vehicle refueling stations, natural gas can also escape to the atmosphere whenever fuel lines are attached and detached. In addition to natural gas vented to the atmosphere or flared, LNG facilities can also produce other emissions and waste such as exhaust from driver motors, liquid effluents from sumps, drains, and cooling returns, and solid waste associated with spent sieves and mercury removal. The Regulations must address health and climate impacts, establish strict limits on emissions and flaring, require the recapture of methane vented from storage tanks and ensure the proper disposal of all LNG process waste.

Response 3.2.3 If a facility uses a flare, or otherwise emits pollutants, it would be subject to all applicable air emission regulations. Requirements for the proper management and disposal of solid/hazardous waste are addressed in other DEC regulations. See also Responses 1.1.8, 1.3.11, 3.3.1, 3.2.2, 3.2.3 and 5.3.2.

Comment 3.2.4. The “life cycle” costs and impacts of LNG are not considered in Part 570.

Response 3.2.4 According to the USDOE, the life-cycle cost of LNG (i.e., the total of all greenhouse gas emissions associated with the production, transportation, and use of LNG) is lower than petroleum. In addition, the maximum volume of natural gas that is reasonably foreseeable to be used in connection with this rulemaking is insignificant in comparison to the total annual usage of natural gas in the State. If LNG facilities permitted under this regulation had an annual throughput of 100 million gallons, this would still be less than one percent of the annual natural gas usage in the State (based upon data from the US Energy Information Administration). For this and other reasons, DEC concluded that the promulgation of the regulation would not result in a significant adverse environmental impact, leading to the negative declaration. See also Responses 1.1.8, 1.1.9, 3.2.2 and 5.3.2.

Comment 3.2.5. Part 570 does not address potential negative impacts to air, water quality, noise, light, wildlife populations, wetlands, floodplains, bird migration, or habitat fragmentation. Each permit application should receive a positive declaration.

Response 3.2.5 See Response 5.3.2.

3.3. Part 570 fails to address some topics.

Comment 3.3.1. Part 570 should require applicants to list other permit requirements (e.g., air permits).

Response 3.3.1 Part 570 would require compliance with all other applicable State, federal and local requirements. As appropriate, DEC can consider requiring applications to specify all other permits that may be needed for a particular project on a case-by-case basis as part of the application for a permit. However, it is not appropriate to attempt to list each separate permit that could be required – such an attempt could limit DEC in specific cases.

Comment 3.3.2. Part 570 should clarify how projects that could be subject to multiple jurisdictional authorities would be processed (e.g., a peak shaving plant subject to Part 570 and FERC).

Response 3.3.2 DEC would coordinate the processing of all permits with other authorities that may have jurisdiction at the proposed facility. The inclusion of a 70,000 gallon limit on facility capacity in the revised proposal addresses this comment.

Comment 3.3.3. Part 570 should have specific engineering requirements that address the different processes of generating, storing, dispensing, and transporting LNG.

Response 3.3.3 These engineering requirements are addressed in the NFPA standards, which are incorporated by reference into proposed Part 570. See also Response 2.2.1.

Comment 3.3.4. The applicability of Part 570 should be clarified to explain what types of facilities are covered (i.e., not just transportation facilities).

Response 3.3.4 After review, DEC believes that the definition of “LNG Facility” at 6 NYCRR 570.1(c)(9) clearly defines facilities that are covered by Part 570 and should not be changed. See response 3.3.2.

Comment 3.3.5. Any permits for larger facilities must include requirements more stringent than the NFPA standards.

Response 3.3.5 Unlike other states, DEC would evaluate each LNG facility application individually. If in the review of a specific application, DEC concludes that special conditions are necessary to address facility-specific risk factors, they would be included in the permit.

However, the NFPA standards adequately address LNG facilities of various sizes as shown by many years of safe operation across the country at facilities subject to these standards. The inclusion of a 70,000 gallon limit on facility capacity in the revised proposal addresses this comment. See also Response 2.2.1.

Comment 3.3.6. Part 570 should require recapture of vented natural gas.

Response 3.3.6 See Responses 1.1.9, 1.3.11, 3.3.1, 3.2.2, 5.3.2 and 5.3.3.

Comment 3.3.7. LNG facility design should prevent any gas confinement (canopies, etc.).

Response 3.3.7 The State building/fire codes and the NFPA standards include requirements to either prevent gas confinement or to include appropriate safety features when gas systems are used in structures (e.g., heating systems). See also response 5.3.2 and 5.3.3.

Comment 3.3.8. LNG transportation by rail should be prohibited.

Response 3.3.8 LNG transportation by rail is governed by federal law. State regulation in this field is, in general, preempted.

Comment 3.3.9. DEC should consult with the National Parks Service (NPS) when facility siting could impact NPS areas.

Response 3.3.9 Should DEC receive an application for a permit for an LNG facility located on property managed by the NPS, DEC would consult with the NPS to resolve any concerns.

Comment 3.3.10. All LNG facilities and operations should be subject, by reference, to the federal OSHA Process Safety Management and EPA Risk Management Program regulations in their entirety.

Response 3.3.10 The proposed regulation, at 570.2(a), requires all LNG facilities to comply with all other applicable State, federal or local requirements.

3.4. The NFPA standards are inadequate/inapplicable.

Comment 3.4.1. The NFPA standards change over time.

Response 3.4.1 The NFPA standards are reviewed and modified on a regular basis to ensure that the standards are current with the latest information. State regulations, including the revised proposed Part 570, are required to reference a particular version of any standards they incorporate by reference, including the NFPA standards. This is necessary so that the requirements of a proposed regulation are made known to the public at the time of promulgation and are not subject to change by others without State action. If DEC wishes to adopt later versions of the standards it must do so through the rule making process. DEC will undertake such additional rulemaking as needed.

Comment 3.4.2. The NFPA standards do not address environmental issues or guarantee that the most stringent risk analysis will be applied and not just an assessment of "tolerable" losses.

Disturbingly, the NFPA code specifically referenced by the proposed Regulations appears to promote risk assessment methods that actually encourage the discriminatory treatment of rural populations. Because the code assesses risk in terms of "tolerable" annual fatalities, people who live in rural areas may be exposed to greater danger than those living elsewhere. In fact, based on risk assessment methods accepted by NFPA, it may be permissible for various safety measures, containment techniques, buffer zones and other protective measures to be less stringent in rural communities simply because the number of people who might die in the event of an accident is smaller. This disparate treatment of human beings is highly objectionable.

Response 3.4.2 DEC believes that this comment mischaracterizes the NFPA standard. The comment appears to be referring to NFPA 59A Chapter 15, which addresses proposed exceptions or variances to the standard setback requirements. If an applicant for a Part 570 permit were to propose a variation to the standard setback requirements using the methods outlined in Chapter 15, DEC would be obligated under the LNG law to consider the risk presented by the proposed facility to the surrounding population. The legislature has directed that densely populated areas be treated differently from substantially less populated areas. DEC would consult with the OFPC to ensure that no unreasonable risk would be allowed. The guidance in NFPA 59A provides a limit to risk that applies to all populations regardless of whether they are in a rural or highly populated area. As stated in NFPA 59A, “. . . ‘tolerable’ does not mean ‘acceptable.’ It refers instead to a willingness by society as a whole to live with a risk so as to secure certain benefits in the confidence that the risk is one that is worth taking and that it is being properly controlled.” (NFPA 59A, Appendix A.15.2.2). Further, DEC is not limited to the NFPA guidance and may deny permits or impose special conditions as determined necessary to properly site an LNG facility. See also Responses 1.1.5, 2.2.2, and 4.9.1.

Comment 3.4.3. Part 570 places a burden on local municipalities (authority with jurisdiction) to make risk assessment decisions.

Response 3.4.3 DEC would always be the “authority with jurisdiction” regarding Part 570 permits. The regulation would not impose a burden on local municipalities for these decisions.

Comment 3.4.4. NFPA does not calculate blast radius as a function of facility capacity.

Response 3.4.4 The NFPA standards require setbacks from property lines adequate to avoid danger to surrounding structures/areas. The setbacks include consideration of tank capacity. In addition, the inclusion of a 70,000 gallon limit on facility capacity in the revised proposal addresses this comment. See also Responses 2.2.1 and 4.1.1.

Comment 3.4.5. NFPA allows the authority having jurisdiction to waive requirements. The NFPA code (sic) also requires that the "authority having jurisdiction" ("AHJ") must select which risk assessment option should be used and how it should be interpreted. (59A NFPA Code, 2013 Ed. Chapter 15.4.2) Furthermore, the NFPA code (sic) states that any provision of the code may be waived at the discretion of the authority having jurisdiction. (Id. At Sec. 5.3.1.4.) Thus, to the extent the DEC relies on the suggested NFPA code, the DEC's approach is in fact circular. DEC references the NFPA code, which in turn requires the "agency having jurisdiction", here the DEC, to make determinations, which are in fact missing from the proposed Regulations. Also, the definition of "authority having jurisdiction" in Regulations is in conflict with that in NFPA 59A. (Compare Regulations Sec. 570.1(c)(2) and 59A NFPA, 2013 Ed., Chapter 3.2.2.)

As a result, it is impossible for the public to know what protection and what criteria, if any, are applicable. Section 570.2(d)(4) of the proposed Regulations merely states that the DEC "shall consider" compliance with the 2013 NFPA code and attendant risks, without providing any criteria as to how those risks will be measured, assessed or mitigated. This is in direct violation of the LNG Statute cited above. It also fails to provide any reasonable standards for staff to apply in interpreting risks and making permitting decisions. This is unacceptable.

Response 3.4.5 The issuance of variances from specific portions of the NFPA standards can only happen if the applicant performs a risk analysis that demonstrates that there would be no unacceptable risks resulting from the variance. There may be several authorities in the area of a proposed facility. However, in all cases in which a Part 570 permit will be issued, DEC will

always be the AHJ. Local zoning and building/fire codes may impose more stringent requirements, but they may not waive a state requirement, whether those are set under a Part 570 permit, under the State building/fire code or another State permit, statute, or regulation.

Comment 3.4.6. It is unclear who the authority having jurisdiction will be. Is it the DEC or the municipality? The NFPA codes (sic) defer internally to another entity, an "Authority Having Jurisdiction" (AHJ) to select what method of risk assessment will be used, providing further that the AHJ may waive any provision of the codes at its discretion. This renders the NFPA codes entirely ineffective as a regulatory instrument. Furthermore, neither the codes nor regulations clearly establish who the "authority with jurisdiction" will be. Relative to the issuance of permits pursuant to the LNG statute, it would appear that the "authority with jurisdiction" must be DEC. However, this is, in fact, a circular reference since DEC's proposed regulations refer to NFPA codes. During the information meeting on October 30th, DEC suggested that LNG siting criteria would be established through zoning, thus implying that each local government may actually be an "authority with jurisdiction." Yet, this neglects the fact that many towns and village in the State do not have zoning, and that even those which do are unlikely to have adopted zoning laws for LNG facilities which have been prohibited for the last forty years. Besides this, such a "pass-the-buck" approach violates the clear mandate set forth in Environmental Conservation Law (ECL) Article 23, Title 17 that DEC must establish and enforce its own strong set of siting criteria as a condition for permit approval. Although it is appropriate and necessary for any local zoning rules which are more stringent to be respected, this does not release DEC from its statutory obligation of promulgating meaningful siting criteria as a regulatory floor. As written, the proposed rules contain improper and circular assignments of authority which skirt the statutory intent of the LNG statute.

Response 3.4.6 See Responses 1.1.5 and 3.4.5.

Comment 3.4.7. NFPA 59A does not and should not apply to facilities that store LNG for vehicle refueling.

Response 3.4.7 Part 570 requires compliance with the applicable requirements of NFPA 59A and/or NFPA 52. Vehicle refueling facility requirements are found in NFPA 52, which is also incorporated by reference into proposed Part 570.

Comment 3.4.8. The NFPA standards should not be used because NFPA is an industry-based non-governmental organization; this appears to represent a conflict of interest.

Response 3.4.8 According to its website, the NFPA is an international nonprofit organization established in 1896. Its mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes and standards, research, training, and education. Membership includes more than 70,000 individuals from nearly 100 nations. NFPA develops, publishes, and disseminates more than 300 consensus codes and standards intended to minimize the possibility, and effects, of fire and other risks.

Standards developed by NFPA and similar Standards Development Organizations (SDOs) are "voluntary consensus standards," created through procedures accredited for their consensus decision-making, openness, balance of interests represented, and fairness by the American National Standards Institute (ANSI).

The United States has a long tradition of government use of voluntary consensus standards to help address important public policy issues. All NFPA standards are developed and periodically reviewed by approximately 7,000 volunteer committee members with a wide range of professional expertise. Many existing State regulations, for example, the State

building/fire code, already adopt many of the NFPA standards including the LNG standards in Part 570.

Comment 3.4.9. There should have been a comprehensive evaluation of the sufficiency of the NFPA standards regarding safety and security issues (e.g., buffer zones, terrorism, etc.) Studies of security threats of LNG facilities have noted that LNG fires burn far hotter and more rapidly than other fuels, can be carried by wind currents, and cannot be extinguished. The intense thermal radiation released by a large, ignited spill of LNG can burn human flesh and melt steel hundreds of feet away. This ability to cause injury, death and destruction over long distances is precisely what makes LNG facilities so attractive to terrorists. In light of these inherent vulnerabilities, "rigorous environmental and security impact assessments must be conducted and security recommendations must be implemented to decrease the associated risks before LNG can be promoted as an alternative to other fossil fuels." Decentralized energy sources, including solar electricity and wind power, eliminate terrorist threats to energy infrastructure altogether.

Response 3.4.9 The State has previously determined that the use of NFPA in state regulation is appropriate through other rulemakings. For example, it has already adopted NFPA 52 and 59A in the State building/fire code. Other states have also adopted these standards. The comment implies that natural gas flame temperatures and velocities are much higher than other common fuels. Flame temperatures and velocities for natural gas are similar to or lower than those of other fuels. See also Responses 1.1.5, 3.2.1, 3.4.8 and 5.3.4.

3.5. The scope of Part 570 is inadequate/unclear.

Comment 3.5.1. Part 570 should cover CNG and Liquefied Petroleum Gas (LPG) – CNG facilities, infrastructure, storage, transfer and use apparently are not regulated at all by DEC. These activities should be included in Part 570, since CNG will be the presumed end product for at least some uses of LNG.

Response 3.5.1 The scope of Part 570 is set forth in ECL 23-1705(1). In conformance with that scope, proposed Part 570 would address only LNG. CNG is outside the scope of this statute and hence cannot be covered by this regulation. CNG and LPG are both in widespread use across the State and are already covered by the State Fire Code.

Comment 3.5.2. Part 570 fails to regulate the production of LNG (including production equipment on a mobile platform/trailer) by omitting the word "confinement" as given in ECL 23-1705(2) – The Draft LNG Regulations fail to directly regulate LNG production—liquefaction of natural gas to create LNG. This is a critical stage in the LNG cycle, super cooling natural gas to create a phase change to LNG and presents tremendous public safety risks.⁶

Since the Legislature clearly directed that DEC address all the dangers associated with LNG, the failure to directly include LNG production facilities is a glaring omission. Further, by omitting the term "confinement" from the Draft LNG Regulation, DEC excises key language. LNG is clearly "confined" at the point of production and until the LNG is placed in a tank, vehicle, pipeline or some other container. In fact, its confinement must be closely regulated and a comprehensive system of monitoring and venting must be in place to ensure this confinement takes place under the safest possible circumstances.

⁶ NFPA 59A(3.3.15) defines "LNG Plant" as "A facility whose components can be used to store, condition, liquefy, or vaporize natural gas."

DEC's misreading of the LNG Statute means that the agency's role in directly regulating LNG in the state will be diminished and public safety compromised. This is a glaring omission and consistent with DEC's overall hands-off approach to responsibility for safety and environmental protection with respect to LNG.

Although DEC may contend that the LNG Statute is silent on direct regulation of LNG production (liquefaction) and that through NFPA 59A production facilities are covered, this would still result in a substantial regulatory gap. While we disagree with this reading of the LNG Statute, DEC should still have used its regulatory authority to "fill in the gap," in light of the comprehensive statute and its clear legislative purposes.

Response 3.5.2 DEC's interpretation of the statute (ECL 23-1705 (2)) is that it includes as regulated facilities only storage and conversion facilities, not production facilities. The second sentence in ECL 23-1705(2) indicates that only conversion facilities, on the one hand, and storage facilities, on the other, are regulated. Thus, the statute does not apply to production facilities per se. Operations that produce LNG will, if they are large enough, include storage tanks, and thus be regulated under Part 570. Operations that liquefy and then immediately transport LNG would be small-scale operations, posing little risk. In any event, as noted, NFPA 59A applies to production operations.

Comment 3.5.3. Part 570 should regulate vehicles/mobile tanks that use LNG as a fuel or store it and permit any mobile LNG facilities. The proposed Regulations are ambiguous with respect to mobile LNG facilities. Subsection 570.1(d)(1) states that an "on-board LNG fuel tank in a LNG fueled vehicle or vessel" shall not constitute a LNG facility; however, it is not completely clear from these words whether or not this exemption applies to a LNG vehicle or vessel but which are intended as fuel for other vehicles or vessels, or a large tank or tanks that contains LNG fuel being delivered to a refueling station or other destination where the LNG would be used or transferred. (It should also be noted that large carrier ships that transport LNG are often powered by some of the natural gas that they carry as cargo.) DEC may have intended the exception in 570.1(d)(1) to apply only to a LNG fuel tank attached to the engine of a vehicle or vessel which serves the sole purpose of powering that particular vehicle or vessel; however, as presently written that is not clear. The ambiguous phrase "on-board fuel tank" is also used in subsection 570.1(d)(4) pertaining to the intrastate transport of LNG. Both 570.1(d)(1) and 570.1(d)(4) should be revised so that only a LNG fuel tank which is attached to the engine of a vehicle or vessel and serves the sole purpose of powering that vehicle or vessel is exempted. Clarification on this issue is especially important in light of emerging mobile technology that could exist for LNG production, storage or regasification. In particular, it is of concern that Expansion Energy—the conflicted author of DEC's 2011 report—has a business interest in marketing patented technology for mobile LNG facilities to be used in various applications, including at gas well pads. A facility which produces, regasifies or stores LNG, even temporarily, should not be exempted from regulation simply because it is contained on a movable platform.

Response 3.5.3 See Responses 3.5.2 and 4.1.2. DEC has modified the proposed regulatory language to reflect this, and similar, comments. Only tanks used for fuel consumed by the vehicle or vessel in question would be exempted.

4. Specific Comments on Part 570

4.1. Comments on §570.1: Introduction.

Comment 4.1.1. Part 570 should have an upper limit on facility capacity/size and facility type (i.e., only fueling). The Regulations, however, are entirely insufficient to support a program of this

scale. Each proposed type of LNG facility should be separately regulated and its safety risks separately regulated. It is not appropriate to propose regulations concerning small LNG refueling stations and deem them adequate for entirely different facilities such as peak shaving plants or large import/export terminals. Either the scope of the regulated facilities must be significantly curtailed or new, comprehensive regulations dealing with each of the proposed types of LNG facilities contemplated must be developed. It is not rational to assume that each of these complex facilities can be regulated pursuant to one, incomplete set of regulations.

Response 4.1.1 The LNG statute does not contemplate limiting facility size. Many factors influence the fire safety risks presented by a specific LNG facility such as individual tank capacities and layout, location, overall capacity, surrounding land uses, capabilities of local fire departments, availability of firefighting water for cooling, etc. Although DEC could not find any study or data that shows that facilities with higher storage capacities have greater risk for fire or explosion than facilities with smaller capacities, an accident involving a facility with large capacities would have the potential to result in greater damage than a smaller facility. After careful consideration of the issue, DEC has revised the proposed regulation to include an upper limit of 70,000 gallons as an allowable facility capacity based on the following:

- The NFPA's "Vehicular Gaseous Fuel Systems Code (NFPA 52) and the "Standard for the Production, Storage, and Handling of Liquefied Natural Gas" (NFPA 59A) both require more conservative siting criteria for containers/tanks with a capacity of 70,000 gallons or more as well as facilities with an aggregate storage capacity of more than 280,000 gallons. (e.g., differences in the setbacks between the tanks and the property line). A limit on LNG facility capacity of 70,000 gallons would be a conservative approach that recognizes the different requirements for large tanks/facilities included in this national standard.
- The 2011 NYSEERDA study concluded that the facilities expected to be permitted within the first five years after Part 570 becomes effective are likely to be truck fueling facilities and that these facilities would likely have capacities less than 70,000 gallons. Therefore, the capacity limit would be consistent with the known storage capacity needs for the facilities to be permitted.
- Many comments received during the public comment period focused on concerns about facility safety and the connection between safety and facility capacity. Adding a limit to facility capacity would be responsive to these comments and consistent with the statutory emphasis on safety of the public from hazards associated with LNG storage, transportation and conversion (e.g., the criteria for siting in §23-1709).

As DEC gains experience with permitting LNG facilities and more information becomes available regarding the relationship between facility capacity and the risk of fire or explosion, and other issues, DEC may reconsider the capacity limit in revisions to Part 570. In addition, each Part 570 permit application would be separately reviewed, and DEC would, as appropriate, impose special conditions or deny permits if safety considerations require such actions. See also Responses 2.1.3 and 4.3.2.

Comment 4.1.2. Section 570.1(d)(4) should be changed as follows: "The movement of an on-board LNG fuel tank used to power an LNG-fueled vehicle or vessel shall not constitute intrastate transport of LNG."

Response 4.1.2 This change has been made to both 570.1(d)(1) and (d)(4) to make it clear that LNG tanks used to supply fuel to a vehicle or vessel for propulsion would not be subject to the need for an LNG facility permit. A tank trailer used for the transportation of LNG would not

be subject to permitting because it meets the definition of an "LNG transportation activity." See 570.1(b). However, a tank used to provide fuel for a vehicle or vessel would not fit the definition of an LNG transportation activity. For fuel tanks, the LNG is being converted to a gas and is consumed. The conversion of LNG to natural gas would make this an LNG facility in the absence of this special exemption. The exemption in 570.1(d)(1) covers the special case of tanks on vessels (or vehicles, if any) that use incidental boil-off vapor from the LNG tank to supply natural gas to the engines for fuel for propulsion. However, operators of vehicles exempted by 570.1(d)(4) that are transporting LNG in tank trailers must still comply with the intrastate routing certification requirement of 570.4.

Comment 4.1.3. The provision in §570.1(e) regarding severability is improper because if one portion of the regulation was ruled improper, the whole regulation would have to be rewritten.

Response 4.1.3 DEC has determined that the severability language is proper and similar to that used in many other DEC regulations. If any portion of Part 570, as adopted, were to be found to be invalid, the remainder would remain in full force and effect.

Comment 4.1.4. Section 570.1(c)(9) should make it clear that the definition of "LNG Facility" is not just limited to truck fueling facilities.

Response 4.1.4 The definition of "LNG Facility" clearly includes any structure or facility that stores LNG in a tank system or that converts LNG to natural gas. There is no explicit or implicit limitation that the definition of LNG Facility is limited to truck fueling facilities.

Comment 4.1.5. The size of LNG facility buffer zones should be tied to the facility capacity.

Response 4.1.5 NFPA addresses this issue by requiring separation distances between tanks, off-site buildings, and the property lines. Larger tanks require greater distances. In addition, all applications would be reviewed on a case-by-case basis. If there are specific circumstances requiring larger separations, they can be addressed at the time of permit application and review. Nevertheless, the inclusion of a 70,000 gallon limit on facility capacity in the revised proposal also addresses this perceived concern. See also Response 4.1.1.

Comment 4.1.6. The emergency exemption in §570.1(d)(6) should not be allowed.

Response 4.1.6 This provision in 570.1(d)(6) complements section 6 NYCRR 621.12, which provides for emergency authorizations. In emergency situations, it could be dangerous to require compliance with normal permitting procedures.

Comment 4.1.7. In §570.1(c), some words/phrases are defined but not used and some that are used are not defined. Definitions not used include "L/CNG," "LNG transportation activity," and "Tank working capacity." "Permanent closure" is not defined.

Response 4.1.7 "L/CNG" is used in §570.2(d)(1). "LNG transportation activity" is used in §570.1(b). "Tank working capacity" is no longer used and has been deleted. The requirements for permanent closure are given in §570.6(a-f).

Comment 4.1.8. The definition of "spill" should include gaseous natural gas, not just liquid.

Proposed Section 570.1(c)(20) provides a definition of "spill" or "spillage", but only covers the escape of LNG in liquid form. However, because natural gas must be kept in a cryogenic state in order to remain in liquid form, once LNG mixes with ambient air, the natural gas quickly moves from a liquid to a vapor state. Consequently, this definition does not adequately describe an LNG spill and we recommend that the definition be revised accordingly, particularly in light of the proposed regulations in section 570.8.

Response 4.1.8 DEC has clarified the threshold for reporting a “spill.” See Response 4.8.1.

Because the common context of the word “spill” is in relation to a liquid, DEC believes that for clarity and understanding, the definition of spill should continue to be limited to a liquid. See also Response 3.2.2.

Comment 4.1.9. Part 570.1(d)(2) should explain what happens if the 72-hour limit is unexpectedly exceeded. Proposed section 570.1(d)(2) describes the circumstances under which an LNG delivery tank truck will not qualify as an LNG facility and, therefore, will not require a permit from DEC. More specifically, an LNG delivery tank truck will not qualify as an LNG facility if it is connected to a natural gas pipeline for less than 72 hours. For clarification, we recommend including language that explains whether an LNG delivery tank truck would qualify as an LNG facility if it was planned to be connected to a natural gas pipeline for less than 72 hours, but exceeded that limit due to unplanned circumstances, including circumstances related to safe operations and worker protection.

Response 4.1.9 DEC would evaluate these situations on a case-by-case basis. In some cases, existing regulations addressing emergency conditions may apply. In others, DEC may invoke other administrative or legal procedures (e.g., an enforceable order on consent with special conditions; enforcement discretion determination, etc.). In cases where these other approaches are not applicable, the DEC would not allow the exceedance.

Comment 4.1.10. Section 570.1(f) should make more specific references to penalty provisions. Proposed section 570.1(f) broadly references the penalties that may apply to a violation of this proposed Part. We recommend more specific references to these penalty provisions where possible.

Response 4.1.10 It is not practicable to specify all of the penalty provisions and procedures that could arise in reference to implementation of the regulation. To attempt to do so could limit DEC’s flexibility.

Comment 4.1.11. The term “non-conforming facility” in §570.1(c)(13) should be changed to “pre-existing facility.” Should DEC decide to proceed with this rulemaking, the Company strongly suggests that the use of the term “non-conforming facility” in § 570.1(c)(13) is inappropriate. Given that DEC’s investigation of the Company’s LNG facility found it is “one of the safest LNG facilities in existence” and that it “meets with or exceeds all applicable LNG standards for construction, operation and maintenance”, to describe such a facility as “non-conforming” is overly pejorative and gives the reviewing public an inaccurate impression of the facility’s ongoing status by implying that there is something inherently less advanced or modern about the existing facility. Furthermore, if DEC would, at some point in the future, inspect a new facility and find that it did not conform to the standards set forth in Part 570, DEC’s correspondence would likely refer to that facility as “non-conforming” and thereby create unnecessary confusion.

The Company strongly recommends that a facility defined in § 570.1(c)(13) be described as a “pre-existing facility” rather than “non-conforming facility”. The phrase “non-conforming facility” should be replaced with “pre-existing facility” throughout the document.

Response 4.1.11 DEC changed the term “non-conforming facility” to “pre-existing facility.”

Comment 4.1.12. Pre-existing facilities should not be required to submit a “statement of compliance.”

The wording of § 570.1(d)(5) should be reworked to be consistent with the definition of “statement of compliance” found in § 570.1(c)(21). As currently written, § 570.1(d)(5)(ii) requires pre-existing facilities to submit a “statement of compliance” within one year of the promulgation of Part 570 and every five years thereafter. However, the definition for “statement of compliance”

indicates that a Professional Engineer is required to make a compliance filing "on behalf of an applicant for a permit". In the case of a pre-existing facility, no permit is required under the terms of the proposed Part 570.

Furthermore, in the second part of the "statement of compliance" the owner of the facility is required to attest that that facility "will be" operated in accordance with applicable regulations and standards. For pre-existing facilities, it would be more appropriate for the owner to attest that the pre-existing facility is being operated in accordance with applicable regulations and standards.

This contradiction of definitions could be resolved by changing the wording of § 570.1(d)(5) and the wording of § 570.5 as follows:

§ 570.1(d)(5): A pre-existing facility may continue to operate, without the need to obtain a permit, provided that the owner of the pre-existing facility remains in compliance with the terms of § 570.5 of this Part.

§ 570.5 Pre-Existing Facilities. All pre-existing LNG facilities may continue to operate pursuant to LNG-related Department orders issued January 19, 1979. However, any increase in the capacity at a pre-existing facility requires a permit issued pursuant to this Part.

Note that these rewritten provisions eliminate the need for a statement of compliance for pre-existing facilities. A statement of compliance, as defined, would be superfluous for pre-existing facilities that are in compliance with the January 1979 Order because Ordering Clauses 1, 2, 3 and 4 of the January 1979 Order already impose a significant reporting requirement that is more exhaustive than the provisions currently envisioned by § 570.1(d)(5). The Company is not suggesting that pre-existing facilities be absolved from any reporting requirement but is encouraging DEC to avoid duplicative reporting requirements.

Response 4.1.12 DEC understands the concern about duplicating reporting requirements and intends to work with operators of the pre-existing facilities to avoid any duplicative requirements.

4.2. Comments on §570.2: Permit requirements and application procedures.

Comment 4.2.1. Facilities should be farther from population centers and community facilities like schools and hospitals (NFPA does not prohibit LNG facilities in residential areas that are beyond buffer zones).

Response 4.2.1 Part 570.2(b)(12) requires the submission of information on land use around a potential facility to evaluate whether the facility would be consistent with surrounding land use. With assistance from the OFPC, DEC will make facility-specific determinations as to whether the proposed location for an LNG facility would present fire safety issues that could not be adequately addressed. Other issues related to locating a facility such as zoning, etc. would remain subject to local review.

Comment 4.2.2. The sufficiency of the NFPA safety standards has not been adequately reviewed.

Response 4.2.2 See Response 3.4.9.

Comment 4.2.3. The siting criteria in Part 570 are not sufficiently specific. DEC acknowledges that an important purpose of the Regulations is to establish criteria for the siting of LNG facilities and specifically to protect the public from serious potential hazards including the risk to public safety from its storage, transportation and conversion as required by the LNG Statute. Instead of developing such criteria, the DEC merely references the 2013 NFPA code that suggests options for

LNG facility siting based on applicant assessments of the explosive and contamination risks. See e.g. NFPA Code 59A, Chapter 15 which provides that the applicants must prepare: "A spectrum of LNG and other hazardous material release scenarios from transfer piping, storage tanks(s), vaporizer(s) and other vulnerable equipment in the plant shall be developed through the use of process hazard analyses...[c]redible large-release scenarios that may pose risks outside the property line shall also be included along with their occurrence probabilities." (59A NFPA Code, 2013 Ed., Chapter 15.5.1.)

Significantly, the NFPA code referenced by DEC does not specifically prohibit the siting of LNG facilities in residential areas as Article 23, Title 17 requires. Further, neither the Regulations nor NFPA 59A define "residential area", "dangerous proximity" or "contiguous population". Indeed, Section 15.2.1 of NFPA 59A allows siting of LNG facilities so long as they "do not pose **intolerable** risks to the surrounding populations, installations or property" and Section 15.2.2 of the code provides "The requirements of this chapter shall be used to assess the level of risks to surrounding population to ensure that the individual risk and the societal risk to not exceed **tolerable** levels in accordance with Section 15.9." (Emphasis added.)

Clearly, the LNG Statute does not contemplate or authorize "tolerable risk" in residential areas or in dangerous proximity to contiguous populations. The LNG Statute also mandates that siting criteria shall be designed to insure the **maximum** safety of the public from hazards associated with liquefied natural or petroleum gas storage, transportation, and conversion." (ECL 23-1709; emphasis added.) Compare Section 1.2 of NFPA 59A entitled "Purpose" which makes clear that "The purpose of this standard is to provide minimum fire protection, safety, and related requirements for the location, design construction, security, operation, and maintenance of LNG plants" (emphasis added). By its own terms, NFPA 59A fails to comply with the legislature's unambiguous directive.

The Regulations must not be adopted without compliance with the LNG Statute and the development of measurable criteria for the site of LNG facilities in proximity to sensitive land uses such as homes, schools, hospitals, public buildings, historic sites, existing businesses, agricultural lands, and sensitive environmental areas. The failure of the proposed Regulations to include necessary site criteria is an insurmountable defect which requires withdrawal and reconsideration of the Regulations.

Response 4.2.3 Part 570 lists the factors included in the statute which DEC must consider when determining whether a proposed facility location is appropriate. These include, for example, population data, zoning, surrounding land uses, etc. DEC would evaluate each application with assistance from the OFPC to make siting determinations. In addition, the inclusion of a facility capacity limit of 70,000 gallons addresses these concerns. See also Responses 3.4.2 and 4.2.1.

Comment 4.2.4. Criteria for evaluating local emergency response capabilities are not sufficiently specific.

Response 4.2.4 These determinations would be made on a case-by-case basis to allow appropriate consideration of all of the factors involved at each location. See also Response 4.3.2.

Comment 4.2.5. Local zoning boards may not be proactive in considering LNG siting issues or there may effectively be no zoning. Nor can the DEC rely on the presence of local zoning or land use laws to provide applicable siting criteria, especially when there is no evidence that adequate local zoning laws exist where the Regulations purport to be applicable. It is helpful that the XE Study expressly states that in determining siting, local zoning should be respected (p. 408). For example, the XE Study confirms that the NFPA codes (on which the DEC so heavily relies) will "not

replace, but rather add to local zoning controls, building codes and other codes..." (Id.). It is also noteworthy that the XE Study cautions that the NFPA codes are insufficient with respect to siting because those codes do not address the "site selection process for where an LNG 'use' may be located." The XE Study explains: "the question of 'where' an LNG facility (or any other use) may locate is the purview of local land use controls (zoning regulations)...[s]uch uses are almost always prohibited in residential zones or in districts that permit community facilities such as schools and hospitals." (Id.)

However, these findings in the XE Study and the Regulations proposed by DEC ignore the reality that many State towns and villages simply do not have zoning or land use plans in place. Moreover, it is unlikely that even those communities with zoning or land use plans have considered LNG facilities due to the fact that the nearly 40 years LNG facilities have been prohibited in the State. Although it is appropriate and necessary that local zoning and land use plans which are more stringent be respected, this does not release DEC from its clear obligation pursuant to the LNG Statute of promulgating regulations that contain meaningful siting criteria as part of the regulatory scheme.

Response 4.2.5 The extent to which local zoning boards are proactive in this area is beyond the scope of this rulemaking. Nevertheless, DEC and the safeguards in Part 570 do not rely solely on zoning restrictions. The proposed regulation, at 570.2(b)(12), would require the submission of information on land use around a potential facility to evaluate whether a facility would be consistent with surrounding land use. DEC would deny permits where a proposed facility would not meet safety, or other standards. Additionally, DEC would impose special conditions in permits to address this, and other, issues.

Comment 4.2.6. The Permit Fees provided for in Part 570 are inadequate for processing, inspections and enforcement. The proposed program fee structure virtually ensures that DEC will not have the necessary resources and funding to perform its function as a regulatory agency protecting the environment and people of the State. DEC should reconsider the permit fees so that the full costs associated with permitting and enforcement (including improvements necessary to address other comments provided herein) can be accounted for. The DEC should substantially raise the proposed permit fees identified in Section 570.2(k).

Response 4.2.6 ECL Article 23 Title 17 (23-1715.2) states that DEC's administration of the program "shall be at no net expense to the state." Revised subdivision 570.2(k) provides that in addition to the permit application fees, the Department would be authorized to recover costs associated with the State Environmental Quality Review Act process, and, on an allocated basis, all other costs incurred by the Department in the administration and enforcement of this Part and Article 23, Title 17 of the Environmental Conservation Law.

Comment 4.2.7. Part 570 permit applications should document operator competency. The proposed regulations also fail to require the demonstration of operator competency. The Regulations should be revised to require that applicants submit appropriate information (such as past projects, safety records and accident reports) so that DEC can determine whether the facility owner, as well as its employees and contractors are qualified to operate the proposed LNG facility. Furthermore, qualification and performance information should be provided periodically once a permit is issued and during permit renewal to ensure ongoing competency.

Response 4.2.7 Applicants are required to show that all requirements of the NFPA standards, including operator training requirements, would be met at each proposed facility. DEC Policy DEE-16, "Record of Compliance," would be used to identify operators with problematic histories, including an inability to operate in compliance with state laws. Section 570.2(b)(13)

allows DEC to require any information it needs to assess applications. As appropriate, DEC would deny, suspend, or revoke Part 570 permits.

Comment 4.2.8. Permits should include recordkeeping requirements for equipment maintenance and safety.

Response 4.2.8 Appropriate recordkeeping requirements are included in the NFPA standards (see NFPA 52 sections 4.4.1.1 and 10.13.1.4; NFPA 59A section 13.18.4.6 and chapter 14). On a case-by-case basis for large or complicated facilities, DEC may include additional recordkeeping requirements as facility permit conditions.

Comment 4.2.9. Section 570.2(b)(7) needs to be more specific about how DEC will review environmental impacts (e.g., air, water, etc.) and whether SEQRA would always apply. With respect to all other environmental hazards, the proposed Regulations merely state that an applicant must include a description of the "possible environmental impacts of the proposed facility." (Sec. 570.2(b)). The Regulatory Impact Statement repeatedly states that it is the policy of the State to "conserve, improve and protect its natural resources and environment and control water, land and air pollution in order to enhance the health and safety of the people of the State... guaranteeing the widest range of beneficial uses of the environment is attained without risk to health or safety..." (Regulatory Impact Statement p.2). However, the Regulations contain no provisions as to how the DEC or anyone else will act upon the required applicant disclosures of environmental and health risks or how such impacts will be mitigated.

Response 4.2.9 Existing DEC regulations and policy would guide review of all aspects of applications, including SEQRA issues; each application would be subject to a SEQRA review (or an equivalent environmental review process under the National Environmental Policy Act if the project is subject to federal review). It is inappropriate to specify the details of this review process in a program regulation like Part 570.

Comment 4.2.10. Section 570.2(h) should require hearings for all permit applications and provide more details of what the hearings will cover. Section 570.2(h) states that public hearings and comments on LNG facilities are controlled by 6 NYCRR Parts 621 and 624. Parts 621 and 624 are inadequate for the necessary public discussion of the advisability of establishing a facility at which an explosion would potentially cause catastrophic impact to the community, nearby inhabitants, the environment and the character of the locale.

Response 4.2.10 Not all LNG facilities would require permit hearings. For example, a small LNG truck fueling facility, co-located with an existing fueling facility, may not require a hearing. See also Responses 4.2.9 and 5.3.2.

Comment 4.2.11. The applications should require the inclusion of information on zoning and land use beyond 1/2 mile radius around the facility.

Response 4.2.11 DEC expects that this requirement will address the majority of applications. DEC has the authority to require additional information, if needed, to process specific applications.

Comment 4.2.12. Permits should have conditions requiring fast response times by facility personnel in the event of an emergency.

Response 4.2.12 Both NFPA standards require emergency response plans that include prompt emergency response procedures for staff to respond to any incidents at the facility (NFPA 52 section 12.2.3; NFPA 59A section 14.4). The standards include requirements that operators be trained on these procedures at least every two years. All applications would be reviewed by

DEC and OFPC to ensure adequate capabilities of local emergency responders. In addition, site specific permit conditions would address any other appropriate safety issues.

Comment 4.2.13. The duration of the permit should be indefinite, not five years, unless noncompliance leads to revocation.

Response 4.2.13 Five years is a reasonable maximum amount of time, after which DEC would review all site specific issues to ensure that there are no indications of noncompliance with Part 570. DEC notes that in some cases it may be appropriate to limit permit terms to less than 5 years. If DEC observes non-compliance during a facility inspection, DEC will act to have the facility owner/operator correct any violations and bring the facility into compliance. In more serious cases, DEC may need to act to revoke a permit.

Comment 4.2.14. 570.2(b)(2) should be eliminated or moved to a different part of the review process because there will be times when there are no reasonable alternative locations for the facility.

Response 4.2.14 DEC understands that there may be times that there are no reasonable alternative locations for the facility and the application can specify that information. The regulation has been modified to require the identification of alternative locations for the facilities, "if any" exist. See also Response 4.2.25.

Comment 4.2.15. 570.2(b)(9) requiring an evaluation of local fire response capabilities should be eliminated.

Response 4.2.15 This requirement is derived from the statute and cannot be eliminated from the regulation. Part 570 goes beyond the NFPA requirements, and would require permits and evaluations of local fire response capabilities.

Comment 4.2.16. The requirements of Section 570.2(b)(12) of including a description of surrounding land use and zoning should be eliminated.

Response 4.2.16 This requirement comes from the statute and cannot be eliminated from the regulation.

Comment 4.2.17. The permit fees specified in Part 570 are not unreasonable.

Response 4.2.17 Comment noted. See also response 4.2.6.

Comment 4.2.18. LNG facilities located on federal properties should not be exempt from permitting. In terms of any resulting adverse environmental impacts associated with the application of proposed regulations themselves, this is largely dependent on the applicability of SEQRA. Section 570.2(a) states "Nothing in this Part exempts a facility from compliance with any other applicable State, federal, or local requirements." But, in §570.2(b) Permit Application Contents (7) requires "a description of the possible environmental impacts of the proposed facility and the facility features or procedures to mitigate those impacts." This latter provision lends one to believe that SEQRA does not apply (as in some state siting laws—e.g. Articles VLL and X). If SEQRA applies, then these regulations should state that it does. If SEQRA does not apply and DEC is solely charged with determining the completeness of the above requirement, then the effectiveness of environmental review, without SEQRA, will be significantly diminished.

Response 4.2.18 Regulations cannot change existing law regarding the applicability of state requirements to federal facilities. SEQRA review or an equivalent environmental review process under the National Environmental Policy Act will be carried out for all Part 570 applications. Federal applicants will be required to obtain Part 570 permits before constructing LNG facilities, unless the applicant successfully asserts sovereign immunity.

Comment 4.2.19. The application requirements in section 570.2 are too complicated and extensive. The application should be a simple form with check boxes and places for the applicant and a professional engineer to sign.

Response 4.2.19 The enabling statute requires maximum safety. DEC requires all information specified in the regulations in order to evaluate whether to issue a permit, and if so to determine what conditions are appropriate.

Comment 4.2.20. The application (§570.2(b)(5)) should not require information about sources of LNG/NG.

Response 4.2.20 This information is necessary to ensure compliance with the transportation/routing requirements.

Comment 4.2.21. The application (§570.2(b)(12)) should not require information on land use, zoning, or population density.

Response 4.2.21 This information is necessary to ensure compliance with the setback requirements of the NFPA standards and to meet the statutory requirements for facility siting.

Comment 4.2.22. DEC should not be evaluating the “appropriateness” of the facility but should just ensure that the regulatory requirements are met and then issue a permit as a clerical action.

Response 4.2.22 Under the LNG law, DEC is required to evaluate the appropriateness of the location of a proposed LNG facility and ensure that the facility can be operated safely. This includes evaluating potential impacts to surrounding structures/features, local emergency response capabilities, and the other issues addressed by the requirements for a complete application.

Comment 4.2.23. How will wilderness, protected lands, and forest preserve areas be considered?

Response 4.2.23 Any LNG facility that is proposed to be located in an area subject to preservation laws must comply with those laws and associated regulations. DEC would deny permit applications when that cannot occur.

Comment 4.2.24. The applicability of the NFPA standards needs to be clarified. The current version of DEC's Notice of Proposed Rulemaking (NPRM) of the Regulation, as written, will lead to an overly broad and ambiguous rulemaking, which will inhibit and greatly discourage investment in the very LNG systems and infrastructure that DEC acknowledges would be beneficial to the economy of the state and the health of its residents. The Regulation, as written, will subject some LNG applications to federal or state regulations that do not pertain to their siting or operation. Additionally, this type of regulation could additionally burden the state as a result of the continual interpretation risks that would be faced by state inspectors.

Federal, State, and local regulatory authorities have long recognized the NFPA for its standards for Hazardous Material Fire Protection in the LNG industry. We are pleased that DEC has recognized this in this rulemaking. However, it is critical that DEC recognize and observe the proper application of each NFPA standard as stated within its scope. As written, the proposed Regulation misapplies these standards. We recommend not applying these standards beyond the circumstances considered when they were adopted, as adopting such standards inappropriately would potentially cause their being applied to circumstances not considered when they were finally adopted. We additionally recommend that the Regulation be amended to harmonize the scope and definitions with the referenced standards to avoid ambiguities, potential for dual compliance issues and burdensome interpretation risk for both inspectors and potential operators.

Section 570.2(d)(1) should be broken out into paragraphs as required by the size or purpose of the proposed LNG facility and direct use to the applicable codes(s) or standard(s). For example, we recommend the following:

- a) 570.2(d)(1a) (sic) should state that LNG facilities with storage tanks with individual capacities of 100,000 or less and a maximum aggregate of 280,000 gallons are to conform to NFPA 59A, Chapter 13.
- b) 570.2(d)(1b) should state that LNG facilities with an aggregate storage of greater than 280,000 aggregate gallons or individual tanks of greater than 100,000 gallons must conform to all applicable sections of NFPA 59A.
- c) 570.2(d)(1c) should state that LNG facilities constructed for the purpose of fueling vehicles must conform to the requirements of NFPA 52, Chapter 12 and, by reference, those other section of the NFPA.

Section 570.2(d)(2) would be better arranged to target the size or purpose of a proposed LNG facility and provide direction to the applicable code(s) or standard(s). For example:

- a) 570.2(d)(2a) should direct permit applications seeking to build LNG facilities intended to load trucks or railcars for interstate commerce or resale to NFPA 59A and 49 CFR Part 193.
- b) 570.2(d)(2b) should direct applicants for facilities intending to transfer LNG to or from LNG vessels for import or export to comply with USCG regulations contained in 33 CFR Parts 105 (Marine Transportation Security Act) and 127 (Waterfront Facilities Handling Liquefied Natural Gas); while Pipeline Hazardous Materials Safety Administration (PHMSA) enforces the regulations found in 49 CFR, Parts 193 (Liquefied Natural Gas Facilities; Federal Safety Standards) and 199 (Drug and Alcohol Testing).
- c) 570.2(d)(2)(c) should direct applicants for a permit to transfer LNG to ships for end use (bunkering) to soon to be issued USCG regulations.

Response 4.2.24 Upon review and consideration of the references identified by the commenter, and review of the manner in which other states (and New York) have previously relied upon the NFPA Standards, DEC concludes that the approach taken in revised proposed Part 570 best achieves the intent of the regulation and enabling statute. The standards stand on their own, incorporated by reference, without interpretation of those standards by the balance of the regulation. The inclusion of a 70,000 gallon limit on facility capacity in the revised proposal makes moot portions of this comment.

Comment 4.2.25. Section 570.2(b)(2) should clarify the requirements for evaluation of alternative facility locations. Section 570.2(b)(2) requires a description of reasonable alternative locations but does not provide guidance on the number of alternative sites that DEC would like applications to include, if there is one, nor does it provide criteria for excluding such alternative sites. We recommend including such guidance. Without such guidance, applicants have no way of knowing whether an application is adequate or will be deemed complete. Moreover, the absence of such guidance could be used as a means by which DEC rejects an application or puts an application on hold, thus causing unnecessary delay for this needed infrastructure.

Response 4.2.25 The requirement for evaluating alternative locations comes from the statute. However, proposed §570.2(b)(2) has been clarified to state that alternative sites include those, if any, that would present less risk to surrounding persons, structures, infrastructure, or the

environment while still meeting the needs, business purposes, or intentions of the applicant. See also Response 4.2.14.

Comment 4.2.26. In §570.2(b)(3), “the need” for the proposed facility should be replaced with “the business case” for the facility. Section 570.2(b)(3) requires that applicants specify "the need for" the proposed facility. We recommend that "the need for" such facilities be replaced with "purpose of" or "business case for" as such terminology helps to provide clarity and intent.

Response 4.2.26 This requirement comes from the LNG statute. DEC interprets this to mean that there should be an explanation of the purpose and therefore the need for the facility. This may include a “business case for” the facility but may also relate to a public need, including for governmental applicants. DEC did not change the language in Part 570, but applicants may submit whatever information they believe will be relevant to and helpful in review of a permit application.

Comment 4.2.27. The requirements for the maps in §570.2(b)(6) should be clarified. Section 570.2(b)(6) requires applicants to file maps showing the routes to be used to supply the facility with LNG. It is not clear whether a map is required to also show the route of natural gas transported to the facility in a gaseous state. In addition, it is not clear whether there are any parameters or requirements for the map. We recommend clarifying whether there are more specific requirements to assist applicants in ensuring an application is complete when filed.

Response 4.2.27 Part 570 does not apply to the transportation of natural gas in the gaseous state, only LNG. There are no special requirements for the routing map, unless DEC so specifies in a permit, order, or in a pre-application meeting.

Comment 4.2.28. Section 570.2(b)(8) should explain if the statement of compliance should be notarized. A model statement should be provided. Section 570.2(b)(8) requires an applicant include a statement of compliance. Although the term "statement of compliance" is defined in the proposed regulations, we recommend that DEC provide clarity regarding the parameters of such a statement, including whether such a "statement of compliance" is to be notarized. We recommend that DEC provide a model document for applicants to ensure consistency in applications.

Response 4.2.28 DEC will provide guidance regarding the statement of compliance and other permit application requirements. This will allow for clarification and refinement as experienced is gained with the permitting process. It would not be appropriate to include these details in the regulations.

Comment 4.2.29. Section 570.2(b)(9) should provide the qualifications of the independent reviewer of local emergency preparedness and clarify that municipalities are responsible for addressing any deficiencies, not permit applicants. Section 570.2(b)(9) requires a report prepared by an independent qualified person evaluating the preparedness of first responders in the vicinity of the facility to respond to a fire. With regard to the "independent qualified person," the proposed regulations do not define this term nor do they specify who may select or determine the independent qualified person. We recommend that such qualifications be determined with reference to existing regulations (for example, applicable emergency response provisions of 29 C.F.R. § 1910.120 and appendices) and/or standards (for example, NFPA 600). In addition, the proposed regulations place the burden on the site owner to ensure capacity and preparedness, as well as the evaluation of fire department’s capabilities. While the industry can and does provide support for these important functions, state and local governments, typically through the State Fire Marshall or local Fire Chief, are in a better position to perform these functions. We recommend that DEC clarify that the government, municipality or other governing authority be responsible for

correcting any deficiencies given that fire departments and other first responders are properly under their jurisdiction and are not accountable to facility owners.

Response 4.2.29 . See Response 4.2.28. Regarding the requirements for applicants to evaluate local response capabilities and provide for any shortfalls, this is a statutory requirement and cannot be omitted from the regulation. The statute requires the implementation of the program to be cost neutral to the State and local government. Therefore, this provision is required.

Comment 4.2.30. In §570.2(b)(13), the criteria and procedures for when DEC requires additional information should be provided. Section 570.2(b)(13) is a catch-all provision. It is unclear how DEC intends to request additional information. We recommend that DEC clarify any formal or informal procedures that would be applicable to such additional requests. Without clarification, applicants will have little objective criteria on which they can evaluate the completeness of their applications and all applications could be subject to indefinite and undue delay in processing under Section 570.2(c)(3).

Response 4.2.30 This requirement is needed, in part because there is no state or national precedent for an LNG facility permitting program; it is therefore not possible at this point to identify all issues or concerns that may arise on a facility-specific basis. As DEC builds experience with the program, if the regulation is adopted, it will issue guidance to further clarify application requirements. But even then, it would not be appropriate to include such details in regulation because circumstances vary on a case-by-case basis.

Comment 4.2.31. The criteria for DEC to determine that an application is incomplete under §570.2(c)(3) should state if the determination is without prejudice and the procedures for challenging the determination. Section 570.2(c)(3) explains that non-conforming applications will be determined to be incomplete. The ambiguity of several other provisions coupled with the broad statement in this section creates substantial uncertainty for applicants. The proposed regulations do not explain whether such a determination will be with or without prejudice and whether there are any formal procedures an applicant can use to challenge the determination or satisfy any missing elements to the application. We recommend that DEC clarify any formal or informal procedures that would be applicable.

Response 4.2.31 DEC will follow the existing and long-standing requirements for processing permit applications set forth in 6 NYCRR Part 621. Generally, incomplete applications may be supplemented with missing information and re-submitted.

Comment 4.2.32. Section 570.2(d)(1) should also include American Petroleum Institute (API) Standard 625, "Tank Systems for Refrigerated Liquefied Gas Storage." Section 570.2(d)(1) requires LNG facilities to comply with certain industry standards and federal regulations. We recommend that regulatory consideration also be given to applicable provision of API Standard 625, "Tank Systems for Refrigerated Liquefied Gas Storage" (1st ED. Aug. 2010, 1st Addendum July 2013).

Response 4.2.32 Upon review and consideration, DEC has determined it is not necessary to incorporate API 625 in Part 570 since NFPA 59A already recognizes LNG tanks that are constructed in accordance with API 625 (see NFPA 59A section 7.2.1). In addition, there are provisions in NFPA 52 that would allow other non-ASME tanks to be used if used in conformance with NFPA 59A (see NFPA 52 section A.13.1).

Comment 4.2.33. Section 570.2(i) should clarify what qualifies as a "change in ownership."

Response 4.2.33 After review, DEC determined that the definition of "owner" in §570.1(c)(15) is sufficient to address this comment.

Comment 4.2.34. Part 570 should not reference specific versions of NFPA standards or regulations as they may conflict with other revisions. DEC must address inconsistencies between its proposal and existing regulatory requirements. Throughout the proposed rule, DEC refers to numerous Federal and industry standards by a specific date of publication. For example, § 570.2(d)(1) requires that "LNG facilities must comply with all applicable provisions of the August 29, 2012 (2013 edition) of NFPA 59A and that "LNG facilities that store and dispense LNG...for use by vehicles must comply with...the December 17, 2012 (2013 edition) of NFPA 52 . . ." DEC is creating a regulatory conundrum for LNG facility owners and operators by referring to these particular versions. 49 CFR 193 at § 2013(c) requires operators to comply with portions of two specific editions of NFPA 59A; 2001 and 2006. Furthermore, 49 CFR 193 adjudicates any conflict between NFPA and 49 CFR 193 by requiring compliance with the Federal regulatory language. From a technical standpoint, facilities subject to both 49 CFR 193 and this proposed regulation may not be able to be in compliance with both if the proposed regulation is finalized by specifying the 2013 NFPA document. Also, by including specific dates for documents such as the Coast Guard regulations, DEC only ensures that the proposed rule will have to be modified if such standards are revised in the future. The company suggests that DEC refer to all regulations and standards with the phrases "as required in 49 CFR 193" or "currently applicable" or "applicable at the time of the preparation of its application" rather than by a specific date.

Response 4.2.34 See Response 3.4.1.

4.3. Comments on §570.3: Site inspections and training of local fire department personnel.

Comment 4.3.1. Emergency response personnel may not be adequately trained to handle LNG incidents. The proposed Regulations do not adequately describe obligations of facility operators to ensure that local emergency responders are capable of responding to fires, explosions, releases of LNG, or other accidents that may endanger personnel on site, the surrounding community and environment. In this regard they will need access to sophisticated training as well as new equipment and protective clothing. Most rural communities operate with volunteer fire departments that work without compensation. It is doubtful that these communities have the resources or equipment to respond to major conflagrations caused by permitted LNG facilities.

Response 4.3.1 The LNG law and Part 570 would require applicants to provide training, equipment, and personnel when necessary. See also Response 4.3.2.

Comment 4.3.2. Local Emergency Preparedness Criteria is not sufficiently specific. In Section 570.2(b)(9) the Regulations require that applicants prepare a report to evaluate the preparedness of fire departments in the area to respond to LNG spills or fire. However, the Regulations contain no criteria for DEC to use in determining the adequacy or accuracy of such reports. Likewise, although a cost estimate and proposed schedule for remedying deficiencies is required, the Regulations fail to clearly require that all deficiencies must be cured before a permit is issued.

Response 4.3.2 Section 570.3(b) specifies that required safety training be provided to local emergency response agencies, at the applicant's cost. OFPC would provide DEC with guidance that describes the expected capabilities of a local fire department that would have jurisdiction over an incident at an LNG facility. The guidance will address the training of firefighters, the number of available firefighters, and the equipment that should be available for responding to an LNG incident. The guidance will also address how these capabilities would increase as facility/tank capacities increase. DEC would provide the guidance to permit applicants and make it available to local officials and the public by placing it on DEC's website. Making this guidance available before a permit application is received would help to

inform local authorities of the requirements, help applicants know how to demonstrate that their proposal would be in compliance, and help to promote statewide consistency.

Paragraph 570.2(b)(9) requires that a permit application for a proposed LNG facility must include an evaluation of the capabilities and preparedness of local fire departments to respond to an incident at an LNG facility. This evaluation would be prepared by an independent qualified person who will determine whether any enhancements to local training, equipment, or personnel are needed. DEC intends to share these evaluations with local authorities before a Part 570 permit is issued to ensure they are familiar with and can respond to the conclusions of this evaluation. Permit applications must also include a “statement of compliance” certified by an independent and qualified professional engineer that the proposed facility would meet the requirements of the State Uniform Fire Prevention and Building Code, which include the NFPA standards for the storage of LNG. DEC will be coordinating with OFPC to ensure that the appropriate issues are being addressed.

Comment 4.3.3. Other emergency response agencies should also be addressed (e.g., police, EMS)

Response 4.3.3 This provision reflects the requirements of the statute which refers only to “fire departments.”

Comment 4.3.4. Many local responders have insufficient resources or training for addressing LNG incidents.

Response 4.3.4 Applicants would be required to provide necessary resources/training as set forth in §570.2(b)(9). See also Response 4.3.2.

Comment 4.3.5. Any deficiencies in local response capabilities must be addressed before a permit is issued.

Response 4.3.5 The proposed regulation, at 570.3(b) requires any required training to be completed prior to the commencement of operations. Regarding a lack of personnel, several approaches to address the shortfall are possible based on case-by-case scenarios. However, DEC will not issue an LNG facility permit until local fire response capability issues have been addressed.

Comment 4.3.6. Part 570 should list the details of the required annual training.

Response 4.3.6 See Response to 4.3.2.

Comment 4.3.7. Part 570 should specify the details of DEC inspections; how often, of what, etc.

Response 4.3.7 This issue is not appropriate for a regulation. In addition, DEC needs the flexibility to schedule inspections when needed and to define the scope of those investigations.

Comment 4.3.8. Part 570 should not require applicants to pay for additional fire training, personnel, or equipment because it would place them at a competitive disadvantage even though they provide a safer and cleaner fuel.

Response 4.3.8 The LNG statute requires the implementation of the program to be cost neutral to the State and local governments. Therefore, it is necessary that applicants bear this cost. In any event, local and state governments do not have the resources to undertake these efforts. See also response 4.2.6.

Comment 4.3.9. If a local fire company has insufficient personnel to address an LNG incident, they can't just hire more because they are mostly volunteers.

Response 4.3.9 See Response 4.3.5.

Comment 4.3.10. Section 570.3(a) should state if the DEC will give prior notice before an inspection and other details. Section 570.3(a) provides that DEC may inspect an LNG facility and site for permit compliance. The proposed regulations do not explain whether DEC will provide any notice of the inspection, who must or may be present at such inspection, what documents the LNG facility owner or operator must have available for DEC's inspection, whether the LNG facility owner or operator may review the results of the inspection, and whether the inspection report will be made public. We recommend that DEC provide clarity on any such requirements to ensure inspections are as efficient and effective as possible.

Response 4.3.10 DEC always has the authority to carry out either announced or unannounced inspections and this is clearly stated in this subdivision. Language has been added to the regulation to make it clear what records would always be maintained at the facility and available for inspection (items 3-7 could be provided within three business days upon DEC request) including, 1) a copy of the current facility permit issued by the DEC, 2) a site plan (to scale with north arrow) showing the location of all LNG tanks, piping, firefighting equipment, facility boundaries, fencing, and adjacent roads, 3) records of training provided to local emergency responders, 4) records of any LNG tank closures, 5) documentation of any financial assurance required by the DEC, 6) records of all reportable spills and reports provided to the DEC regarding those spills, and 7) any records required by NFPA standards 52 or 59A applicable to the facility.

Comment 4.3.11. Section 570.3(b) should provide the requirements for first responder training and clarify that this is voluntary for the applicant. Section 570.3(b) requires that an applicant offer an emergency response training program for local first responders. At a minimum, we recommend that the proposed regulations be augmented to specify the criteria for any such program. In addition, as above, we recommend that DEC clarify that the government, municipality or other governing authority is responsible for correcting any deficiencies because the fire departments are under their jurisdiction. While industry is amenable to working with a regional Fire School (e.g., the Delaware Fire Training Academy) to develop and conduct a LNG fire training program, industry is not in the best position, nor is it industry's role, to provide such training in the absence of more specific criteria or justification (although some API members do provide training to municipal responders on a voluntary basis). Unless this section is revised to include such criteria or justification, and/or to make clear that any training programs offered by industry are voluntary and do not subject industry to inequitable legal or regulatory liability, this section should be deleted.

Response 4.3.11 The requirements for emergency response training, personnel, and equipment are dependent upon many facility-specific factors (e.g., LNG capacity, surrounding structures and features, access, existing response capabilities and resources, proximity to additional resources, etc.). These issues are best addressed case-by-case so that no limitations are placed on DEC's and OFPC's ability to ensure that local capabilities are sufficient for any given LNG facility. Providing training is not voluntary for the applicant. ECL 23-1715(2) and subdivision 570.3(b) make it clear that costs for additional training needed to be able to respond to LNG incidents must be borne by the LNG facility permit applicant. See also Responses 4.1.1 and 4.3.2.

4.4. Comments on §570.4: Transportation/Routing of LNG

Comment 4.4.1. NYSDOT should be part of the approval process and has been eliminated or unacceptably refuses to complete routing certifications. Proposed Regulation, Section 570.49(a) prohibits **intrastate** transport of LNG to LNG facilities **unless the route has been certified by**

NYSDOT (emphasis added.). This is also a requirement of the LNG Statute, ECL Section 23-1713. Thus, NYSDOT has no discretion pursuant to ECL 23-713 not to certify such routes.

However, DEC admits that the NYSDOT does **not** intend to regulate intrastate routes. DEC states that since no designated routes exist for "other" hazardous materials transport it would be "impractical" to develop such routes for LNG transport. (Regulatory Impact Statement p. 10.)

This is unacceptable and misleading. DEC should not announce that Regulations will be developed for certified routing on intrastate transport of LNG while inserting provisions buried elsewhere in the documents admitting that the NYSDOT does not intend to comply with applicable law or the Regulations because it deems them "impractical".

Similarly, Section 570.4(b) of the Regulations requires that **interstate** transport of LNG comply with all state and federal requirements for the transport of **hazardous material**. However, since this statement is not included in subsection 570.4(a), it is not clear that DEC intends this requirement to apply to the **intrastate** transport of the same materials. Whether LNG is carried from locations originating within or outside the State, the relative risks to public safety, roads, and waterways are the same. If LNG is hazardous material when traveling interstate it must be hazardous material when moved **intrastate** as well.

Response 4.4.1 NYSDOT has participated in the development of this regulation and has determined that intrastate transportation route certification is impracticable and is not undertaken for any other hazardous materials. Proposed Part 570 recognizes that in order for intrastate transportation to occur, NYSDOT must certify the route. If NYSDOT does not certify the route, intrastate transport to LNG facilities will not be allowed. The regulation has been modified from the proposal noticed on September 11, 2013 to clarify that all state and federal requirements for the transport of hazardous materials will apply to intrastate transport, if any, as well.

Comment 4.4.2. The routing requirements are inadequate.

Response 4.4.2 See Responses 4.4.1 and 4.4.5. Pursuant to proposed Part 570, interstate and intrastate transportation must be conducted in accordance with applicable State and federal requirements for the transportation of hazardous materials. The requirements comport with the statute.

Comment 4.4.3. DEC is claiming powers it does not possess by declaring unfettered transportation of LNG acceptable. DEC has drafted regs for the certified routing of intrastate transport of Liquefied Natural Gas—as the law requires—and then, elsewhere, effectively undoes both the law and the reg by giving the certifying agency an excused absence. But, DEC does not have the authority to do so.

Response 4.4.3 DEC does not “declare unfettered transportation of LNG acceptable.” DEC is not assuming any authority over LNG transportation other than as is specifically authorized and required by the statute. Proposed Part 570 specifies that all transportation be conducted in accordance with applicable State and federal requirements, and, as per the statute, prohibits intrastate transport unless it occurs on routes certified by NYSDOT.

Comment 4.4.4. The intrastate requirement is unclear and seems to allow transportation to start in the State, briefly exit, and return and be considered “interstate” transportation.

Response 4.4.4 The Part 570 definition of “interstate” transportation is consistent with USDOT and NYSDOT regulatory definitions of interstate commerce. DEC recognizes that the laws, regulations, and case law regarding interstate commerce are complicated. NYSDOT assisted

with the development of this definition, which reflects current jurisprudence connected with the Commerce Clause of the United States Constitution.

Comment 4.4.5. Intrastate transportation (certified by NYSDOT) must also be in compliance with all applicable state and federal transportation safety requirements.

Response 4.4.5 Section 570.4(b) has been modified so it is clear that all transportation of LNG would be subject to all applicable state and/or federal transportation safety requirements.

Comment 4.4.6. More details are needed about requirements for LNG transport vehicles and drivers (e.g., driving rules, hours of operation, etc.).

Response 4.4.6 These issues are adequately addressed by USDOT and New York State Department of Motor Vehicles requirements, with which Part 570 would require compliance.

Comment 4.4.7. The de facto intrastate ban on transportation should be repealed.

Section 570.4(a) provides that the route for intrastate transportation of LNG must be certified by NYSDOT but does not provide a cross-reference to the regulations, if any, governing such certification. For clarity, we recommend that DEC include any such cross-references.

Response 4.4.7 The routing requirement for intrastate transportation is set forth in the ECL and cannot be changed in this regulation. See also Response 4.4.1.

Comment 4.4.8. Section 570.4(a) should provide the reference to the NYSDOT regulation regarding routing of LNG.

Response 4.4.8 At this time the NYSDOT does not have a regulation that addresses the intrastate routing of LNG. See also Response 4.4.1.

4.5. Comments on §570.5: Non-conforming (pre-existing) facilities.

Comment 4.5.1. No comments were received on §570.5 regarding the regulatory provisions regarding the continued operations of the three multi-million gallon ‘grandfathered’ LNG peak-shaving facilities, which have operated safely for decades. However, one commenter requested that the terms referring to them be changed from “Non-conforming” to “pre-existing.”

Response 4.5.1 Proposed section 570.5 has been modified to clarify that there are two criteria that would result in a pre-existing facility being required to apply for and obtain a permit under Part 570. These include an increase in LNG facility capacity and any reconstruction of the facility. See Response 4.1.11.

4.6. Comments on §570.6: Permanent closure of out-of-service LNG storage tanks.

Comment 4.6.1. Part 570 needs to define how long a tank can be temporarily out of service before it must be permanently closed.

Response 4.6.1 Section 570.6 has been revised to clarify that a tank will be permanently closed if it has been out of service for more than 12 months. The definition of out of service has been clarified to say that out-of-service means no longer receiving or dispensing LNG. This approach is consistent with the existing requirement for tank closure in the state fire code for petroleum and with the DEC’s intent for other bulk storage tank systems. If the 12-month requirement creates a case specific burden for an LNG permit holder, they would have the opportunity to apply for a facility-specific permit condition for DEC’s consideration.

Comment 4.6.2. Section 570.6 should clarify the requirements for tank closure plans. Section 570.6 provides that a permit holder must submit plans to DEC if it plans to permanently close an LNG

storage tank or facility. However, the proposed regulations do not specify what information is required regarding such plans nor do they define "permanent closure." We recommend that DEC augment this section to provide such clarification and definition.

Response 4.6.2 The requirements for permanent closure are specified in this section and are clear enough to make it unnecessary to detail the requirements of a closure plan in the regulation. Should experience show that additional detail is needed, it will be included in guidance.

Comment 4.6.3. Section 570.6(b) should clarify what constitutes "good engineering procedures" for protecting tanks from flotation. Section 570.6(b) notes that tanks must be protected from flotation in accordance with good engineering procedures, but does not define what DEC considers to qualify as "good engineering procedures." We recommend that DEC augment this section to provide such definition.

Response 4.6.3 Since these tanks would be permanently closed and not contain LNG, DEC does not need to be specific here about how to design tank flotation protection systems. Regarding the protection of tanks that would be used to store LNG, the State Building Code includes requirements for flood protection. The statement of compliance (defined in §570.1(c)(21)) requires attestation by a professional engineer that the facility design is in compliance with the NFPA standards and the State Building Code. Both require that the tanks be protected from flooding. Therefore, the specific requirements for protecting LNG storage tanks will be determined on a case-by-case basis in the normal course of the facility design.

4.7. Comments on §570.7: Financial assurance.

Comment 4.7.1. Financial responsibility should always be required (including for operations, not just for closure). Financial assurance, which may take the form of trust funds, surety bonds, letters of credit, insurance, documentation of financial capability or other acceptable financial assurance, may be required by DEC to ensure proper closure of facilities. The form and amount of such financial assurance, if any, will be established by DEC.

In other words, liability insurance is mandatory precondition for those who seek to build and operate LNG facilities in the State. As for the need to post a bond, the operative words here are "may" and "if any" as in maybe yes and maybe no. DEC will rule on a case by case basis on the requirement—*if any*—for bonding. And *if any* bonding may be required, it will be limited to the end-of-life process of closing up the facility.

Response 4.7.1 As noted, DEC will consider requiring financial assurance on a case-by-case basis when issuing any Part 570 permit. Liability insurance would be required to be carried by the applicant. This issue would be reviewed by DEC during the permit application process to determine if additional financial assurance would be necessary. See also Response 4.2.10.

Comment 4.7.2. Insurance requirements should reflect the strict liability requirements of the law ECL 23-1717(8). This part of the Regulations refers only to financial assurance to address "closure" of facilities. Section 570.2(b)(10) requires applicants to provide proof of "liability insurance to cover the proposed operation." However, the LNG Statute, ECL 23-1717(8) provides for strict liability, stating: "neither compliance with the requirements of this title, nor the exercise of due care, shall excuse any such person from liability for personal or property damage determined to be caused by the accidental release of liquefied natural gas...." Clearly, the proposed Regulations do not sufficiently describe the scope of potential damages that facility operators must insure against.

If regulations for the permitting of LNG facilities in the State are eventually promulgated, Section 570.7 must be revised to clearly mandate that owners and operators of proposed facilities must provide insurance, bonds or other security measures to cover all costs associated with strict liability

for accidents, environmental damage, and harm to impacted communities and individuals, on- or off-site, as a result of operations or closure of the facility.

Response 4.7.2 See Responses 4.2.10 and 4.7.1. Nothing in Part 570 supersedes the requirements of the ECL regarding strict liability. However, DEC notes that Part 570 specifically requires that insurance covering LNG operations be carried by permit applicants.

Comment 4.7.3. Financial responsibility should be required and expanded to cover impacts from fire, explosion, and releases to surrounding properties, bodily injury, property values, etc.

Response 4.7.3 See Responses 4.7.1 and 4.7.2.

Comment 4.7.4. Part 570 should provide explicit liability protection for municipalities regarding any accidents at LNG facilities.

Response 4.7.4 This issue cannot be resolved in Part 570, but would have to be addressed by a statutory change. Also see Responses 4.7.1 – 4.7.3.

Comment 4.7.5. The State should create an LNG emergency fund to pay for LNG disasters.

Response 4.7.5 Any mechanism of this sort would require statutory authorization. In addition, site remediation issues like those typically addressed under the Superfund for hazardous waste and the Spill Fund for petroleum discharges would not apply to LNG because discharges of LNG quickly volatilize and dissipate. The safety record of LNG facilities in the United States indicates that a disaster fund to address fires and explosions from an LNG facility is not necessary.

Comment 4.7.6. Section 570.7 should include a range of financial assurance mechanisms for closure and claims. Section 570.7 is inadequate. Please change to: “Financial assurance, which may take the form of trust funds, surety bonds, letters of credit, insurance, documentation of financial capability or other acceptable financial assurance, will be required by the Department to ensure costs are met in case of claims filed against said facilities, and for closure of facilities. The form and amount of such financial assurance will be established by the lending institution, local government and confirmed by the Department. Any changes in the above by said facilities during operation will require evaluation and approval by all agencies involved.”

Response 4.7.6 Section 570.7 identifies several mechanisms including, “trust funds, surety bonds, letters of credit, insurance, documentation of financial capability, or other acceptable financial assurance, may be required by the Department.” DEC believes this is an appropriate list. DEC has responsibility for implementing these regulations, and cannot properly delegate them to local agencies or private institutions.

4.8. Comments on §570.8: Reporting of LNG spills.

Comment 4.8.1. All spills should be reported. The regulation sets the bar too low for reporting circumstances or occurrences that may be important to the public, local emergency responders and DEC.

Response 4.8.1 It would be inappropriate to report very minor spills that do not present any threat of fire, explosion or threat to public safety or health. However, DEC recognizes that lack of clarity in the proposed Part 570, noticed in September, 2013 makes it difficult to know when a spill report must be made. The threat of a fire or explosion depends upon many factors making it difficult to establish an objective, measureable reporting threshold. To reasonably address the comment, DEC has rephrased the requirement to read as follows: “Spills of one gallon or

more of LNG at an LNG facility, or lesser amounts that result in a fire or an explosion, must be reported to the Department.”

Comment 4.8.2. All spills should be reported to both the State and local agencies. Moreover, any equipment failures or malfunctions must be reported to local emergency responders, local government and the state. This information will be useful in inspecting and monitoring the facility, identifying whether maintenance is meeting safety standards and with respect to permit revisions and reissuance. All this information should be promptly reported and readily available to the public through hard copy records and on a website.

Response 4.8.2 See Response 4.8.1. Incidents that require a response by local agencies would be reported to them under existing processes.

Comment 4.8.3. All spills should be reported immediately.

Response 4.8.3 Two hours is as immediate as practicable and is consistent with the DEC petroleum and chemical bulk storage programs for other flammable liquid spills

Comment 4.8.4. Spills of any other regulated materials should also be reported (e.g., methane).

Response 4.8.4 Spills of any other regulated materials must be reported as required by other statutes and regulations governing those materials. To attempt to address the reporting of spills of other substances in this rulemaking would be beyond its scope, as well as unnecessary and confusing. See also Response 3.3.1.

Comment 4.8.5. The recordkeeping requirements in Part 570 are inadequate.

Response 4.8.5 See Response 4.2.8.

Comment 4.8.6. Non-spill accidents should be reported (impacts to wildlife, injuries, explosions). According to the Regulations, the only type of accident that must be reported is a LNG spill, defined as the "escape of LNG in liquid form" (Regulations, Sec. 570.8). The proposed Regulations contain no other requirements for reporting or maintaining records pertaining to chemical spills, fires or explosions not caused by a LNG spill or human injury. Nor do the proposed Regulations require the reporting or documentation of impacts caused by site activity (such as venting or flaring) or any other kind of incident in which environmental harm or contamination may have occurred. It is also unclear how Section 570.8, which limits reporting to spills, is harmonized with any applicable reporting requirements that might be included in the NFPA code.

Response 4.8.6 Any impacts or other accidents may be subject to other reporting requirements and are not appropriately included in this regulation. Specifying in more detail the types of incidents that require reporting could result in some that should be reported avoiding the reporting requirement, and vice versa. Flexibility is preferable in this case. See also Responses 3.3.1 and 4.8.1.

Comment 4.8.7. The requirement for reporting LNG spills in Sec. 570.8 is also severely flawed. The proposed Regulations only vaguely state that a spill should be reported if it could "result in or may reasonable be expected to result in, a fire with potential off-site impacts or that cause or may be reasonably be expected to cause an explosion."

Lacking any reference to spill volume, this highly ambiguous language essentially allows the LNG operator to decide what, if any, spills need to be reported. If regulations for the permitting of LNG facilities in the State are promulgated, clearly a specific set of protocols should be included for the reporting of accidents, monitoring of emissions, maintenance of equipment, and the keeping of records appropriate to each type of LNG facilities contemplated.

Response 4.8.7 See Responses to 4.8.1 – 4.8.3.

Comment 4.8.8. DEC should provide an online publicly-available database of LNG spills and accidents searchable by company and facility that includes reports of the resolution of the incidents.

Response 4.8.8 All spills reported to the DEC hotline are available on the DEC public website, which includes information on whether the spill is open or closed. See also Response 4.8.1.

Comment 4.8.9. Section 570.8 should clarify what is meant by “off-site impacts” regarding LNG spills. Clarification of "off-site impacts" is critical. For example, would visual impacts be included as off-site impacts? DEC should better define whether "off-site impacts" are limited to those impacts included under the USDOT's Pipeline and Hazardous Materials Safety Administration's regulations governing the applicable exclusion zones for LNG releases (e.g., 49 C.F.R. Part 193).

Response 4.8.9 See Response 4.8.1. The reference to off-site impacts has been removed.

Comment 4.8.10. We recommend including a volumetric de minimis exemption (e.g., a percentage of the maximum volume of the storage facility based on the overall land area of the facility and the applicable exclusion zones under federal law).

Response 4.8.10 See Response 4.8.1.

Comment 4.8.11. The regulation should specifically recognize that applicants are expected to work with local fire and other emergency responders in the event of an LNG spill to determine the best course of action.

Response 4.8.11 All local fire departments would be properly trained. See Responses 4.3.1 and 5.1.1.

Comment 4.8.12. The requirement in subsection (a) that operators submit a written report to DEC within 48 hours of a spill incident documenting the cause of the spill, the amount of LNG spilled and the curative measures to prevent future spills is unrealistic and actually could harm efforts to control, manage and respond to a spill.

- At a minimum, the deadline for filing of such a report should be contingent on the containment of the spill; i.e., once the spill is fully contained, the owner/operator then would have a specified amount of time in which it is required to file such report.
- We recommend that DEC extend the time for reporting on the cause of the spill and preventative measures to avoid future spills. The proposed 48 hours is simply not long enough and could lead to inaccurate or incomplete assessments of the cause. In the event of a spill, DEC and the industry want to ensure that a complete analysis is undertaken so that if there are appropriate best practices that result they are crafted in the best way to prevent future spills. A 48-hour deadline will not allow for the kind of comprehensive and technical-based review that should be undertaken in the event of a spill.

Response 4.8.12 Section 570.8(a) has been revised to require this report to be submitted within 10 calendar days of the spill or as otherwise directed by DEC. Further, the regulation has been clarified to require this written report only for reportable spills (see also Response 4.8.1). The ten-day requirement was chosen to ensure that DEC gets a timely evaluation but also one that is complete and well considered. DEC could allow more time than ten days but we conclude that is an appropriate balance between timeliness and completeness in most cases. In special cases, DEC can allow more or less time as appropriate.

Comment 4.8.13. The spill reporting requirements should only apply to the applicant.

Response 4.8.13 This requirement for others with knowledge of a spill who are also in an employment or contractual relationship with the facility owner/operator is necessary to ensure timely reporting of spills and is based upon similar requirements in DEC's other bulk storage programs.

4.9. Comments on §570.9: Moratorium.

Comment 4.9.1. Rural areas are not protected as much as NYC resulting in unequal protection under the law. The Regulations appear to assume that the ban on all LNG facilities in any city or town of more than one million people will remain in effect (Regulations, Sec. 570.9.). However, the XE Study states that the Regulations will eventually apply in NYC because LNG facilities will only be sited "outside NYC during the initial years when the existing moratorium on LNG facility deployments may still be in place" (XE Study p. 46.) The clear implication is that LNG facilities will eventually be permitted in NYC under the proposed Regulations. The Regulations, if adopted, must make clear that in all likelihood, they will eventually apply to all of the State as the XE Study indicates. Different standards of protection based solely on the number of people who might be affected are irrational and repugnant. Residents of small cities and rural towns are entitled to the same protections as those who reside in cities of a certain size. The lives of the families, children, students and elderly who live in rural areas are just as valuable as those who live in more populated regions. It is unjust and irrational to assume otherwise. To the extent the Regulations would make it easier to site a LNG facility in minority or low-income communities and would cause disproportionate environmental impacts in those communities, the Regulations are contrary to DEC's Environmental Justice (EJ) Policy.

Disturbingly, the NFPA code specifically referenced by the proposed Regulations appears to promote risk assessment methods that actually encourage the discriminatory treatment of rural populations. Because the code assesses risk in terms of "tolerable" annual fatalities, people who live in rural areas may be exposed to greater danger than those living elsewhere. In fact, based on risk assessment methods accepted by NFPA, it may be permissible for various safety measures, containment techniques, buffer zones and other protective measures to be less stringent in rural communities simply because the number of people who might die in the event of an accident is smaller. This disparate treatment of human beings is highly objectionable.

The equal protection of persons from harm caused by industry is a cornerstone principle of EJ that cannot be dismissed. If Regulations are promulgated, consistent, clearly enforceable safety measures must be established, including but not limited to containment techniques and substantial buffers around facilities, to ensure that residents who live in rural areas are afforded the same protection as those in more populated urban areas.

Response 4.9.1 The legislature has imposed a statutory moratorium only on new LNG facilities located within cities with populations greater than one million persons. Part 570 simply reflects this statutory requirement. See also Response 3.4.2. In addition, the LNG statute repeatedly makes reference to the population density in areas surrounding proposed LNG facilities as a factor to be considered by DEC in siting such facilities. This type of analysis is commonly undertaken in the siting of various similar facilities.

4.10. Comments on §570.10: References.

Comment 4.10.1. No comments were received on §570.10.

Response 4.10.1 No response needed.

5. General Comments on Rulemaking Documents and Process

5.1. Cost impact analyses are inadequate.

Comment 5.1.1. The rulemaking documents do not address impacts to local governments (e.g., emergency response, application review, future SEQRA compliance, zoning law development) – DEC assumes, throughout the proposed Regulations, that there will be no regulatory impact on local governments as a result of the construction of such facilities. These assumptions are apparently based on the premise that the local governments will also abrogate all governmental functions. This is incorrect and inappropriate and the costs to local government of monitoring compliance permit application review, emergency response, future SEQRA compliance, zoning law development and all other governmental functions must be considered.

Response 5.1.1 The RIS addresses the impacts to local governments. In addition, applicants must pay for any emergency response equipment, personnel and training. Beyond these provisions, the remaining tasks are all normal responsibilities of local government and as such should not represent additional burdens.

Comment 5.1.2. The impacts of LNG transportation on roadways was not evaluated in light of the greater weight of LNG trucks that use LNG as a fuel. What would a build-out of LNG infrastructure mean for our transportation infrastructure? Compared to a typical diesel-burning tractor-trailer, a truck fueled with Liquefied Natural Gas weighs between **1,800 and 2,000 pounds more**. That's problematic for trucking companies because the extra weight of the fuel gives them less available weight for cargo. They are thus forced to carry less, and the smaller payloads cut into their profit margins.

Response 5.1.2 The total weight of LNG-fueled trucks is not greater than any other trucks. Individual truck weight limits are already in place on the total weight of a truck based on the roadways limits. Therefore, even though the tractors may be heavier, LNG-fueled trucks would simply have to carry less of a load in order to comply with the established weight limits. The profit margin of private entities is not within the scope of this rulemaking.

Comment 5.1.3. The costs to the state of remediating releases should have been evaluated.

Response 5.1.3 This issue was evaluated. DEC anticipates little or no environmental remediation of any LNG release would be required in most cases since the LNG would volatilize and dissipate.

5.2. The negative declaration should not have been issued.

Comment 5.2.1. To the extent LNG facilities are sited at gas well pads and on new or existing pipelines, they cannot be permitted without a cumulative impacts analysis of all of the underlying impacts of the LNG facilities when combined with the well pads and pipelines and hydraulic fracturing infrastructure. The LNG facilities and these Regulations cannot and should not be analyzed in isolation. The DEC's Negative Declaration issued pursuant to the SEQRA for the action of promulgating the Regulations overlooks several potentially significant adverse environmental impacts, including cumulative impacts, from the expected development and proliferation of LNG facilities across the State.

The DEC's Negative Declaration ignores the required criteria for determining significance set forth at 6 NYCRR Subsection 617.7, which criteria include a "substantial change in existing air quality," "a major change in the use of either the quantity or type of energy," and "the creation of a hazard to human health." The Regulations would allow for deterioration of air quality in the vicinity of LNG facilities which engage in flaring, a major change in the use and transportation of LNG and the legislature has specifically found and acknowledged that LNG is a potential hazard to human health and safety. The cumulative impact of the proliferation of LNG facilities has likewise been

overlooked. That individual permit reviews will be subject to SEQRA is not a sufficient substitute for proper SEQRA review of the Regulations themselves; and considering potential adverse environmental impacts of LNG facilities only on a case-by-case basis would constitute improper segmentation, which, as per 6 NYCRR Subdivision 617.3(g), is contrary to the intent of SEQRA.

Response 5.2.1 This rulemaking does not on its own authorize any LNG facilities. The 2011 NYSEDA study evaluated the expected number of LNG facilities in the foreseeable future (i.e., five years) and concluded that there would be approximately 21 facilities, for fueling vehicles, not involving any pipeline construction. DEC expects the projected fueling facilities would be constructed in lieu of, or would replace, other fueling facilities. In light of these projections, and considering the expected environmental benefits of LNG compared to the fuels it would replace, DEC has concluded that there would not be significant adverse environmental impacts, including cumulative ones, associated with this agency action. As the preceding discussion illustrates, DEC did consider cumulative impacts. See also Responses 5.3.2 and 3.3.1. The change in the energy usage would not be large, and the substitution of natural gas for diesel fuel (the likely primary initial changes) would result in positive environmental impacts, not negative ones.

5.3. DEC failed to adequately evaluate/investigate several issues before proposing Part 570.

Comment 5.3.1. There should have been a positive declaration and a full EIS conducted for the rulemaking to take a “hard look” at potential adverse environmental impacts.

Response 5.3.1 See Response 5.3.2.

Comment 5.3.2. There should have been an EIS that evaluated potential negative impacts to the environment. The potential impacts to air quality, major change in type of energy, and threats to public health and safety from the proliferation of LNG facilities are potentially significant, adverse environmental impacts which require the rescission of the Negative Declaration pursuant to 6 NYCRR Subdivision 627.7(f), and the issuance of a Positive Declaration. In that way, the potential impacts of the Regulations can be more thoroughly documented and analyzed in a Draft Environmental Impact Statement, alternatives can be considered and proper mitigation integrated into the Regulations. Clearly, the fact that the DEC relied on a Short EAF instead of a SEQRA review that was not sufficiently protective of the environment.

It is stated that between 10 and 25 facilities (best estimate 21) are expected within the next five years, but no size parameters of types of facilities are affixed to these facilities, nor is there any consideration or mention of related facilities - such as pipelines - that will or may be involved as components of the "whole action." This is contrary to SEQRA and is subject to a challenge under the requisite "hard look" test. As per the "Notable Court Decisions on SEQRA" section on the DEC website, the case *H.O.M.E.S. v. UDC 69 AD2d 222* (4th Dept. 1979) has bearing here. In it, "The court held that, in order for a negative declaration to be upheld, the record must show that the agency identified relevant areas of environmental concern, thoroughly analyzed them for significant adverse impact and supported its determination with reasoned elaboration."

There should have been an EIS that evaluated potential negative impacts to air (e.g., from venting and smog), water quality, noise, light, wildlife populations, wetlands, floodplains, bird migration, habitat fragmentation, agriculture, “community character,” health care facilities, businesses, and farming. Despite this mandate, even the International Finance Corporation recognizes and assesses the environmental impact of proposed LNG facilities more thoroughly than the DEC in its proposed eight-page document. The IFC's "Environmental, Health and Safety Guidelines for

Liquefied Natural Gas (LNG) Facilities" are technical reference documents which provide that the following environmental issues associated with LNG facilities should be considered as part of a comprehensive assessment and management program:

- Threats to aquatic and shoreline environments
- Impacts to businesses, and farming
- Hazardous material management
- Water
- Air emissions
- Waste management
- Noise
- LNG transport

In the proposed LNG facilities regulations there are no protections for wildlife, drinking water, air quality or forests, nor are there suggested mitigations for noise pollution, light pollution, toxic emissions, spills, etc.

LNG facilities in other locations have contributed significantly to air pollution. In Australia, LNG plants are responsible for nitrogen dioxide levels that exceed safe limits.⁷ In San Diego, imported LNG has contributed significantly to regional smog and so reversed years of hard-won air quality improvements.⁸[R. Soto, "Gas From Afar Pollutes Here, Critics Say," *San Diego Union-Tribune*, 11 Jan. 2011]

Response 5.3.2 In proposing Part 570, which is required by the LNG statute, DEC reviewed potential environmental impacts that might result from this rulemaking, and concluded that there were no potentially significant adverse environmental impacts. On the contrary, DEC expects environmental and other benefits (see, e.g., Responses 1.1.8 and 1.3.1 – 1.3.11). Part 570 establishes a permitting process to evaluate requests to site an LNG facility in the State. The regulations, in and of themselves, do not create any entitlement to a permit, much less specify where any facility may be located.

Whether an individual project may result in significant adverse environmental impacts is contextual, and the nature of the impacts would depend on such factors as proximity to residential areas, wildlife, other environmental resources and the specific plans to construct and operate that facility. The expectation is that LNG facilities proposed under Part 570 would be in proximity to or replace other fueling facilities. However, until an application is received by DEC, conclusions about the significance of any particular facility would be premature and speculative.

To evaluate potential environmental impacts and safety issues, DEC convened a broad working group of affected agencies, which included staff of the various environmental programs within DEC. The group also included staff from the NYSDOT, OFPC, NYSDPS, NYSERDA, and NYSDOS. As the preceding discussion, and that which follows, indicate, DEC did take a "hard look" at the agency action at issue, the promulgation of Part 570.

⁷ <http://www.abc.net.au/news/2013-10-18/pollution-fears-aired-over-curtis-island-lng-plant-approval/5008422>.

⁸ <http://www.utsandiego.com/news/2011/jan/13/gas-from-afar-pollutes-hear-critics-say/all/?print>.

To facilitate this review, NYSERDA commissioned a study that resulted in a report issued in 2011. The results of that study (and a previous study, issued in 1998), combined with the conclusions of the working group, indicated that New York was the only state that did not allow new LNG facilities, and that such facilities had operated in comparative safety and with environmental benefits elsewhere in the country.

The State's approach to LNG under Part 570 would be more protective than that undertaken by other states, by going above and beyond the NFPA requirements (which already apply both in the State, through building/fire codes, and elsewhere). DEC would review each application on a case-by-case basis, denying applications or imposing special permit conditions where appropriate. In addition, the imposition of a facility capacity cap of 70,000 gallons makes the proposed Part 570 program more protective.

With respect to the specific environmental issues raised in the comment, each application would undergo SEQRA review. All applications would evaluate alternatives, including consideration of potential environmental impacts. If a particular LNG permit application may have a significant adverse impact, a positive declaration would be issued and an Environmental Impact Statement would be required. All applications would be subject to the Uniform Procedures Act and 6 NYCRR Part 621, and any permit hearings would be conducted pursuant to 6 NYCRR Part 624. All existing regulatory requirements, including those applicable to air emissions and water discharges, would also have to be complied with. See also Responses 3.3.1 and 5.2.1.

As noted, any detailed discussion of impacts of specific LNG facilities connected with these issues is premature and speculative, in that there are no specific proposals to evaluate. However, in general, based in part on DEC's review of existing LNG facilities around the country, and in the State, most Part 570 permit applications are projected to be for facilities located at or near other industrial operations, usually other fuel storage facilities. In such cases, no significant net increase in adverse environmental impacts can reasonably be anticipated, because any new impacts would be offset by reductions in impacts from activities that are discontinued, or diminished, as LNG replaces other fuels. However, even for co-located facilities that replace other fuel facilities, each application would be evaluated separately under SEQRA. To the extent that a particular project meeting permit requirements causes significant adverse environmental impacts, those would require mitigation.

Part 570 would not create a material demand for other actions that will result in a significant adverse environmental impact. Notwithstanding the fact that the adoption of Part 570 has no potentially significant adverse environmental impacts, DEC has prepared responses to specific issues raised in the comment. They are set forth below:

- air - There would not be significant adverse environmental impacts to the air quality of the State from the implementation of this regulation. See Responses 1.1.8, 1.3.11, 3.2.2, 3.2.3, 3.2.4, and 3.3.6.
- water quality - LNG would replace other liquid fuels (e.g., diesel or fuel oil), which do impact water when containment fails. Any failure of an LNG storage system would not create any impact to groundwater or surface water. Thus, using LNG instead of petroleum presents opportunities for improvements to the waters of the State. See also Response 1.1.2.
- noise, light, visual and community character impacts - The promulgation of Part 570 is not associated with any specific project or geographic area. Therefore, any potential

noise, light, visual and community character impacts cannot be predicted in detail; to attempt to do so would be speculative. Projections are that LNG facilities would be located in commercial or industrial sites. For those projects with potentially significant adverse noise, light, visual and community character impacts, the DEC would require that an environmental impact statement be prepared and appropriate mitigation measures undertaken. As appropriate, DEC policy guidance, including DEC Policy DEP-00-1, Assessing and Mitigating Noise Impacts, would be applied to applications. All projects would have to comply with all applicable laws and regulations.

- wildlife populations/bird migration, floodplains, forests, aquatic and shoreline environments, habitat fragmentation and wetlands - To prejudge impacts in these programs would be speculative, but any impacts to wildlife or birds would require compliance with existing State and Federal regulations. Part 570 permit applications would have to evaluate alternatives, and any potential impacts to wetlands, to forests, aquatic and shoreline environments and habitat. Any impacts to regulated protected species or wetlands would require compliance with existing State and Federal regulations. LNG permit applications would have to evaluate potential impacts from flooding and compliance with existing State and Federal Floodplain regulations. DEC has added to the revised proposed Part 570 a specific requirement that floodplains, within areas impacted by floods equal to or greater than the 100-year/base flood as defined in 6 NYCRR Part 500 and within one-half mile of the proposed facility, be identified with all applications [see 6 NYCRR 570.2(b)(12)].
- agriculture/farming - LNG permit applications would have to consider impacts to agriculture. Any impacts to agriculture would require compliance with existing State and Federal regulations. However, in part because Part 570 facilities would likely be located in existing industrial areas, no significant adverse impacts on agriculture can reasonably be anticipated. See also Response 5.3.6.
- businesses/health care facilities - Potential impacts of LNG facilities on businesses are evaluated in the Job Impact Statement Exemption Statement. Impacts on health care facilities are not a SEQRA issue. See also Response 5.3.6.
- waste/hazardous material management - Projections are that LNG facilities would generally be installed in lieu of, and/or near other fuel storage facilities. No significant difference in impacts on waste production or management can reasonably be anticipated. LNG permit applications would have to evaluate any alternatives, including, among other things, discussion of any potential impacts to waste management. Any significant adverse impacts to waste management would require mitigation.

Comment 5.3.3. There should have been an evaluation of impacts to climate change.

Response 5.3.3 DEC has determined that this rulemaking will not result in any significant adverse environmental impacts. This includes potential impacts to climate change as a result of this rulemaking. See also Responses 1.1.8, 1.1.9 and 5.3.2.

Comment 5.3.4. There should have been a comprehensive evaluation of the sufficiency of the NFPA standards regarding safety and security issues (e.g., buffer zones, terrorism, etc.).

Response 5.3.4 See Responses 3.2.1 and 3.4.9.

Comment 5.3.5. Terrorism should have been evaluated: perimeter security; personnel security; facility access; integrated training with local and other responders.

Response 5.3.5 Site security issues are addressed in the NFPA standards. See also Responses 3.2.1 and 3.4.9.

Comment 5.3.6. There should have been an evaluation of economic impacts to the State industries like beer, wine, yogurt, and cheese. Moreover, the DEC analysis does not consider any negative impacts to existing jobs and businesses in the agriculture, tourism and recreational land use markets. The DEC apparently relies only on the XE Study, which also did not consider adverse impacts and recites a belief that the Regulations would cause no additional paperwork, no additional staffing requirements, and no adverse economic burdens. (Regulatory Flexibility Analysis, p.1; Rural Area Flexibility Analysis, p.1.)

Response 5.3.6 The Revised RIS and Revised Job Impact Exemption statement address impacts to all State industries; no significant adverse impacts were identified.

Comment 5.3.7. There should have been an evaluation of the impacts of truck traffic on roads.

Response 5.3.7 See Response 5.1.2.

Comment 5.3.8. The 2011 NYSEDA reports states but does not adequately support the conclusion that emissions from LNG fueled trucks are lower than for diesel. Before moving forward on LNG in the State, the DEC must demonstrate, and not just claim, that natural gas used as fuel in real-life vehicles would generate lower air-polluting emissions than similar investments in clean diesel or hybrid truck fleets. As part of this analysis, the role of catalytic converters must be studied.

Response 5.3.8 See Response 1.1.8.

Comment 5.3.9. DEC should have evaluated the impacts of contaminants in NG (e.g., radon, petroleum, benzene, hydrogen sulfide). The liquefaction of natural gas is an energy-intense process that generates considerable fossil fuel emissions. And before the methane is liquefied, it must be purged of impurities, such as benzene and hydrogen sulfide. At some LNG facilities, methane is also periodically flared during regasification. All these other gases—including the toxic and carcinogenic ones—all have to go somewhere.

Response 5.3.9 The impacts of chemicals that are removed from natural gas during the production of natural gas are not related to the storage, transportation or regasification of LNG; therefore this issue is beyond the scope of this rulemaking. Any waste generated from the production of LNG in the State would have to be handled and disposed of in accordance with applicable statutes and regulations. DEC expects significant environmental benefits from the implementation of this regulation. See Response 5.3.2.

Comment 5.3.10. DEC should have completed a public health study of the impacts of permitting LNG facilities.

Response 5.3.10 See Responses 5.3.2 and 2.2.1.

Comment 5.3.11. DEC should have evaluated impacts to property values and insurance costs from permitting nearby LNG facilities.

Response 5.3.11 . Property values and insurance costs are not issues that are covered by SEQRA. See following citations from the SEQR Handbook:

- B. 34. May determinations of significance be based on economic costs and social impacts?
No. A determination of significance is based on the regulatory criteria relating to

environmental significance. If an EIS is required, its primary purpose is to analyze environmental impacts and to identify alternatives and mitigation measures to avoid or lessen those impacts. Since the definition of "environment" includes community character, these impacts are considered environmental. However, potential impacts relating to lowered real estate values, or net jobs created, would be considered economic, not environmental. Social and economic benefits of, and need for, an action must be included in an EIS. Further, in the findings which must be issued after a final EIS is completed, environmental impacts or benefits may be balanced with social and economic considerations. p. 87

- C. 9. Are there economic or social factors which are inappropriate for inclusion in an EIS? Purely economic arguments have been disallowed by the courts as a basis for agency conclusions when concluding a SEQRA review by developing Findings. Therefore, potential effects that a proposed project may have in drawing customers and profits away from established enterprises, possible reduction of property values in a community, or potential economic disadvantage caused by competition or speculative economic loss, are not environmental factors. See *East Coast Development Company v. Kay and Wal-Mart Stores v. Planning Board of the Town of North Elba*. p. 118

Comment 5.3.12. The 1998 NYSERDA report is too old and should have been brought up to date.

Response 5.3.12 Part of the reason that the 2011 NYSERDA report was created was to provide an update to aspects of the 1998 report that specifically relate to the promulgation of Part 570. Other parts of the 1998 report are important on their own. Therefore, DEC believes that the 1998 report still has value for the purposes of the rulemaking.

Comment 5.3.13. The 2011 NYSERDA study should have been completed before the regulation was drafted. If, indeed, the regulations were created before there was adequate factual information to verify the safety of LNG expansion in the State, then this rulemaking subverts the intent of the State Administrative Procedure Act (SAPA), which establishes uniformity in state agency rulemaking procedure to "insure that equitable practices will be provided to meet the public interest" and to replace a disjointed approach to rulemaking which would "create misunderstanding by the public.

Response 5.3.13 The 2011 NYSERDA study was conducted to provide specific information required for the rulemaking and related documents, for example impacts to jobs, and to evaluate the current "state of the art" regarding the regulation of LNG. It was completed before the final drafting of the proposed regulation. None of the findings of the 2011 report brought into question any of the facts supporting the rulemaking.

Comment 5.3.14. The LNG law requires DEC to complete an investigation before drafting a regulation; this was not done. ECL § 23-1709 states that "department shall, after investigation...adopt...regulations establishing criteria for the siting of liquefied natural and petroleum gas facilities. Such siting criteria shall be designed to insure the maximum safety of the public from hazards associated with liquefied natural or petroleum gas storage, transportation and conversion."

The Expansion Energy Study—the only recent report cited by DEC—does not fulfill DEC's duty to conduct an "investigation" under the LNG Statute.

In our estimation, the problem is not with Expansion energy and/or Mr. Vandor. The problem lies with DEC's use of conflicted consulting firms to do what either DEC or truly independent contractors should be doing on behalf of the residents of the state.

Response 5.3.14 Along with the 2011 NYSERDA report, DEC convened an interagency work group with representatives from the NYSDOS, the OFPC, NYSDOT, NYSDPS and DEC to investigate and review all issues relevant to this rulemaking. See also Response 5.3.2.

Comment 5.3.15. DEC should have evaluated risks from human error, particularly for smaller facilities with frequent product transfers.

Response 5.3.15 The NFPA requirements address risks from human error. DEC would issue permits for all LNG facilities, and site-specific issues, including any connected with topics raised in this comment, would be reviewed on a case-by-case basis.

5.4. NYSERDA's contractor (XE) has a conflict of interest.

Comment 5.4.1. The projections provided in the 2011 NYSERDA report cannot be relied upon because the author is part of the LNG industry. DEC did not conduct an independent scientific study. The regulations are supposed to be based on the best available data. The data in this case come exclusively from a paper written by an LNG manufacturer. Does the DEC consider this paper objective science?

Although this paper was written by an industry leader, it is referred to in the regs as the "2011 NYSERDA study." Why?

NYSERDA is a public benefit corporation that all State rate payers help to fund. Why is it jobbing out its research to an LNG manufacturer?

Does DEC believe that David Vandor is a reliable source for the claim that liquid natural gas has "environmental benefits? DEC amplifies this same claim in both the text and headline of its **press release** when announcing the release of the draft regs. Does that mean that DEC believes that we, the public, will also be so convinced?

Response 5.4.1 The report was prepared under a NYSERDA contract and subject to review by both NYSERDA and DEC to ensure that the report appropriately dealt with the issues being addressed. The purpose of the report was to research factual answers to questions by contacting individuals with knowledge about the state-of-the-art of LNG matters. DEC needed a knowledgeable expert in the field of LNG that understood the questions that needed to be answered and had the contacts to gather the answers. DEC reviewed this report and used the information to answer the questions in the rulemaking supporting documents. In addition, the author of the study was not part of the State interagency workgroup.

5.5. The Job Impact Exemption Statement (JIS) is inadequate.

Comment 5.5.1. The Jobs Impact Exemption Statement erroneously, and without support, states that the DEC "has determined that the proposed Liquefied Natural Gas (LNG) regulations will have a positive impact on jobs and employment opportunities throughout the State. There would be a creation of an essentially new industry with this rule-making and it will not replace any existing petroleum or chemical facilities in the State." Jobs Impact Exemption Statement, p. 1. This is troubling because it is directly inconsistent with the findings of the XE Study which concluded: "Each of the LNG facilities likely to be deployed in the first five years after the promulgation of Part 570 will generate very few jobs..." and that "[t]he job and cost projections should that there would be minor increases in job opportunities as a result of the ability to issue LNG facility permits." (XE Study, pp.50 and 51.)

The DEC cannot have it both ways. One of these documents, both of which are a part of the record submitted in support of the proposed Regulations, is inaccurate.

Response 5.5.1 The Job Impact Exemption Statement accurately reflects the projection of a positive but small number of new jobs created. No adverse impact on jobs in the State is anticipated.

Comment 5.5.2. No analysis of impacts to tourism, agriculture, recreation was provided. The DEC Job Impact Exemption Statement provides no evidence for its assertion that the impacts to existing jobs and businesses are zero. Businesses in agriculture, tourism, wine-making, and recreational land use will certainly be affected by "regional LNG production facilities" that will be making "relatively large quantities" of LNG and which are "expected to be operating 24 hours per day, seven days a week."

Response 5.5.2 DEC does not anticipate any adverse impacts to tourism, agriculture or recreation. Many of the facilities are anticipated to be co-located at existing truck stops. Any site-specific impacts would be addressed during permitting. In addition, the imposition of a facility capacity cap of 70,000 gallons eliminates the possibility for the development of large LNG facilities.

Comment 5.5.3. The JIS implies there will be new firefighting jobs but most fire companies are volunteer.

Response 5.5.3 While DEC expects very few new firefighting jobs to be created, where there is a need for additional firefighters this would be addressed during the permit process and may include the applicant providing for the hiring of additional firefighters.

Comment 5.5.4. The JIS overestimates the number of new jobs – experience in states producing natural gas shows lower numbers.

Response 5.5.4 This regulation is not related to the production of natural gas.

5.6. The Rural Area Flexibility Analysis (RAFA) is inadequate.

Comment 5.6.1. There was no analysis of impacts to tourism.

Response 5.6.1 See Response 5.5.2.

5.7. The Regulatory Flexibility Analysis (RFA) is inadequate.

Comment 5.7.1. The rulemaking supporting documents are reaching incorrect conclusions regarding paperwork and staffing impacts and burdens.

Response 5.7.1 All significant costs would be paid by permittees. There would be *de minimis* costs associated with paperwork to others.

5.8. The NFPA standards are not sufficiently available for public review.

Comment 5.8.1. The NFPA website is difficult to access/navigate and should not require any personal information to access. The regs "incorporate by reference" two NFPA standards: 52 and 59A. The process of seeking access to the relevant NFPA codes cited in the DEC's regs includes terms of agreement to which you must offer consent. Also as prerequisite to access is a registration process with NFPA that requires divulging your name, phone number, mailing address, email address and various details about your occupation. One must also possess version 5.0 or higher of Microsoft Explorer, etc.

I am not comfortable registering my name and private information with a trade group in order to find out the details of a public law that may affect my family's safety and the safety of my community? This process is not reasonable and does not facilitate citizen education on these critical points of information.

Response 5.8.1 The NFPA standards are copyrighted materials and subject to access as determined by NFPA. DEC has complied with, and gone beyond, all requirements for making these materials available to the public. Each DEC document repository has a copy of these standards available for public access, and contact information for these repositories is posted on DEC's website.

Comment 5.8.2. The NFPA standards are not readily available and you must pay to get a copy from NFPA. We are commenting on the lack of transparent and ease of accessibility to NFPA's codes and standards, which are copyrighted and do not exist in the public domain. The NFPA makes them available for viewing, free of charge on its website, but they cannot be browsed, searched or printed.

These limits, says the NFPA website, are intended to protect "the financial stability" of the association.

Response 5.8.2 See Responses 5.8.1 and 5.8.3.

Comment 5.8.3. The full text of the NFPA standards should be included in Part 570

Response 5.8.3 It is common regulatory practice to incorporate such standards by reference. The NFPA copyright prohibits DEC from including the text of the NFPA standards within the regulation.

5.9. Environmental justice impacts are not addressed.

Comment 5.9.1. Environmental justice issues are not addressed in the regulation.

Response 5.9.1 DEC does not believe there are significant EJ issues connected with this rulemaking. In particular, since there are no specific proposals for LNG facilities, and Part 570 would apply statewide (except with respect to the existing moratorium in NYC), there is no reason to believe Part 570 would disproportionately affect EJ communities or EJ areas. Where applicable, environmental justice issues would be considered in accordance with DEC's CP-29 on a facility-specific permit basis. See also Response 4.9.1.

5.10. The rulemaking documents are ambiguous regarding the type or size of LNG facilities to be permitted.

Comment 5.10.1. The rulemaking documents don't make it clear that facilities other than transportation fueling would be permitted under the regulation.

Response 5.10.1 Although the rulemaking documents emphasize the projection that all of the LNG facilities expected to be permitted in the first five years would be transportation fueling facilities, the proposed documents also acknowledged that other facility types would be covered by the regulation.

Comment 5.10.2. The rulemaking documents do not address import/export terminals in federal waters.

Response 5.10.2 See Responses 2.1.3 and 2.1.4.

5.11. There was an insufficient number of public meetings and hearings.

Comment 5.11.1. Several more meetings should have been held. DEC mishandled the public comment process with respect to the Regulations. DEC scheduled only a single public hearing for the entire State, which took place in Albany, New York on October 30, 2013. This disadvantaged and prejudiced those citizens who live outside of greater Albany and who could not take the entire

day off from work or family obligations to travel to Albany to attend. Additional hearings throughout the State should have been scheduled.

In addition, the hearing venue at DEC headquarters in Albany was insufficient to accommodate the crowd that sought to gain entry. As should have been reasonably anticipated, hundreds of people were present, which overwhelmed the DEC's facilities. Many people could not enter the hearing room when the hearing started and were forced to stand outside in the cold while waiting for a turn to speak. In fact, because the hearing room size was woefully inadequate, someone had to leave the hearing room for another person to be allowed to enter. This prevented the public from hearing what was being said in the hearing and suggests a deliberate intent to curtail the public's right to participate in the one public hearing scheduled. Clearly, DEC knew it was expecting a large crowd, as evident from the large security presence that it had arranged. DEC had a duty under Public Officers Law Section 103(d) "to ensure that meetings are held in an appropriate facility which can adequately accommodate member of the public." DEC failed to meet this legal requirement.

Response 5.11.1 No public information meetings are required under law. However, DEC held a stakeholders meeting in February 2013 and held three public meeting in conjunction with the rulemaking in order to provide information to the public and receive input. DEC used the largest room available to it at the time (capacity of 120 persons) for the hearing. Since the public is not required to pre-register to attend a public hearing, it is not known how many will attend until the event occurs. The hearing continued until no persons who wished to speak remained. In addition, as was repeatedly stated at the hearing, and elsewhere, written comments were given the same weight as oral comments.

Comment 5.11.2. The comment period should have been longer. The public was initially allowed less than 60 days to comment on the proposed Regulations. The Notice of the proposed Regulations was issued on September 11, 2013; however, a press release to the general public was not forthcoming until two weeks later. Public comments were to be submitted by November 4 at 4:00 p.m. Eventually, the time period was extended by 30 days to December 4, 2013; but that is still LESS than 90 days to comment on proposed Regulations that could have a profound effect on communities throughout the State. This is clearly insufficient.

Response 5.11.2 DEC increased the comment period to 85 days which is well more than that required by law. This provided ample opportunity for the public to provide comments, as demonstrated by the DEC receiving approximately 57,000 submittals of over 131,000 comments.

Comment 5.11.3. The hearing should have been longer.

Response 5.11.3 Seventy-one people made oral comments at the hearing. The attendees were repeatedly reminded that written comments would be given equal weight. See Response 5.11.2. DEC made arrangements to continue the meeting until late in the evening if necessary, but the hearing concluded at 5:15 p.m., when no further speakers were present. No person wishing to make an oral comment was turned away.

Comment 5.11.4. DEC has not made "every reasonable effort to involve project sponsors, other agencies, and the public in the SEQR process."

Response 5.11.4 See Responses 5.11.1 – 5.11.3. DEC has worked with all involved governmental agencies, and held a stakeholders' meeting on February 27, 2013, to which all known interested parties were invited (96 were invited). An informal draft of Part 570 was provided to the stakeholders before that meeting. Comments on the draft were considered,

resulting in changes in the draft regulation prior to proposal. The regulation was formally proposed in the State Register on September 11, 2013. DEC then held a voluntary public meeting in Syracuse on October 16, 2013, and two more preceding the required hearing in Albany on October 30, 2013. DEC then extended the required public comment period, greatly expanding the required period during which comments could be submitted. DEC received some 57,000 documents containing over 131,000 comments, evidencing the ample opportunity the public had to make comments. DEC has gone above and beyond applicable requirements, and was accommodating under the circumstances in seeking and incorporating the views of all parties. Additional revisions were made in proposed Part 570 in response to comments received.

5.12. The rulemaking does not address the State Energy Plan.

Comment 5.12.1. Part 570 was developed in a vacuum regarding the processes and requirements of the State Energy Plan. The plan is not even mentioned in the DEC's regulatory statement or in the DEC's public information session materials presented on October 30, 2013. Therefore, the DEC has, ostensibly, not engaged in consultations with involved agencies. This is a gaping deficiency, considering: a) that the purpose of the State Energy Plan is "reliably meeting projected future energy demands, while balancing economic development, climate change, environmental quality, health, safety and welfare, transportation and consumer energy cost objectives."; b) that the State Energy Board is comprised of 14 state representatives from multiple state agencies, including the Commissioner of DEC, the chair of the PSC, the Commissioner of Health and the President of NYSEERDA.; and, c) that DEC is, as part of the plan, actively engaged in critically important and connected topics including climate change, smart growth, greenhouse gas emissions, the Regional Greenhouse Gas Initiative, Cleaner Greener Communities and environmental and health impact of energy. New Yorkers have a right to know how their energy policies are formulated and how the implementing regulations are justified and connected to those policies. Even though the State Energy Plan process codifies requirements for public involvement, the failure of DEC to cite any connection with the State Energy Plan—with its comprehensive components, several of which are very much related to any proposed LNG regulations—is inexcusable and unacceptable.

Response 5.12.1 The State Energy Plan represents policy of state government and is not directly related to this statutorily mandated rulemaking. However, issues associated with LNG are addressed in Volume 2, Chapter 2 of the Draft 2014 State Energy Plan, with which revised proposed Part 570 comports. The development of Part 570 was included in DEC's regulatory agenda.

5.13. There should have been consultation with Indian Nations.

Comment 5.13.1. DEC should have consulted more closely with Indian Nations in the development of the proposed regulation in accordance with CP-42. On March 27, 2009, after years of discussions and meetings, the DEC issued Commissioner Policy CP-42: "Contact, Cooperation, and Consultation with Indian Nations." These proposed LNG regulations have been promulgated without any attempt by the agency to fulfill this important governmental obligation. In this neglected Policy, the DEC promised "cooperation and consultation with Indian Nations on issues relating to protection of environmental and cultural resources" within the homelands of the Haudenosaunee.

Further, the Policy states that: "The Department recognizes the unique political relations based on treaties and history, between the Indian Nation governments and the federal and state governments." DEC promised to consult with Onondaga and the other Six Nations "on

environmental and cultural resources issues of mutual concern." DEC has failed to follow its own policy and has not consulted, as promised.

This failure to consult on this important set of regulations is particularly egregious, given the history of the past five and one half years, in which Onondaga and the Haudenosaunee have met repeatedly with and sent multiple letter to the DEC expressing their fundamental concerns about and opposition to the oil and gas industry's plans to frack Haudenosaunee homelands and to build the associated infrastructure of pipelines, compressor stations and storage facilities.

Response 5.13.1 DEC acknowledges the unique political relationship between the Haudenosaunee and the State, especially regarding effective resource management and the application of conservationism. Upon receiving this comment, DEC staff working on this rulemaking consulted with DEC's Indian Nations Affair Coordinator, who is responsible for implementation of CP-42. The result of this consultation confirmed DEC's initial conclusion that this rulemaking does not require special consultation with the Indian Nations. This conclusion is reinforced by the fact that this rulemaking is statewide, and independent of the HVHF ("fracking") issue, the primary issue raised in the comment. However, on any specific Part 570 permit application that may impact Indian Nations, DEC would implement full consultation under CP-42. See also Responses 5.2.1 and 5.3.2.

5.14. The Regulatory Impact Statement (RIS) is inadequate.

Comment 5.14.1. The RIS does not adequately explain how DEC would enforce against persons who violate the requirement to obtain prior NYSDOT certification for intrastate routing.

Response 5.14.1 DEC enforcement of violations of Part 570 would proceed on a case-by-case basis according to DEC Enforcement policies and applicable authorities. This is similar to other program regulations.

Comment 5.14.2. The RIS underestimates the number of facilities (provided by the 2011 NYSEERDA report) and therefore underestimates DEC staffing needs to review applications and inspect for compliance. The clearest indication that the Expansion Energy Report underestimates the number of plants likely to engage in LNG activities under new regulations comes from a report submitted by New York State Electric & Gas Corporation to the United States Department of Energy (the "NYSEG DOE report").⁹ The report dated January 29, 2009, includes NYSEG's LNG "initial market" assessment for projects within its geographical service area in upstate New York.

Finally, for reasons that are unclear, Expansion Energy considered only a five year period and as a result this reduced the number of LNG projects that would be allowed under the Draft LNG regulations and are likely to move forward with LNG activities.

Thus, there is ample basis to believe that the Expansion Energy Report did not provide credible projection of the number of facilities that are likely to engage in LNG activities if regulations go forward in the State. To the extent that DEC has drafted its regulations and planned based on the Expansion Energy Report projections, DEC is not ready to handle the volume of activity that is likely to occur and will have miscalculated the cumulative challenges in this area, including staffing needs, as well as cumulative risks from activity substantially beyond projections.

⁹ Final Project Status Report, New York State LNG Demonstration Program, New York State Electric & Gas Corporation, January 29, 2009. Accessed at: http://www.netl.doe.gov/File%20Library/Research/Oil-Gas/Natural%20Gas/NT42027_FinalReport.pdf

Response 5.14.2 Comment noted. DEC does not have information to support any estimates other than what is in the report. The 2011 report was reviewed and commented on by DEC and NYSERDA. It was prepared by an expert in the field. There is no reason to believe it is inadequate. The five year period over which projections were made is a reasonable period. The statute and revised proposed regulations provide the Department with the authority to recover all costs it incurs in implementing the Part 570 program.

Comment 5.14.3. The 1998 NYSERDA report was flawed because it did not address the hazards from a rapid-phase LNG to gas phase transition explosion.

Response 5.14.3 This relates mainly to maritime-based LNG operations in which LNG is spilled onto a large body of water. These types of facilities would be under Coast Guard, USDOT, and FERC programs. See also Response 2.1.4.

Comment 5.14.4. The RIS does not address the need to develop evacuation plans for communities where facilities will be located.

Response 5.14.4 The NFPA standards require set-back distances from property lines, which have proven to be adequate. This issue can be addressed, if needed, on a site-specific basis during the permitting process. The inclusion of a 70,000 gallon limit in the revised proposal addresses this perceived concern.

Comment 5.14.5. The reduction in the number of firefighters statewide is not taken into account.

Response 5.14.5 All deficiencies in local emergency response capability would have to be addressed by the applicant prior to the issuance of a permit.

Comment 5.14.6. The RIS does not document its assertion that there is “renewed interest” in permitting LNG facilities.

Response 5.14.6 DEC has received numerous inquiries over the last several years regarding siting of LNG facilities. An example of this interest is that legislation was proposed (it did not pass) in the State legislature to revise the LNG Statute to exclude smaller capacity LNG facilities from the permitting requirement.