

**Catskill Citizens for Safe Energy ♦ Center for Environmental Health
Citizens' Environmental Coalition ♦ Concerned Health Professionals of New York
Delaware Riverkeeper Network ♦ Earthjustice ♦ Earthworks
Environmental Advocates of New York ♦ Food & Water Watch ♦ Hudson Riverkeeper
Institute for Health and the Environment ♦ New York Public Interest Research Group
Sierra Club Atlantic Chapter ♦ Trout Unlimited**

VIA EMAIL AND FIRST CLASS MAIL

October 17, 2013

Joseph Martens, Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233

**Re: Liquefied Natural Gas Proposed Rule Making, ENV-37-13-00005-P
Request for Extension of the Public Comment Period**

Greetings:

The undersigned organizations and individuals request that the Department of Environmental Conservation (“DEC”) extend the public comment period for the above-referenced rulemaking for an additional one hundred eighty (180) days. In light of the complexity and novelty of this issue, we believe this request is reasonable and would provide the public and experts with additional time to consider the numerous dimensions of this proposal, thereby helping inform DEC in carrying out its responsibilities under the law.

This matter was noticed in the New York State Register on September 11, 2013. The rulemaking is set for a public hearing on October 30, 2013, with comments due on November 4, 2013.¹ DEC will hold two public information sessions, one in Syracuse on October 16, 2013 and the other before the public hearing on October 30th in Albany.²

New York has a unique history with respect to the storage and use of liquefied natural gas (“LNG”). As you are well aware, on February 11, 1973, an explosion at the Texas Eastern Transmission LNG storage facility on Staten Island killed 40 workers.³ This tragedy led the Legislature to pass and

¹ <http://www.dec.ny.gov/press/93559.html>.

² *Id.*

³ See, e.g., *28 Victims Found, 12 Still Mission in S.I. Explosion*, Robert D. McFadden, *The New York Times*, February 12, 1973.

Governor Carey to sign into law a comprehensive siting, operating and transportation law (1976) and subsequently a statewide moratorium on new facilities (1978). As a practical matter the moratorium has been in effect since the Staten Island tragedy. Despite the lifting of the moratorium almost a decade and a half ago, effective April 1, 1999, neither DEC nor New York State Department of Transportation (“DOT”) had issued implementing regulations required under the 1976 law.

In the intervening years, utilities and the natural gas industry have pushed for legislative approaches as an alternative to implementing the comprehensive regulatory statute. Bill drafts were circulated and bills were introduced and advanced by various interests, most recently in the 2013 legislative session.

Now, almost 40 years after the Legislature first acted in this area, the DEC has issued regulations purporting to address and implement the comprehensive law enacted in the 1970s, including aspects previously believed to be solely within the purview of DOT.⁴ Yet DOT has not issued regulations nor does it have a role in the proposed regulations.

For our organizations and other interested New Yorkers in communities throughout the state, meaningful participation—which will yield more useful comments for DEC—requires having sufficient time to review, analyze, discuss and comment on the proposal. We believe the minimal statutory time period for comment is inappropriate and more time is necessary for the public and experts to weigh in on the proposed LNG regulations.

Since no new LNG facilities have been sited in New York since 1973, there is limited experience and expertise in New York on LNG. Thus, New Yorkers need more time to consider the range of issues that deserve examination before regulations are finalized. Included among the issues that warrant attention are whether the proposed regulations comply with the state’s comprehensive LNG statutory provisions; the adequacy of the proposed regulations from a public health and safety perspective; the appropriateness of applying these external codes, directly incorporated by reference, to New York⁵; and whether the regulations will ensure a high level of emergency response training, preparation, communication and coordination.

⁴ See “Report on Issues Regarding the Existing New York Liquefied Natural Gas Moratorium, New York State Energy Planning Board, November 1998, p. 2-9, which states in relevant part: “The Commissioner of Transportation is authorized in Section 14-f of New York State Transportation Law to promote safety in all modes of hazardous materials transportation (which includes LNG).”

⁵ The proposed regulations incorporate by reference National Fire Protection Association (“NFPA”) codes, NFPA 59A, “Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)” and NFPA 52, “Vehicular Gaseous Fuel Systems Code.”

Moreover, our review is complicated by the fact that to a great extent the proposed regulations rely on proprietary codes created by the National Fire Protection Association (“NFPA”), a non-profit standard setting organization. Unfortunately, full access to NFPA’s codes requires purchase. Limited access is available online. However, online access is cumbersome, making it difficult to review and analyze the NFPA codes. The NFPA website sets forth the limitations on the “RealRead” program access:

This document is designed to be viewed online: there are no "print", "save", "cut and paste", or "search" options.⁶

Thus, average New Yorkers, community-based organizations and advocacy groups have an additional obstacle in reviewing the key substantive parts of the proposed regulations, which are contained in NFPA’s proprietary codes 59A and 52. In contrast, access to these materials is not an issue for industry representatives.

Further, for many other issues, local experts are available in New York. Expertise may come in the form of lawyers, engineers or first responders with experience in the relevant subject areas. However, since LNG use in New York has been sharply curtailed for decades, identifying these resources is a greater challenge. Thus, the learning curve is longer and more time is needed to examine the proposed regulations.

We believe the obstacles we face in fully reviewing and commenting on the proposed regulations present similar challenges to municipal governments and community-based first responders, who will be called upon to contend with a set of new, complicated issues with respect to zoning, local monitoring, traffic and emergency response.

In light of the fact that it has been almost 40 years since New York enacted its comprehensive LNG statute addressing the siting, operation and transporting of LNG within the state and that the proposed rule-making envisions up to 25 permitted facilities (which does not include vehicle usage)⁷ in the first five years, the DEC should grant this reasonable request for an extension of the public comment period for an additional 180 days.

⁶ Accessible at www.nfpa.org/catalog/services/onlinepreview/online_preview_document.asp?id=59A13.

⁷ DEC Summary of Regulatory Impact Statement – 6 NYCRR Part 570, section 3, “Needs and Benefits.”

Thank you for your consideration of our request. Please contact Russ Haven at the New York Public Interest Research Group (NYPIRG) at 518 436-0876 if you would like to discuss this matter further.

Sincerely,

Russ Haven
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cc: Governor Andrew Cuomo
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