



STATE OF RHODE ISLAND
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Peter F. Neronha
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May 7, 2021

Via Electronic Mail

Emma Rodvien
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RI Energy Facility Siting Board
89 Jefferson Boulevard, Warwick, RI 02888
Emma.rodvien@puc.ri.gov

RE: *SB-2021-03 – Sea 3 Providence, LLC Petition for Declaratory Order Regarding the Rail Service Incorporation Project*

Dear Ms. Rodvien,

Please accept the Attorney General’s memorandum of law in objection to the above-referenced Petition for Declaratory Judgment (“Petition”) filed by Sea 3 Providence, LLC (“Sea 3 Providence”) with the Rhode Island Energy Facility Siting Board (“EFSB”). The Petition seeks a determination that its proposed rail service and other associated enhancements to its current liquid propane gas (“LPG”) terminal and storage operations at 25 Fields Point Drive, Providence, (the “Facility”) *do not* constitute an “alteration” of a major energy facility and therefore do not require a full application before the EFSB pursuant to R.I. Gen. Laws § 42-98-1, *et seq.* The Attorney General disagrees and urges that the EFSB find a full application is mandated and commence the review process, including convening a public preliminary hearing, evaluation of the application for issues to be considered and designation of advisory opinions as appropriate, in accord, *inter alia*, with R.I. Gen. Laws § 42-98-9.

The proposed increase in operations is significant and raises serious concerns about the cumulative addition of harmful air emissions associated with increased truck traffic in an environmental justice community already overburdened by pollution, and other serious public health and safety concerns related to rail transport and storage of LPG. Moreover, an expansion of the Facility for the purpose of increasing the import and distribution of LPG runs contrary to the State’s mandatory long-term climate goals. As such, the EFSB should determine that the proposed expansion is an “alteration” to a “major energy facility” as those terms are defined by the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-3(b) and Rule 1.3(4) of the EFSB’s Rules and require Sea 3 Providence to submit a full application to the EFSB for the proposed expansion.

A full application from Sea 3 Providence and comprehensive review by the EFSB are imperative to ensure that all aspects of this proposal are satisfactorily addressed and that the public is given adequate opportunity to comment on the proposal’s potential impacts to the community. Further,

the Attorney General notes that the EFSB public notice for the Petition discourages objections by requiring a “memorandum of law” and the mailing of five hard copies and is different from a recent public notice given for a similar petition from National Grid on Aquidneck Island. The Attorney General encourages the EFSB to adjust its public notice requirements going forward so that public comment deadlines and intervention deadlines are clearly stated and so that it is easier for the general public to participate in the process of reviewing these petitions and projects. Specifically, the EFSB should be mindful of environmental justice communities’ rights to be heard on projects, which have the potential to impact already overburdened communities.

The Attorney General’s full comments in support of its position are included below.

A. THE PROPOSED EXPANSION IS AN “ALTERATION” TO A MAJOR ENERGY FACILITY PURSUANT TO R.I. GEN. LAWS § 42-98-1 AND REQUIRES A FULL APPLICATION BEFORE THE EFSB

According to R.I. Gen. Laws § 42-98-3(b), an “alteration” is defined as “a significant modification to a major energy facility which, as determined by the Board, will result in a significant impact on the environment or the public health, safety and welfare.”

In the Petition, Sea 3 Providence uses terms like “operational enhancement,” “ancillary modification” and “construction program” to describe the proposed expansion of its Facility operations. At the same time, Sea 3 Providence acknowledges that its “modification” needs approvals from the State Fire Marshal and the Coastal Resources Management Council (“CRMC”), an approved Soil Management and Stormwater Management Plan from the Rhode Island Department of Environmental Management (“DEM”), and Development Plan review from the City of Providence. Furthermore, the Petition notes that the alteration will require updates to the Facility’s Emergency Response Plan, Process Safety Management Plan, the EPA and Risk Management Plan, and monitoring for compliance with the existing Environmental Land Use Restrictions (“ELUR”) on the property. Though the expansion is described as a relatively insignificant construction program, Sea 3 Providence hired consultants to prepare Optimization Studies, a Flare Study, and a Traffic Analysis. The Petition for the proposed expansion was supported by a 33-page Site Report and more than 400 pages of exhibits that must be reviewed. The proposed 4-phased expansion is documented like a significant alteration to a major energy facility and for the reasons set forth below should be determined to be so by the EFSB.

Sea 3 Providence proposes to incorporate a vacant adjacent lot into the daily operation of its existing terminal within the ProvPort marine industrial port complex to enable it to acquire LPG by rail in addition to its current means of obtaining supply from marine vessels. In addition to connecting an existing rail spur, the Petitioner proposes to install other equipment to allow for the offloading of LPG into six new 90,000-gallon horizontal storage bullet tanks on the vacant adjacent property, which will increase the storage capacity on site by 450,000 gallons. The existing truck rack would be expanded to include two more tractor trailer truck lanes from offloading. The proposed daily rail shipment would include sixteen rail cars of LPG per day.

The EFSB should find the proposed expansion of the Facility to be an “alteration” because: 1) it will increase diesel emissions and truck traffic in the Port, impacting the public health and welfare of an already overburdened environmental justice community; 2) serious safety concerns are

associated with transportation of LPG by rail and the storage of LPG in rail cars; and 3) the potential growth in operations is inconsistent with Rhode Island's long-term climate change goals.

1. The Proposed Expansion Will Increase Diesel Emissions and Truck Traffic in the Port Impacting the Public Health and Welfare of an Already Overburdened Environmental Justice Community.

The residential neighborhoods to the south and west of the Port of Providence are already suffering the disproportionate impacts associated with heavy truck traffic and the industrial and commercial activities taking place along Allens Avenue. These activities are highly concentrated in a relatively small geographic area and expose the residents of South Providence, and nearby communities to greater risk of severe respiratory illness than other Rhode Islanders. Specifically, the additional truck traffic into the Port of Providence from the proposed project may result in significant increases in nitrogen oxide and easily inhaled fine particulate matter in an area with already elevated pollution levels and elevated asthma rates including early onset of asthma cases in children. As of 2019, Rhode Island reports the ninth-highest rate of asthma in the country – with the some of the highest concentrations in the areas surrounding the Port of Providence. The referenced map shows a clear correlation between particulate matter emitted from diesel vehicles in the Port of Providence and the respiratory hazard created by those emissions in the surrounding communities. This map provides a clear picture of the fact that this low-income community of color is being over-burdened by poorly evaluated industrial operations and associated expansions. The presence of unregulated cumulative toxic air emissions caused by segmented and incremental project expansions in the Port of Providence is the very definition of environmental injustice. The potential for this impact alone deserves to be studied and reviewed pursuant to the public full application process.

Air Toxics: Diesel Particulate Matter

Respiratory Hazard Index

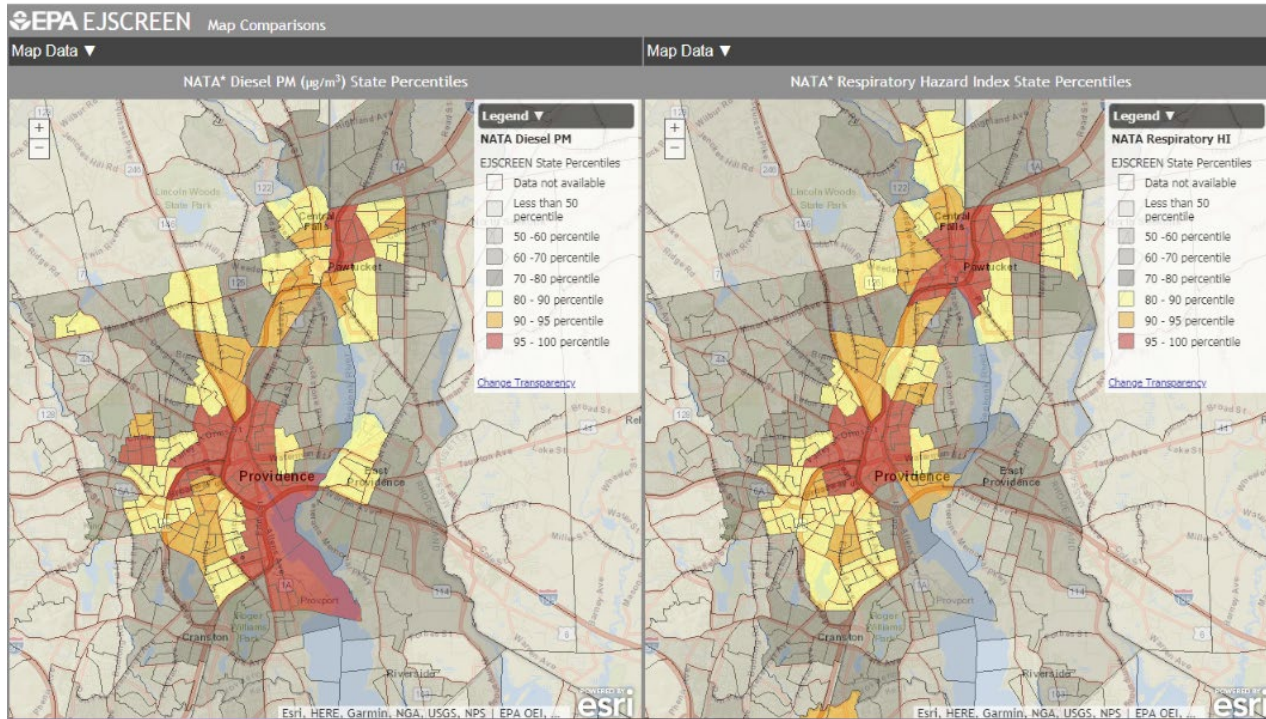


Figure 1 - Presentation on Asthma in Rhode Island: Greater Providence Area, prepared by Julian Drix at RIDOH.

In fact, air quality issues along Allens Avenue and in the Port of Providence prompted the U.S. Environmental Protection Agency, Region I, to fund and conduct a Truck Count and Assessment Study in order to develop an inventory of truck activity and identify potential strategies to reduce air emission, noise, and congestion from heavy-duty trucks and their activities. During the first phase, completed last August, surveyors counted 1,360 trucks within the Port area over a period of just forty-six (46) hours. *Rhode Island Truck Count and Assessment Study*, Dawson Solutions, September 9, 2020.

According to the Traffic Assessment completed by Pare Corporation on behalf of Sea 3 Providence, the overall objective of the proposed expansion is to “provide the operational flexibility to move 600,000 gallons (with a maximum of 1,200,000 gallons) of LPG product per day on to truck transports” and that “*the permitted number of trucks will not increase with the ancillary expansion of the Sea 3 Providence’s operation.*” (*Emphasis added*). Sea 3 Providence Petition, Figure 5. While the existing site is permitted for 244 trucks a day with eighteen loads per hour, *actual usage to date has only been between 80-100 trucks per day during the highest demand times*. Therefore, the proposed expansion of operations will increase the current baseline number of trucks traveling to and from the area – a baseline that has already contributed to demonstrable injury – and may in fact allow Sea 3 Providence to perhaps more than double the number of trucks currently traveling along Allens Avenue to I-95 access points.

Sea 3 Providence is permitted to operate two flares for the control of volatile organic compounds (“VOC”) emissions that result from the loading of the LPG tank and the truck loading racks. The

community is already exposed to VOC emissions (some from inadequately controlled sources) from several sources within the Port of Providence. Even small increases of VOC emissions contribute to cumulative negative health impacts and the potential for increase needs to be evaluated. It is not entirely clear from the materials submitted whether the air pollution control technology for this Facility is adequate in light of the concerns about cumulative impacts in this community. As part of its review of the application for this proposed expansion, the EFSB should solicit advisory opinions from DEM and the Rhode Island Department of Health.

These public health, safety and welfare concerns warrant the EFSB's treatment of the proposed expansion as an alteration.

2. The Proposed Expansion Requires Full Review by the EFSB Due to the Serious Safety Concerns Associated with Transportation of LPG by Rail.

As a matter of general practice, any proposed expansion that brings with it the possibility of high-hazard flammable trains being routed to densely populated residential areas should be reviewed with utmost care and scrutiny, and in a public process. Propane gas is highly combustible, denser than air, and can be volatile if not stored and transported within precise parameters. Therefore, the transport of LPG by rail, the storage of LPG in rail cars, and the potential for uncontrolled releases of LPG cannot be viewed as an "ancillary modification." The transport and storage of LPG creates serious fire and explosion risks. For example, the Process Design Basis document attached to the Site Report states that "given the design temperature of the Refrigerated Tank (T-0001), a high concentration of ethane should be avoided in imported propane from railcars in order not to exceed this minimum design temperature of the storage tank." Process Design Basis at p.8. But neither the Petition nor the Site Report explains what measures will be employed by Sea 3 Providence to verify ethane content before accepting rail car deliveries of LPG.

The safety plans for the transport of LPG by rail and the potential storage of LPG in up to sixteen rail cars per day at the Facility must be comprehensively reviewed. The Pipeline and Hazardous Materials Safety Administration ("PHTSMA") together with the Federal Railroad Administration have come under fire recently for failing to adequately address the specifications for rail cars transporting cryogenic liquids. Attorneys General from fifteen states, including Rhode Island, and the District of Columbia have expressed concern that certain rail cars are not designed to address the safety hazards associated with transporting these cryogenic fuels.

The submitted materials also do not address how the risks associated with rail car derailment, tank car crashworthiness or routing near populated areas will be addressed. The State's and the City of Providence's capacity to respond to the accidental release of LPG or an explosion caused by accident or otherwise in a densely populated areas should be thoroughly – and publicly – evaluated.

Furthermore, the security implications of LPG shipments by rail, and the storage of LPG in rail cars are serious considerations, as LPG shipments and storage facilities could be targeted by individuals with malicious intent. These safety concerns have been well documented by the community. When Teppco Partners LP, the former fossil-fuel transportation company ceased its operations in 2016 and Sea 3 Providence took over, one of Sea 3 Providence's first actions was to hire a consultant to downgrade the Coast Guard's threat assessment for the Facility to a level that does not require police detail when LPG tankers arrive on site. The Police Chief and several

members of the Providence City Council expressed genuine concerns about the downgrade, as there had always previously been significant police and fire escorts with these transports given the associated fire and security risks. See Tim Faulkner, *Council, Police Caught Off-Guard by LPG Shipment*, ecoRI news (Jan. 28, 2020) (<https://www.ecori.org/pollution-contamination/2020/1/28/rto7ugghhi8uc8jt84t95uipfkmrx>).

Although it is unclear from the Petition whether police and/or fire escorts will be required for the rail shipments, the fire risks associated with the installation of the six new high pressure “bullet” LPG storage tanks and the associated piping for rail offloading increases the risk of a possible fire/explosion at the Facility. The daily rail shipment of sixteen rail cars of LPG to the Facility through this densely populated residential area would also increase the risk of public harm caused by a catastrophic accident. Also requiring review are the implications associated with the Facility’s location on the water within ProvPort and its vulnerability to the impacts of climate change, particularly sea level rise, hurricanes and related storm surges. Increasing the storage capacity of the Facility only heightens the risk of incidents in this industrial waterfront environmental justice community.

Accordingly, full EFSB review of the proposed expansion is necessary to ensure the public’s safety, especially when we do not have sufficient information about the Facility’s safety plan for this proposed expansion, the specifications of the rail cars, or the capability of the Providence Fire Department, Rhode Island Department of Environmental Management, and Rhode Island Emergency Management Agency to respond to an uncontrolled release of LPG at the Facility, malicious acts, or train derailment/accident.

3. The Potential Growth in Operations is Inconsistent with Rhode Island’s Long -Term Climate Change Goals.

Expansion of this Facility would allow for increased and eased distribution of fossil fuels, which is contrary to our State’s mandatory goals to address climate change. The State of Rhode Island, boasting over 400 miles of coastline, is particularly vulnerable to sea level rise, cyclones, and flooding, and has already spent significant funds to study, mitigate, and adapt to the effects of global warming. Climate change already is adversely affecting Rhode Island and jeopardizes State-owned or operated facilities critical for operations, utility services, and risk management, as well as real property and other assets that are essential to community health, safety, and well-being.

In response to these ongoing dangers, Rhode Island has been at the forefront of renewable energy initiatives, including enacting laws like the Resilient Rhode Island Act and the recently enacted Act on Climate. Of particular relevance here is the Act on Climate, which establishes *legally binding* GHG emissions reductions of 45% below 1990 levels by 2030, 80% by 2040, and net-zero emission by 2050. The State’s failure to meet these goals could subject the State to litigation. Therefore, it is important that the State evaluate every proposal through the climate change lens with an eye toward achieving the goals. The ability of the State to meet its climate goals is important to the general welfare of the State, as such the potential for the proposed expansion to undercut the State’s ability to meet its climate goals should factor into the EFSB’s determination that the proposed expansion is an “alteration.”

B. EFSB'S PUBLIC NOTICE DISCOURAGES PUBLIC COMMENT

The EFSB's April 16, 2021, public notice is inapposite to purpose of public notice and comment, as it improperly burdens individuals who *wish to object* to the Petition over those who *wish to comment in support* of the Petition. Specifically, the notice states:

The Board hereby gives notice that it will accept written objections with a memorandum of law or comments in support of Sea 3 Providence, LLC's Petition until 4:00 p.m. on May 7, 2021. Objections and comments should be limited to the issue of whether the proposed project constitutes an alteration as defined in the statute. All filings shall be made electronically to emma.rodvien@puc.ri.gov and an original and 5 hard copies shall be provided to Emma Rodvien, Coordinator, Energy Facility Siting Board, 89 Jefferson Boulevard, Warwick, RI 02888.

(Emphasis added in underline and italics).

The requirement for the submission of a memorandum of law applies only to objectors and imposes an additional burden on the objector that is not imposed on the supporter. Further, the notice discourages the public from commenting unless they have the ability to prepare a memorandum of law and the capability to make and mail five hard copies. The distinction between the requirements for objectors and supporters for purposes of commenting on this Petition is not clear to the Attorney General. The point of public comment is to help inform and bring transparency to the decision-making process and whether a commenter supports or opposes a particular project should not have any relevance to the applicable requirements for comment.

Further, despite there being no particular EFSB regulations requiring public comment in declaratory judgment petitions, it appears that this public notice was published pursuant to the procedures laid out in R.I. Gen. Laws § 42-98-9.1, *Public Notice and Hearings on Construction Projects in Cities and Towns Affected*. Specifically, this statute requires “the applicant shall notify the citizens in towns and cities affected thirty (30) days prior to public meetings through local papers.” R.I. Gen. Laws § 42-98-9.1(c). Here, the notice was published in the Providence Journal. Importantly, this law provides “[p]ublic input *shall* be a part of the decision-making process.” R.I. Gen. Laws § 42-98-9.1(e). This language specifically shows that the intent of public comment is meant to be inclusive and without the limitations set forth here. Accordingly, the Attorney General respectfully requests that the EFSB accept electronic comments for both objectors and supporters, with or without an accompanying memorandum of law.

C. CONCLUSION

The Attorney General hereby requests the EFSB determine that the proposed expansion to the Facility is an alteration of a major energy facility requiring a full application and review by the EFSB.

Respectfully submitted,

THE STATE OF RHODE ISLAND

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