

## STATE ENVIRONMENTAL REGULATION

## Expert Analysis

# Are New Liquefied Natural Gas Facilities Coming to New York?

The New York State Department of Environmental Conservation (DEC) is proposing to adopt regulations to implement a permitting program for the siting, operation, and transportation requirements for liquefied natural gas (LNG)<sup>1</sup> facilities<sup>2</sup> in the state. The DEC contends that the price differential between petroleum and natural gas, the development of engines that can run on LNG, the environmental benefit of fewer emissions from LNG fuel than from petroleum, and the economic demand for LNG facilities all have renewed interest in locating LNG facilities in New York.<sup>3</sup> The DEC expects that most of the early permits would be issued for smaller facilities that would supply fuel to long-haul and fleet trucks that use LNG as a substitute for diesel fuel.

A recent report prepared for the New York State Energy Research and Development Authority estimated that in the first five years after the DEC's LNG regulations become effective, there would be approximately 21 LNG facilities permitted in New York, all of which are likely to be associated with transportation.<sup>4</sup>

### Background

In 1976, the New York Legislature added Article 23, Title 17, "Liquefied Natural and Petroleum Gas" (the LNG statute) to the Environmental Conservation Law (ECL). The LNG statute requires the DEC to implement regulations with criteria for the safe siting, operation, and transportation of LNG and LNG facilities throughout New York.

Despite the enactment of the LNG statute, and partly in response to a 1973 maintenance accident at an LNG facility on Staten Island, which was not related to LNG storage, the Legislature enacted a statewide moratorium on the siting of

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new LNG facilities under Chapter 395 of the Laws of 1978. This moratorium was lifted on April 1, 1999, for all locations except municipalities with a population of one million or more (i.e., New York City). The moratorium for New York City has been extended multiple times, and the current moratorium expires on April 1, 2015.

Adoption of the proposed regulations would allow the DEC to address the siting of LNG facilities and to consider applications for environmental safety permits for new facilities.

Most other states permit the construction and operation of LNG storage and conversion facilities. New York, however, has not permitted the construction of any LNG facilities since its LNG statute was adopted. Adoption of the proposed regulations, 6 NYCRR Part 570,<sup>5</sup> would allow the DEC to address the siting of LNG facilities and to consider applications for environmental safety permits for new facilities.<sup>6</sup>

### Applications

The proposed regulations start with an introductory section, setting forth the purpose, applicability, and definitions. The purpose of these

proposed rules is to establish criteria for siting and permitting of LNG facilities.<sup>7</sup> This section also includes exemptions.<sup>8</sup> For example, an on-board LNG fuel tank in a vehicle or vessel is not considered an LNG facility. LNG delivery tank trucks attached to a natural gas pipeline for fewer than 72 hours per event and no more frequently than once during a 30-day period also are exempt under the proposed rules.<sup>9</sup>

The next section of the proposed regulations contains the permit requirements and application procedures.<sup>10</sup> An application must include the following information: (1) the location of the proposed facility; (2) a description of "reasonable alternative locations"; (3) the need for the proposed facility; (4) tank design capacity specifications for each tank and the facility's total capacity; (5) the expected sources of natural gas or liquefied natural gas; (6) a summary and maps showing the LNG supply routes for the facility; (7) possible environmental impacts of the proposed facility and mitigation procedures or features to address these impacts; (8) a statement of compliance; (9) a report, prepared by an "independent qualified person," evaluating the capability and preparedness of fire departments in the vicinity of the proposed facility who would respond to a release of LNG or a fire involving LNG. If this report concludes that additional training, personnel, or equipment is needed for local fire departments to effectively respond to a release or fire involving LNG, the report must detail the deficiencies and provide a detailed cost estimate and schedule for remedying the deficiencies; (10) proof of the applicant's liability insurance covering the proposed facility; (11) a list of National Fire Protection Association (NFPA) requirements applicable to the proposed facility and an explanation of how the proposed facility complies with these requirements; (12) zoning, land use, and population information for the facility and surrounding properties within one-half mile of the facility; and (13) other information determined

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by the DEC to be necessary to decide whether to issue the permit for the facility.<sup>11</sup>

#### Siting and Operation Criteria

The proposed regulations also contain the criteria on which the DEC will rely when deciding whether to approve an application containing the required information.<sup>12</sup>

First, all LNG facilities must comply with all applicable provisions of NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas."<sup>13</sup> LNG facilities that store and dispense LNG or liquefied-to-compressed natural gas (i.e., LNG that may be dispensed from its container as either a liquid or as compressed natural gas) for use by vehicles also must comply with all applicable provisions of NFPA 52, "Vehicular Fuel Systems Code."<sup>14</sup>

Facilities that transfer LNG to trucks or rail cars also must comply with the applicable provisions of the U.S. Department of Transportation's Pipeline Safety Regulations.<sup>15</sup> The installation, operation, and maintenance of facilities that transfer LNG to and from marine vessels must be designed, built, and operated in accordance with those regulations or the U.S. Coast Guard's Navigation and Navigable Waters Regulations,<sup>16</sup> as applicable.

Under the proposed regulations, as part of the criteria for siting and operation of LNG facilities, it is the DEC that will determine if the information in the permit application indicates the need for additional training, personnel, or equipment to enable local fire departments to respond effectively to any release or fire involving LNG at the facility. If the DEC concludes that additional training, personnel, or equipment is needed, the applicant must provide it before beginning to operate the facility.<sup>17</sup>

The proposed regulations also provide that the DEC will consider the physical, flammability, and explosivity characteristics of LNG and compliance with the factors listed in 6 NYCRR Section 570.2(d)(1) through (3). It also will consider "risks to persons and property in the area neighboring the facility," and "risks from transportation accidents" in deciding whether to issue a permit to an LNG facility.<sup>18</sup>

The proposed regulations provide that the permit will be valid for a five-year period unless the DEC determines that a shorter period is appropriate.<sup>19</sup> A permit can be renewed for additional five-year periods, or a shorter term as determined by the DEC.<sup>20</sup> The proposed regulations also provide that a permit, once issued, is valid only for the facility's specified owner and operator, under the specific conditions stated in the application and permit. A

change of ownership requires the new owner to submit an application for a permit transfer and pay a fee.<sup>21</sup> Similarly, a change in the facility operator would require notice to the DEC, although no fee is required.<sup>22</sup>

#### Site Inspections

The proposed regulations allow the DEC to conduct site inspections to determine compliance with the permit.<sup>23</sup> In addition, unannounced inspections by the DEC are allowed when necessary.<sup>24</sup> Each applicant for a permit must offer, and must pay for, an emergency response training program for local enforcement, fire, and hazardous material response personnel of the authority having jurisdiction. The training must occur before an LNG facility begins operating and annually thereafter using a training program approved by the New York State Fire Administrator within the Division of Homeland Security.<sup>25</sup>

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#### Other Matters

There are a number of other subjects covered by the proposed regulations, from the requirement for financial assurance to ensure proper closure of facilities to the reporting of LNG spills. In addition, the proposed regulations govern the transportation of LNG in New York. As proposed, the intrastate transportation of LNG to permitted LNG facilities would be prohibited unless the route has been certified by the New York State Department of Transportation. Under the proposed regulations, the interstate transportation of LNG within New York would have to be conducted in accordance with all applicable state and federal requirements for the transport of hazardous materials, including the requirements set forth by New York's departments of transportation and motor vehicles.<sup>26</sup>

#### Conclusion

The DEC recently extended the public comment period on the proposed regulations to Dec. 4, 2013, at 5 p.m. While it is expected the

DEC will finalize the regulations promptly, to begin a new chapter in the state's energy history, the key questions for the DEC, applicants, and the public will be where LNG facilities will be located and the terms and conditions inserted into the permits.

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1. Liquefied natural gas, or "LNG," is natural gas or synthetic gas composed primarily of methane (CH<sub>4</sub>) cooled to its liquid state. For the purposes of the DEC's proposed regulations, liquefied natural gas does not mean liquefied petroleum gas.

2. LNG facilities are those that either store LNG in a tank system or convert LNG into natural gas through vaporization.

3. Oct. 30, 2013, DEC Public Information Meeting on Proposed Part 570, available at [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/lng1030pres.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/lng1030pres.pdf).

4. NYS Liquefied Natural Gas (LNG) 6 NYCRR Part 570 Promulgation Support Study, at 45, available at [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/lngnyserdareport1.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/lngnyserdareport1.pdf).

5. Proposed 6 NYCRR Part 570 - Regulation of Liquefied Natural Gas Facilities, available at <http://www.dec.ny.gov/regulations/93069.html>.

6. There are three "grandfathered" facilities that produce, store, and vaporize LNG in New York City and on Long Island that are operating under orders on consent with the DEC in accordance with ECL 23-1719; no permits are required for these facilities unless capacity is increased. The three facilities are National Grid's Holtville and Greenpoint facilities and Con-Edison's Astoria plant. Proposed 6 NYCRR Section 570.5.

7. Proposed 6 NYCRR Section 570.1(a).

8. Proposed 6 NYCRR Section 570.1(d).

9. Proposed 6 NYCRR Section 570.1(d)(1) and (2).

10. Proposed 6 NYCRR Section 570.2.

11. Proposed 6 NYCRR Section 570.2(b)(1) through (13).

12. Proposed 6 NYCRR Section 570.2(d).

13. Proposed 6 NYCRR Section 570.2(d)(1). See, <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=59A>.

14. Proposed 6 NYCRR Section 570.2(d)(1). See, [http://www.nfpa.org/catalog/product.asp?pid=5213&cookie\\_test=1](http://www.nfpa.org/catalog/product.asp?pid=5213&cookie_test=1).

15. Proposed 6 NYCRR Section 570.2(d)(2). 49 CFR Part 193, Subchapter D.

16. 33 CFR Part 127.

17. Proposed 6 NYCRR Section 570.2(d)(3).

18. See 6 NYCRR Parts 621, 624.

19. Proposed 6 NYCRR Section 570.2(e).

20. Proposed 6 NYCRR Section 570.2(f).

21. Proposed 6 NYCRR Section 570.2(i) and (k).

22. Proposed 6 NYCRR Section 570.2(i).

23. Proposed 6 NYCRR Section 570.3(a).

24. Proposed 6 NYCRR Section 570.3(a).

25. Proposed 6 NYCRR Section 570.3(b).

26. Proposed 6 NYCRR Sections 570.4, 570.6, 570.7 and 570.8. Interestingly, similar to petroleum spills, LNG spills must be reported to the DEC within two hours of discovery. However, the obligation to report LNG spills only applies to the owner, operator, and their employees, agents, and representatives, and certain persons in contractual or agency relationships with the owner or operator or who have responsibility for handling or managing the LNG and/or its spillage. Proposed 6 NYCRR Section 570.8(b)(1) through (3).