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December 2, 2013 **VIA ELECTRONIC and FIRST CLASS MAIL**

Russ Braukusieck
NYS DEC
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

Re: Draft LNG Facility Regulations

Dear Mr. Brauksieck:

On behalf of the Onondaga Nation, I am submitting the following comments on the proposed regulations for Liquefied Natural Gas (LNG) facilities. The Onondaga Nation is the "Firekeeper" or central council fire of the Haudenosaunee, which is composed of the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations. These Six Nation entered into three treaties with the fledgling United States, in 1784, 1789 and finally the Canandaigua Treaty of 1794.

The Onondaga and the Haudenosaunee view New York's continued emphasis on building oil and gas infrastructure within their homelands to be a serious violation of the commitments made by the United States in the Canandaigua Treaty. This push to build oil and gas infrastructure on Haudenosaunee homelands is also a violation of the United Nation Declaration on the Rights of Indigenous Peoples, in that it is being done without free, prior and informed constent.

The Nation and the Haudenosaunee have an obligation to care for the lands on which we live, to ensure that future generations have clean air and clean water, and to help protect natural areas and wildlife. In addition, the Nation is working for a healing of the relationship between the land, themselves, and the people of Central New York. In their present form, the

draft LNG regulations are simply inadequate to help meet these goals and they must be withdrawn.

The Nation is submitting these comments on a government-to-government basis and not as a member of the general public.

(1) DEC has failed to consult with Onondaga or the Haudenosaunee relative to these proposed regulations, in violation of DEC Policy # CP-42:

On March 27. 2009, after years of discussions and meetings, the DEC issued Policy # CP-42: "Contact, Cooperation, and Consultation with Indian Nations." These proposed LNG regulations have been promulgated without any attempt by the agency to fulfil this important governmental obligation. In this neglected Policy, the DEC promised "cooperation and consultation with Indian Nations on issues relating to protection of environmental and cultural resources" within the homelands of the Haudenosaunee.

Further, the Policy states that: "The Department recognizes the unique political relations based on treaties and history, between the Indian Nation governments and the federal and state governments." The DEC promised to consult with Onondaga and the other Six Nations "on environmental and cultural resources issues of mutual concern." DEC has failed to follow its own policy and has not consulted, as promised.

This failure to consult on this important set of regulations is particularly egregious, given the history of the past five and one half years, in which Onondaga and the Haudenosaunee have met repeatedly with and sent multiple letter to the DEC expressing their fundamental concerns about and opposition to the oil and gas industry's plans to frack Haudenosaunee homelands and to build the associated infrastructure of pipelines, compressor stations and storage facilities.

(2) The draft LNG regulations fail to set clear siting guidelines.

Although the draft regulations are intended to "establish criteria for the siting of liquefied natural gas (LNG) facilities," § 570.1, DEC fails to define any areas in which LNG facilities are inappropriate or to set clear guidelines for exclusion zones, buffers, setbacks or other limits to siting. In fact, the draft regulations themselves include no explicit siting

guidelines or requirements at all. Instead, DEC is given wide discretion to determine whether a permit should issue based on the "risks to persons and property in the area neighboring the facility and risks from transportation accidents." § 570.2(d). However, the type or geographic scope of risks to be considered, the acceptable level of risk, and appropriate assessment methods are not defined. Without more direct guidance, DEC staff are likely to interpret these regulations as simply construction and operating requirements rather than limitations on facility location.

If DEC staff choose to consider the appropriateness of particular sites through a more wide-ranging risk assessment, their analysis may be unduly constrained by the limited data required by the regulations. For example, the applicant is only required to provide information about zoning, population, and current uses of land within a half-mile of the facility, potentially limiting the geographic scope of DEC's risk assessment. § 570.2(b). Despite the requirement that the applicant provide information on "potential environmental impacts" without specific limits, the only risk addressed directly by the draft regulations relate to fires and explosions. This narrow regulatory focus may be interpreted to limit the scope of DEC's risk assessment and, potentially, the type of information provided by the applicant.

Even if DEC considers a wide range of impacts on a facility-by-facility basis, the draft regulations fail to provide the reviewing public any meaningful ideas about the overall impacts of these regulations, including the type of risks these facilities may pose, the geographic scope of those risks, or the level of risk deemed tolerable under the regulations. As a result, assessing or commenting meaningfully on their adequacy is very difficult.

For all these reasons, DEC should revise the draft regulations to provide clearer siting guidance. Specifically, DEC should set minimum or default buffers around LNG facilities based on facility type or size, define the uses that are permitted within a defined radius around an LNG facility, and those sensitive uses which are prohibited within a defined radius of an LNG facility. In addition, DEC should provide more explicit guidance on the risk levels that would support outright denial of a permit or the modification of construction and operating requirements.

(3) The assertion that LNG is "safe and environmentally beneficial" is inaccurate, as it fails to evaluate the climate change impact of the entire life cycle of methane production, via fracking, and its liquefaction, transportation and storage:

While it is true that methane burns cleaner, at its moment of ignition, than diesel fuel; focusing on this isolated fact is completely unscientific, in that it ignores the overall negative impact on climate change from the fracked production of the methane and the leaks of methane associated with fracking, compressing and transporting the gas. Further, venting of methane is necessary in order to keep the LNG liquified; and the liquefaction process itself requires a very large amount of energy, which contributes to the overall climate change impact.

This "environmentally beneficial" claim also ignores the estimates that over its life cycle, LNG is 30 % more carbon intense than ordinary methane gas. Merely switching from one fossil fuel to another at this crossroads of time relative to climate change is not responsible and not acceptable to the Nation. We must break these fossil fuels habits and move as quickly as possible to truly sustainable energy policy and practices.

(4) This "environmentally beneficial" claim is based upon one study that was not done by DEC itself, but was done by an energy company:

The scientific citation for the "environmentally beneficial" claim is a 2011 NYSERDA study. However, this study was merely sponsored by NYSERDA, and in fact, the study written by employees of Expansion Energy, a company that stands to profit handsomely in that it specializing in technology for the manufacture of LNG. Such an industry funded study is a classic case of conflict of interests and reliance upon this sort of conflicted document greatly increases the risk of litigation should these ill advised regulations be implemented. Further, for a decision as important as this, more than one peer reviewed study should be referenced**.**

(5) The draft LNG regulations rely on non-transparent, inaccessible industry standards.

The draft regulations incorporate by reference detailed design, construction and operating standards adopted by the National Fire Protection Association (NFPA) (NFPA 52

and NFPA 59A). Unfortunately, these standards are difficult to access, are extremely technical, and incorporate unarticulated assumptions regarding tolerable risk levels. If DEC intends to rely on the NFPA standards, it should take steps to make those standards more available to the public, to translate the technical jargon, and to explain the assumptions regarding tolerable risks.

First, the standards are simply not easy for the general public to access. Although the documents are available on-line, accessing them requires a registration process that involves the provision of some personal information. Once accessed, the standards can only be read on-line with no option to print the document or to copy and paste key sections into a separate document for later review or wider circulation. Printed versions are only available by purchase. In addition, key sections of the NFPA standards themselves rely on external documents that are not directly available on-line. If DEC chooses to incorporate external standards into its draft LNG regulations, it should make those standards readily accessible from its own website and available in printed form for those individuals without internet access.

Second, while the NFPA standards are widely used in LNG facility regulations, they are highly technical. Key elements of these standards, such as the calculation of buffer or exclusion zones rely on complex models described in separate publications. For example, NFPA 59A, § 5 defines a "thermal exclusion zone" based on the maximum radiant heat flux at the property line as defined by a complex model that incorporates site-specific factors such as maximum wind speed, ambient temperature, and humidity. The average person will have no way to translate these standards into the typical or sample exclusion zones or to meaningfully comment on their adequacy. This is critical because these standards provide the only explicit constraints on facility siting. For example, NFPA 59A § 5 defines the vapor and thermal exclusion zones, which must be under the control of the facility operator. As a result, these standards essentially define the minimum size of an LNG facility and impact siting decisions.

Similarly, NFPA 59A § 15, which can be applied in lieu of § 5, sets standards for the individual and societal risk posed by a particular facility and the levels of risk that may justify denying or placing additional conditions on an LNG facility permit. The draft LNG regulations has done nothing to help translate these technical standards into concrete

examples of exclusion zones or siting limitations or even when the alternative risk assessment standards will be applied to facility siting decisions.

Finally, these sections of the NFPA standards are driven by assumptions regarding acceptable risk which were developed by an "expert" working group with no apparent public input. NFPA 59A acknowledges that "tolerable risk" is societally defined (FRPA 59A, § A.15.2.2. defines tolerable risk as the level of risk that "society as a whole . . . is willing to lie with . . . so as to secure certain benefits"). However, both siting-related sections incorporate explicit trade-offs between safety and economic interests and the NFPA itself describes its technical guidelines as "balanc[ing] the various affected interests" (New York State Energy Planning Board, Report on Issues Regarding the Existing New York Liquefied Natural Gas Moratorium, Nov. 1998, p. 2.2 [hereinafter "Moratorium Report"] (citing NFPA Information Brochure *Bringing people together in a safer world*)). Balancing those interests or determining the point at which "the time, difficulty and cost of further reduction measures becomes unreasonably disproportionate to the additional risk reduction obtained," NFPA 59A § 15.3.1, is inherently subjective and a proper subject for public input. By adopting NFPA standards without comment or amendment, DEC is placing a critically important conversation about risk outside the scope of public review.

If DEC continues to rely on NFPA standards in its draft LNG regulations, the agency should make these standards more easily accessible, both on-line and in paper form. In addition, the agency should provide more lay-friendly explanation of these standards, including sample calculations of vapor and exclusion zones, to ensure that the affected public has a meaningful sense of how the standards would operate. In addition, the DEC should make explicit its assumptions regarding tolerable individual and societal risk and invite public comment directly on this critical component of the draft LNG regulations.

(6) Draft LNG regulations should consider a broader range of hazards.

Although the draft LNG regulations include some general language regarding evaluation of environmental impacts, the only hazards that are explicitly discussed are fires and explosion and, in particular, the risks posed to people and infrastructure. This limited focus is inadequate and should be expanded.

The draft LNG regulations explicitly focus almost entirely on fire and explosion hazards. For example, the spill reporting provisions incorporated into the draft regulations

apply only to spills with the potential to cause fires with off-site impacts or explosions, § 570.8, and DEC is only charged with considering risks to "persons and property" from the facility or from transport accidents, § 570.2(d)(4). The draft regulations include no limits on air emissions, despite the potential for methane to contribute to climate change. LNG fueling stations may have to monitor ambient levels of methane, FRPA 52A, § 103.7, but there appear to be no similar requirements for other LNG facilities (*see* FRPA 59A). The draft regulations should be amended to explicitly regulate risks to natural areas and wildlife, impacts on climate change, and other non-fire, non-explosion related risks of LNG facilities. In addition, before issuing these regulations, DEC should consider impacts related to the proliferation of LNG storage facilities and fueling stations, such as the impacts of increasing the number of heavier LNG-fueled trucks and buses to the state's roadways and the potential for readily-available natural gas to displace renewable energy sources.

(7) Draft LNG regulations should require applicants to report on other permitting requirements.

The regulatory structure governing LNG facilities is complex and involves multiple layers of control. When the California Energy Commission studied the issue, it found that the siting and development of a new LNG facility might require review and approval by or compliance with regulations issued by the Department of Energy, the Federal Energy Regulatory Commission, as well as state agencies tasked with regulating air emissions, land use, and fish and wildlife protection (California Energy Commission, Liquefied Natural Gas in California: History, Risks and Siting, July 2003). In New York, this list may also include the Public Service Commission, the Department of State, and the Department of Transportation (Moratorium Report, pp. 2-7 to 2-12).

Given the complexity of the regulatory structure, as part of the permit application, DEC should require applicants to list all other permits, licenses or approvals that are required for siting, construction or operation of the facility and the specific regulatory provisions with which the facility must comply. In addition, the applicant should provide a tentative time frame for filing and review of any additional approvals. This information will allow DEC to

check that all relevant safety and environmental protection measures are being met and will ensure that the public is aware of all relevant comment opportunities.

(8) Draft LNG regulations should consider the adequacy of emergency response beyond fire control.

The draft LNG regulations require applicants to assess the "capability and preparedness" of area fire departments. Fire control would not be the only concern in the event of a major incident at an LNG facility. DEC should expand this provision to include a more complete assessment of the capability and preparedness of the host community to respond to an emergency, including EMT services and trauma response at local hospitals. DEC should also, at minimum, require applicants to assess the need for an emergency warning or evacuation plan for adjacent properties. Finally, given the potential seriousness of fires or accidents that might occur at LNG facilities, DEC should require proof of operator competence from all applicants and, where an applicant has operated similar facilities in other areas, confirmation of regulatory compliance and good citizenship in those operations.

Conclusion:

More broadly, the Nation would prefer to see greater emphasis on sustainable and renewable fuels in New York State. For that reason, the Nation does not favor regulations which facilitate increased reliance on fracked gas and, potentially, increased demand for production of methane and other gases in New York through hydrofracking.

In addition to its active opposition to fracking of its homelands, this year, the Nation has also been working with it neighbors to resist a proposed 24 inch, 1200 psi gas pipeline that the Millennium company has proposed to build to connect their east-west pipeline in the Southern Tier with the more northern Tennessee Gas Pipeline. Further, within the past two months, the Nation has again joined with its neighbors to block a proposed massive propane storage and distribution terminal, targeted for the town of Preble and within a half mile of the sacred Tully kettle lakes and the headwaters of the Tioughnioga River.

We are at a crossroads, and we owe a moral obligation to the generations yet to come to break the fossil fuel habit that is destroying Mother Earth, its climate balance and its

waters. New York has the opportunity to be a leader in renewable and sustainable power production. However, instead, we observe that the DEC, the very agency we had thought was tasked to protect the land, waters and air, has concentrated its limited resources and people power for promotion of the oil and gas industry in the "development" of these carbon resources that have been buried for hundreds of millions of years. Merely switching from one fossil fuel to another is not acceptable, particularly when we understand that fracking and its gas production actually has a more negative impact on global climate change, due to the inherent methane leakage at every step of the process.

These regulations will open the door to increased fossil fuel usage. The billions of dollars that would be used to develop the LNG infrastructure should be used to buils a sustainable future for New York and the Haudenosaunee homelands.

If DEC moves forward with these regulations, however, significant revisions are necessary. DEC must make its siting criteria and limitations more explicit, ensure that the industry standards upon which DEC relies are made available and accessible to the general public, and take steps to make the risk calculations upon which those standards are based are transparent and open to public review and comment. The regulations should be amended to consider a broader range of potential impacts. Finally, DEC should require permit applicants to provide information about any additional permits or license required, other regulations that may be applicable, and their own record of competence and compliance.

Please don't hesitate to contact my office if you have any questions.

Sincerely,

Joseph J. Heath
Joseph J. Heath

cc: Onondaga Nation Council of Chiefs
Haudenosaunee Environmental Task Force