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New York Adopts Regulations for Liquefied Natural Gas Facilities

The New York Department of Environmental Conservation (DEC) this week adopted long-anticipated regulations establishing a permitting program for the siting, construction and operation of liquefied natural gas (LNG) facilities. (6 NYCRR Part 570.) These regulations, which will become effective February 26, 2015, will allow for the development of new LNG facilities in New York state for the first time in nearly 40 years. The regulations were first proposed by DEC on September 11, 2013. Following several public information meetings and public comment periods, DEC revised the regulations to include an upper limit of 70,000 gallons as the total amount of LNG that may be stored at a permitted LNG facility.

New York has not allowed new LNG facilities in the state since 1976, after an explosion on Staten Island killed 40 workers. Although the statutory moratorium was lifted for all areas outside New York City in 1999, the ban effectively remained until the DEC passed regulations. The regulations have no effect on the moratorium that still prohibits new LNG facilities within New York City.

The regulations also address the transportation of LNG, prohibiting the intrastate transportation of LNG unless the route has been certified by the New York Department of Transportation (NY DOT). The regulations, however, exempt LNG fuel tanks used to power trucks and other vehicles from the permitting requirement. According to DEC's Revised Summary of Express Terms, the NY DOT has determined that since certified routes are not established for other hazardous materials, it would be impracticable to establish certified routes for intrastate transportation of LNG, and accordingly, intrastate transportation of LNG will not be authorized under the regulations. The regulations do not require certification of interstate LNG transportation routes.

DEC's regulations require that LNG facilities comply with the National Fire Protection Association siting standards, which prescribe, among other things, setbacks, evacuation requirements and tank capacities. Further, LNG facilities that transfer LNG to and from trucks, rail cars, or marine vessels must comply with the U.S. Department of Transportation's Pipeline Safety Regulations, 49 CFR Part 193, Subchapter D, or the U.S. Coast Guard's Navigation and Navigable Waters Regulations, 33 CFR Part 127, as applicable.

The regulations provide for DEC site inspections and require that the applicant offer training, at its own cost, to local emergency response personnel. The regulations also require the closing of out-of-service LNG storage tanks or facilities and prompt spill reporting for spills of one gallon or more of LNG at an LNG facility, or lesser amounts that result in a fire or an explosion.

DEC estimates that the most common LNG facilities to be permitted under the regulations in the first five years will be fueling facilities that are designed to serve long-haul trucking and commercial fleet operations.

Should you have any questions regarding DEC's regulations, please feel free to contact any of the attorneys listed in the sidebar.

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