



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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Peter F. Neronha
Attorney General

June 16, 2021

VIA FIRST CLASS and ELECTRONIC Mail

Emma Rodvien
Siting Board Coordinator
RI Energy Facility Siting Board
89 Jefferson Blvd.
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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:

Enclosed please find for filing an original and six (6) copies of the Attorney General's Motion to Intervene in the above-referenced docket.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Nicholas Vaz

Special Assistant Attorney General
nvaz@riag.ri.gov

Enclosures

Copy to: Service List

**STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD**

**In Re: Sea 3 Providence, LLC
d/b/a Sea 3 Providence
(Rail Service Incorporation Project
25 Fields Point Drive and Seaview
Drive Providence, Rhode Island)**

Docket No. SB-2021-03

THE RHODE ISLAND ATTORNEY GENERAL'S

MOTION TO INTERVENE

(Memorandum of Law Incorporated Herein)

NOW HERE COMES the Attorney General for the State of Rhode Island, Peter F. Neronha, and moves to intervene in the above-captioned matter, pursuant to the Energy Facility Siting Board's (hereinafter "EFSB") Rules of Practice and Procedure § 1.10 (hereinafter "EFSB Rules"). In support hereof, the Attorney General incorporates by reference, his Objection submitted to the EFSB on May 7, 2021 (attached hereto as *Exhibit A*), and further provides the following:

I. INTRODUCTION AND BACKGROUND

On March 15, 2021, Sea 3 Providence, LLC (hereinafter "Sea 3 Providence") filed its petition with the EFSB (hereinafter the "Petition"). The Petition seeks a determination that Sea 3 Providence's proposed rail service and associated enhancements to its current liquid propane gas (hereinafter "LPG") terminal and storage operations at 25 Fields Point Drive, Providence (hereinafter 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 Energy Facility Siting Act (hereinafter the "Siting Act").

Pursuant to the Siting Act, the EFSB is “the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state.” R.I. Gen. Laws § 42-98-7. As plainly stated in R.I. Gen. Laws § 42-98-4: “[n]o person shall site, construct, *or alter a major energy facility within the state without first obtaining a license from the [EFSB]...*” (emphasis added). Accordingly, should the EFSB determine that the proposed expansion of the Facility constitutes an “alteration” to a “major energy facility,” a full and comprehensive permitting process overseen by the EFSB must be conducted.

The Siting Act and the EFSB Rules define major energy facilities to include, *inter alia*, “... facilities for the conversion, gasification, treatment, transfer or storage of liquefied natural and liquefied petroleum gases[.]” R.I. Gen. Laws § 42-98-3(d); EFSB Rules 1.3(16). An alteration is defined as: “a significant modification to a major energy facility which, as determined by the [EFSB], will result in a significant impact on the environment or the public health, safety and welfare. [...]” R.I. Gen. Laws § 42-98-3(b); EFSB Rules 1.3(4).

Clearly, the Facility is a major energy facility, as it stores large quantities of LPG and is engaged in the conversion of LPG for transport. Sea 3 Providence acknowledges that it is operating a major energy facility, but asserts that its proposed additional and changed operations do not constitute an *alteration* of the Facility.

Sea 3 Providence has indicated that its expansion does not constitute an alteration, as the company does not project long-term impacts to the environment or the public health, safety and welfare. See *Petition*, page 10. However, this determination must be made by the EFSB, and can only be made upon review of a complete application and hearings having been conducted to ensure that the public’s concerns are adequately addressed. The predictable effects of the proposed

expansion require a thorough review of the project via a full permitting process conducted by the impartial members of the EFSB.

The Attorney General is obligated to protect and represent the public interest. There is an undeniable public interest in ensuring clean air and general safety for the surrounding communities. Not only does the Attorney General have a statutory right to intervene in this matter pursuant to Rhode Island's Environmental Rights Act, but, as explained below, the EFSB need only find that the public interest *may be* affected by the Petition in order to allow intervention pursuant to EFSB Rule 1.10. There is more than enough evidence to suggest that this low bar has been met, as there is no question this large-scale project could potentially affect the safety, health and welfare of the Rhode Islanders living in the surrounding areas. Accordingly, the EFSB must allow the Attorney General to intervene and be heard.

II. STATEMENT OF RELEVANT FACTS

As noted in the Petition, Sea 3 Providence proposes to merge and incorporate a vacant lot adjacent to the Facility into its daily operation at the existing terminal within the ProvPort marine industrial port complex. The project would enable Sea 3 Providence to acquire LPG by rail, while continuing to receive its current shipments from marine vessels. If Sea 3 Providence is allowed to move forward, changes at the Facility would include, among other things, the construction of a new connection to an existing rail spur to allow for LPG delivery by train, the addition of six (6) new storage tanks capable of storing an additional 450,000 gallons of LPG, and the addition of two new truck lanes to accommodate additional traffic and onloading. The proposed operations would, for the first time, bring railcars full of LPG, a highly flammable and dangerous fuel, into the Facility by train. In fact, Sea 3 Providence plans to receive sixteen (16) railcars full of LPG each day.

According to Sea 3 Providence's own Traffic Assessment conducted by Pare Corporation, the proposed expansion of the Facility will "provide the operational flexibility to move 600,000 gallons (with a maximum of 1,200,000 gallons) of LPG product per day on truck transports." While Sea 3 Providence contends that traffic will remain below the amount allowed in their current permitting, the fact remains that *actual* traffic would likely increase substantially. Current traffic is less than half the permitted truck-per-day allowance. In light of this, Sea 3 Providence could actually see an increase of between 144 and 164 trucks per day while still remaining within the limit established by the Facility's current permitting. Obviously, this type of traffic increase would substantially increase the pollution in the area surrounding the Facility.

Currently, there are two (2) flares in place at the Facility to control volatile organic compounds ("VOC") emissions. These VOCs result from the loading of the existing LPG tank and use of the truck loading rack. The addition of six (6) new tanks and numerous trucks will likely increase VOC levels. It remains unknown what technologies might be employed by Sea 3 Providence to address these problems, and whether the existing or proposed system is adequate. Even a small increase in VOCs released into the atmosphere, especially when viewed as an incremental increase in an area already overburdened by cumulative air pollution, could significantly impact the health, safety and welfare of the public.

All this new industrial activity would take place in the Port of Providence. This is an area already significantly impacted by the incremental toxic air pollution that has been allowed for large-scale industrial and commercial operations in the area. The residential neighborhoods to the south and west of the Port of Providence have been identified as environmental justice communities disproportionately impacted by the diesel emissions from heavy truck traffic and other industrial and commercial activities. The concentration of these activities in this vulnerable

area has led to elevated pollution and asthma rates, which may continue to increase as a result of the proposed project. Specifically, this project, and the increase in traffic associated with it, will likely increase levels of nitrogen oxide and easily-inhaled fine particulate matter further exacerbating an already critical problem in the neighborhoods surrounding the Facility.

Finally, by its own estimation, Sea 3 Providence describes this proposed expansion of the Facility as a \$15-20 million project. See *Petition* at p.6. Such a large and expensive undertaking at a highly regulated major energy facility, should qualify as substantial, as the proposed activities stand to significantly impact the environment and the public health, safety and welfare.

III. STANDARD OF REVIEW

The EFSB Rules provide that: “[P]articipation in a proceeding as an intervenor may be initiated [...] [b]y order of the [EFSB] upon a motion to intervene.” EFSB Rules § 1.10(A)(2). Further, a party may intervene in EFSB proceedings by “claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate[.]” Said rights and interests include:

1. A right conferred by statute.
2. An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the [EFSB]'s action in the proceeding.
3. Any other interest of such nature that petitioner's participation may be in the public interest.

EFSB Rules § 1.10(B). Accordingly, a party should be allowed to intervene in proceedings before the EFSB if any one of the aforementioned rights can be demonstrated. As explained in greater detail below, all three bases for intervention are applicable here. The Attorney General has a statutory right to intervene, represents the interests of persons not currently represented by parties in these proceedings, and is charged with protecting and representing the public interest.

IV. GROUNDS FOR INTERVENTION

a. The Attorney General has a statutory right to intervene in the proceeding pursuant to the Environmental Rights Act, R.I. Gen. Laws § 10-20-1 *et seq.*

EFSB Rules § 1.10(B)(1) allows for intervention where a “right [is] conferred by statute.” Here, the Attorney General, through his designated Environmental Advocate, and pursuant to the Environmental Rights Act, R.I. Gen. Laws § 10-20-1, *et seq.*, has a separate statutory right and obligation to “take all possible action” for “the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state.” *See* R.I. Gen. Laws § 10-20-1 and § 10-20-3(d)(5). The proposed expansion at the Facility corresponds with a potential for increases in air pollution resulting from additional train and truck traffic, as well as potential increased releases of VOCs into the atmosphere during operations. Furthermore, Sea 3 Providence’s proposal is an investment in expanded fossil fuel infrastructure and consumer reliance on fossil fuels in a State with a mandatory obligation to reduce greenhouse gas emissions and reliance on fossil fuels.

Thus, the Attorney General has a statutory right to intervene in this proceeding to ensure that the health and environmental effects of an expansion at the Facility are appropriately weighed and that the State’s climate goals are considered.

b. The Attorney General has an interest in protecting the public from environmental harms and ensuring the State’s long-term energy and climate goals are not undermined.

EFSB Rules § 1.10(B)(2) allows for intervention where an “interest which may be directly affected, and which is not adequately represented by existing parties and as to which petitioners may be bound by the [EFSB]’s action in the proceeding.” Additionally, EFSB Rules § 1.10(B)(3) allows for intervention where “[a]ny other interest of such nature that petitioner’s participation may be in the public interest.”

The Attorney General is the only party that can represent the public's interest in this matter, as well as the State's commitment to reduce its reliance on fossil fuels and curb emissions of greenhouse gasses. Recently, the Rhode Island 2021 Act on Climate imposed mandated reductions in statewide greenhouse gas emissions. In fact, greenhouse gasses must be reduced by 45% from 1990 levels by 2030, by 80% from 1990 levels by 2040, and the State must attain net-zero emissions by 2050. *See* R.I. Gen. Laws § 42-6.2-9. As such, the State and the public have a vested interest in ensuring that immediate expansion of fossil fuel infrastructure does not come at the cost of failing to achieve the State's long-term energy goals and efforts to combat climate change.

Moreover, the Attorney General “has a common law duty to protect the public interest.” State v. Lead Indus., Ass'n, Inc., 951 A.2d 428, 471 (R.I. 2008)(*quoting* Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032 (R.I. 2005)). Specifically, the Attorney General has an interest in ensuring that the EFSB considers carefully, the effects the proposed expansion would have on the public, including especially the potential health and safety concerns associated with the increased truck transportation and the transport and storage of large quantities of extremely dangerous and flammable materials within the State.

Sea 3 Providence contends that the proposed project is necessary to meet future demand for LPG in the region. In supporting its claim, Sea 3 Providence points to a market evaluation by the Propane Gas Association of New England, which claims that Demand is expected to “rise to approximately as high as 57.9 million gallons in 2021.” *Petition*, page 14. However, any determinations with respect to future need for the proposed expansion should consider the State's and the region's commitment to reducing the use of fossil fuels and replacing antiquated energy sources with cleaner alternatives. Rhode Island's aggressive mandates for the reduction of greenhouse gas emissions will necessarily affect demand for LPG and other fossil fuels in coming

years. It is unclear whether the 2021 Act on Climate was considered in Sea 3 Providence's market analysis (although it seems unlikely given that the Act was passed less than two months before the Petition was filed).

Additionally, as explained above, the Port of Providence has been identified as an environmental justice community, already overburdened and affected by air pollution giving rise to serious health concerns for the people living nearby the Facility. The Attorney General has a clear interest in seeing that the potential effects of the proposed expansion are carefully reviewed by the EFSB so that the safety, health and welfare of the neighboring citizens are adequately considered and protected.

V. THE ATTORNEY GENERAL'S POSITION IN THE PROCEEDING

Pursuant to EFSB Rules § 1.10 (C) a Motion to Intervene shall not only set out the relevant facts and grounds for intervention (as provided above) but must also include the position of the movant in the proceeding. The Attorney General's position is clear as set forth above and when considered in conjunction with its detailed Objection submitted to the EFSB on May 7, 2021 (attached hereto as *Exhibit A*). Sea 3 Providence's proposed expansion is an alteration of a major energy facility as defined under the Siting Act and the EFSB Rules. Accordingly, "[n]o person shall site, construct, or alter a major energy facility within the state without first obtaining a license from the [EFSB]." R.I. Gen. Laws § 42-98-4. The EFSB, therefore, should require Sea 3 Providence to submit to a full and comprehensive permitting process overseen by the EFSB.

A \$15-\$20 Million expansion that establishes a new means of receiving LPG by rail and incorporates additional large-scale storage of highly flammable fuel both on rail cars as well as in tanks, and which will contribute incremental pollution to an area that is already cumulatively overburdened by it, meets the definition of an alteration. The proposed expansion poses significant

risks to public health and the environment, as well as the general safety and welfare of the public. These risks include, *inter alia*, increased additional pollution and degradation of air quality in an environmental justice community, as well as those associated with significant investment in fossil fuels as the State works toward mandated reductions in greenhouse gas emissions.

As such, it is the Attorney General's position that Sea 3 Providence's proposed expansion is clearly an alteration of a major energy facility as defined under the Siting Act and the EFSB Rules. Accordingly, the EFSB should require Sea 3 Providence to submit a full application to the EFSB so it can carefully carry out its duty to review Sea 3 Providence's proposal and ensure that the potential effects of the proposal can be considered before the project is allowed to move forward.

VI. CONCLUSION

For the reasons stated herein, the Attorney General respectfully requests that the EFSB allow its intervention in the above-captioned matter to present arguments before the EFSB on the question of whether the proposed expansion is an alteration to a major energy facility.

Respectfully submitted,

THE STATE OF RHODE ISLAND

PETER F. NERONHA
ATTORNEY GENERAL

By:

/s/ Nicholas M. Vaz

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Certificate of Service

I certify that the original and six hard copies of this Motion to Intervene were filed with the Energy Facility Siting Board. In addition, this Notice was served electronically on the service list of this Docket, as was provided by the EFSB on June 16, 2021.

/s/ Nicholas M. Vaz

**SB-2021-03 Service List – updated as of June 16, 2021
(Sea 3 Providence LLC Petition for Declaratory Order)**

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Peter F. Neronha
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May 7, 2021

Via Electronic Mail

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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

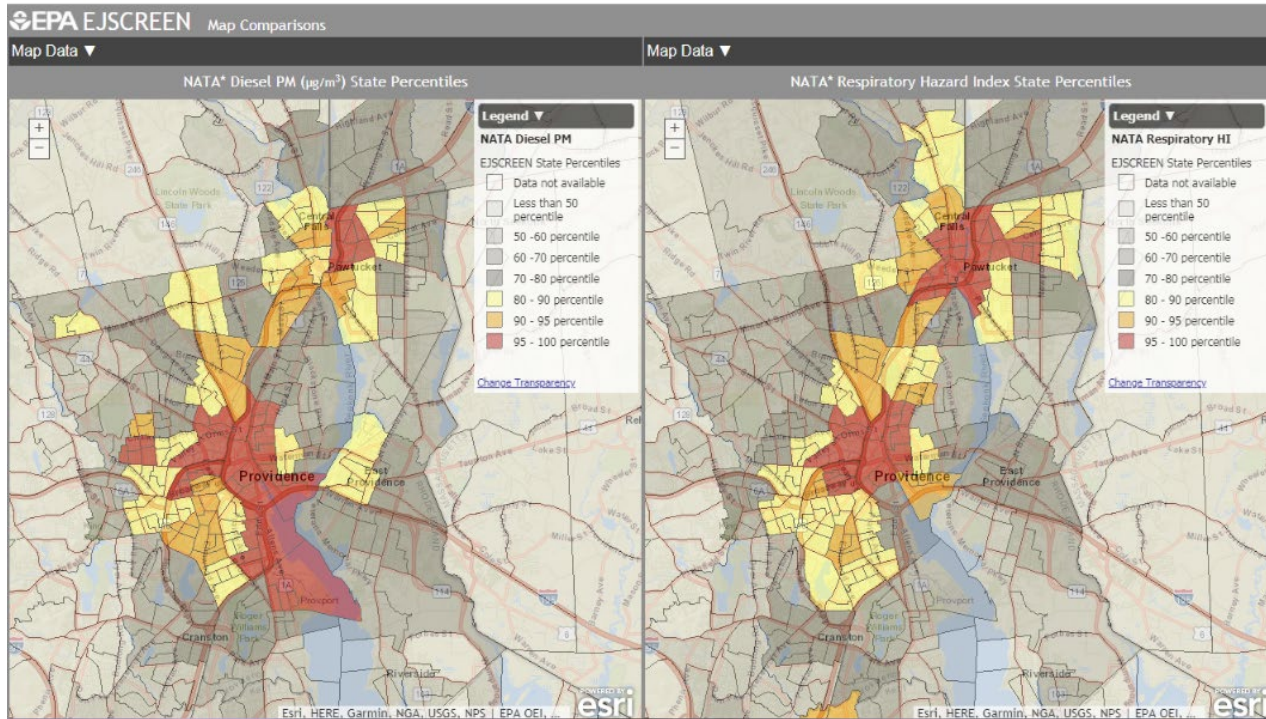


Figure 1 - Presentation on Asthma in Rhode Island: Greater Providence Area, prepared by Julian Drix at RIDOH.

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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