



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

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August 19, 2014

VIA FEDEX

Cynthia T. Brown, Chief
Section of Administration/Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20024

236475
ENTERED
Office of Proceedings
August 20, 2014
Part of
Public Record

Re: Sea-3, Inc. v. City of Portsmouth, New Hampshire
City of Portsmouth Reply to Sea-3 Inc.'s Emergency Petition for Declaratory Order
Docket Number FD_35853_0

Dear Ms. Brown:

Enclosed for filing is the City of Portsmouth, New Hampshire's original Reply dated August 19, 2014 filed in response to Sea-3, Inc.'s Emergency Petition for Declaratory Order. The ten copies and 3 compact discs are also enclosed for this letter.

Please feel free to contact me if you have any questions regarding this filing.

Thank you for your assistance.

Sincerely,

Jane Ferrini
Staff Attorney
City of Portsmouth

Enclosures

cc: Robert P. Sullivan, City Attorney
John P. Bohenko, City Manager
Alec L. McEachern, Attorney for Sea-3, Inc.
Chris Cole, Esquire

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. FD_ 35853_0

SEA-3, INC.

V.

CITY OF PORTSMOUTH, NEW HAMPSHIRE

**REPLY TO EMERGENCY PETITION
FOR DECLARATORY ORDER**

Communications with respect to this
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City of Portsmouth, New Hampshire

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. FD_35853_0

SEA-3, INC.

V.

CITY OF PORTSMOUTH, NEW HAMPSHIRE

REPLY TO EMERGENCY PETITION FOR DECLARATORY ORDER

On August 4, 2014, Sea-3, Inc. (“Sea-3”) filed an Emergency Petition for Declaratory Order against the City of Portsmouth, New Hampshire, (“City”), alleging that both of its appeals of the Town of Newington’s Planning Board’s approval of a site plan for expansion of Sea-3, Inc.’s facility to the Town of Newington Zoning Board of Adjustment and the New Hampshire Superior Court are an attempt to use state and local law to deny, restrict and/or regulate Sea-3’s access to common carrier rail service, which would be preempted by the Interstate Commerce Commission Termination Act (“ICCTA”). The City denies these allegations, objects to Sea-3’s Emergency Petition for Declaratory Order and submits this Reply in support thereof.

BACKGROUND

This case involves rail service to two parcels of property owned by Sea-3 at its facility located in Newington, New Hampshire. Sea -3 receives, stores, chills and distributes Liquefied

Propane Gas (LPG) by rail, truck and ship domestically and abroad. Sea-3's facility is served by the common carrier for the rail line, Boston and Maine Corporation/Springfield Terminal Railway Company d/b/a Pan Am ("Pan Am"). The rail line servicing the site travels through four New Hampshire towns, Newfields, Stratham, Greenland and Portsmouth, before it bisects the two parcels of property owned by Sea-3, Inc. in Newington, New Hampshire. Sea-3 applied to the Newington Planning Board for site plan review to expand its facility to accommodate a substantial increase in volume of LPG that will be received, stored, chilled and distributed from the site ("Application").

The City and the three other New Hampshire towns along the distribution route of the rail line received notice of Sea-3's Application because the expansion of the site was determined by the Town of Newington to be a "development of regional impact". Under New Hampshire law, land use boards must evaluate all projects to determine if they are a "development of regional impact" and give those affected communities notice in order to provide them with the opportunity to comment on the project. The criteria to determine whether a project is a "development of regional impact" is whether the project will impact neighboring communities for various reasons, including, but not limited to, the project's proximity to another community's border, the project's effect on the transportation network and its effect on anticipated emissions such as light, noise, smoke, odor or particles or proximity to aquifers or surface water that transcends municipal borders. N.H.R.S.A. § 36: 54-58.

The City received notice from the Town of Newington and actively participated in the public hearing process for this "development of regional impact". During the public hearing process, the City and the Newington Planning Board both initially recommended that a rail

safety report be conducted prior to approval of the site plan. The City's concerns regarding rail safety have been reproduced at length in Sea-3's Petition. The Planning Board's recommendation for information about rail safety or reports prior to approval of the site plan was not documented in Sea-3's Petition. See minutes of meeting as follows:

Chairman Hebert reiterated that he was asking Ms. Scarano with Pan Am and Mr. Bogan with Sea-3 to assist the Town in getting the FRA to meet with them. He said the citizens had a right to know the safety condition of the rails and the Town also needed to hear assurances from the FRA before a decision on the site could be made...

Chairman Hebert said the Board could not deny Pan Am's operations, but they could say they needed more safety information from the FRA before they approved sea-3's proposal for expansion.

See Town of Newington, NH Planning Board Meeting Minutes-, Monday, February 10, 2014, pages 4 and 5 attached and incorporated as Exhibit A.

Mr. Richardson read through "Uses Allowed" in the zoning ordinance and said a question of whether the use would create an over intensification of the area might be made in regards to the rails, but they would then be stepping outside their jurisdiction. Mr. Richardson said the Board had been told the rail standards would be upgraded, and they could accept that finding to satisfy the criteria, or request a study to prove it, but there would need to be a determination first.

Town Planner, Tom Morgan said he started out asking the same questions. He said in November 2013 the Board determined if the project would have a regional impact. Mr. Morgan said he thought a study could help determine what that impact might be and to come up with some non-binding recommendations that would assist the cost of upgrading crossings in surrounding communities, but he wasn't sure how the cost of upgrades could be attributed to the Sea-3 project.

See Town of Newington, NH Planning Board Meeting Minutes- Monday, May 5, 2014. at page 2 attached and incorporated as Exhibit B

However, after the Planning Board received an opinion letter from counsel from Pan Am, the Planning Board members refused to consider or require a rail safety report or any other safety or hazard evaluation of the site itself. See letter from Robert B. Culliford, Senior Vice President and General Counsel for Pan Am dated March 18, 2014 attached and incorporated as Exhibit C. Throughout the public hearing process and presently, the City,

outside the public hearing process on the Sea-3 Application, has pursued and continues to pursue independent inquiries regarding rail safety, including but not limited to reaching out to its Congressional and Senate delegations to request rail safety records, investigating the development of “quiet zones” in the City, having Pan Am appear at City Council meeting to answer questions about rail safety and urging the Governor of the State of New Hampshire to assess rail safety state-wide. None of these activities are subject to the jurisdiction of the Surface Transportation Board or are in any way unlawful or unreasonable. The City not only has the right to pursue this information regarding rail safety from any and all available resources but has a duty and obligation to its citizens to inquire about rail safety in order to protect their health, safety and welfare. None of these inquiries, moreover, are intended to impede or interfere with railway operations; rather, these inquiries and others are efforts to assess the consequences of increased rail traffic due to the proposed substantial intensification of the use of the Sea 3 facility – in the face of Sea 3’s, the Planning Board’s, and the railway’s apparent unwillingness to provide any such information.

The Newington Planning Board granted Sea-3’s Application and the City appealed this decision to the Town of Newington Zoning Board of Adjustment and the Rockingham County Superior Court on the grounds that it failed to abide by its own zoning ordinance and site plan review regulations, including but not limited to failing to require or review a safety/hazard study of the site. Sea-3 alleges that these appeals – that is, the totality of the allegations and arguments made in the two appeals – are subject to the jurisdiction of the Surface Transportation Board because Sea-3 alleges that the City is attempting to use state and local law to deny Sea-3 access to common carrier rail service, and as such, the appeals themselves,

or certain issues raised in these appeals, are preempted by the Interstate Commerce Commission Termination Act (“ICCTA”).

Sea-3, a private corporation, filed this Emergency Petition for Declaratory Orders, and the City files this reply.

ARGUMENT

Sea-3 Lacks Standing

The Surface Transportation Board (“STB”) has exclusive jurisdiction over transportation by rail carrier. “[T]he regulation of rail transportation are exclusive and preempt the remedies provided under Federal and State law.” 49 U.S.C. § 10501(b) (2). The ICCTA defines both “rail carrier” and “transportation”.

“Rail Carrier” is defined by 49 U.S.C. § 10102(5) as “a person providing common carrier railroad transportation for compensation.” Sea-3 is not a rail carrier. Pan Am is a rail carrier. Sea-3 does not allege it is an agent of Pan Am, and Pan Am has neither brought itself or joined in this Petition. Therefore, because Sea-3 is not a rail carrier, the STB has no jurisdiction over this matter and this matter should be dismissed.

In the alternative, in the event that Sea-3 claims that the STB has exclusive jurisdiction, even though it is not certified as a rail carrier because its facility falls under the definition of “transportation” and “railroad”, the STB must review the definition of “transportation” and “railroad” under the ICCTA. The ICCTA defines “transportation” as:

A locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and ... services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property...” 49 U.S. C. §§ 10102(9) (A) (B).

Railroad is defined as “intermodal equipment used by or in connection with a railroad’ and “a switch, spur, track, terminal, terminal facility, and a freight depot, yard and ground, used or necessary for transportation”. 49 U.S.C. §§ 10102(6) (A) (C).

Sea-3’s assertion of the Board’s jurisdiction is similar to the misplaced argument of Hi-Tech Transportation, LLC in the federal district court in New Jersey. In Hi-Tech Transportation, LLC v. State of New Jersey Department of Environmental Protection, 382 F.3d 295 (3rd Cir. 2004), the State of New Jersey brought an administrative enforcement action against Hi-Tech, which operated a solid waste disposal facility there. Hi-Tech claimed that certain permit and licensing requirements imposed by the State’s regulatory scheme were preempted by the ICCTA, because its business involved transportation by railroad. Hi-Tech claimed that regulation of its business was, therefore, exclusively within the STB’s jurisdiction. Both the federal district court and the United States Court of Appeals for the Third Circuit disagreed.

As Sea-3 does here, Hi-Tech sought a declaration that New Jersey administrative rules and regulations were preempted and within the exclusive jurisdiction of the STB because its solid waste facility involved railway activity carried out under a license of trackage rights. Conceding that it was not certified as a rail carrier, Hi-Tech asserted that the STB still had exclusive jurisdiction because “its facility falls under the ICCTA's definitions of ‘transportation’ and ‘railroad.’” 382 F.3d at 306. Because it fell under both definitions, Hi-Tech argued that “its facility is subject to the STB's exclusive jurisdiction and, therefore, New Jersey's [statute and administrative scheme] are preempted as applied to it.” The Third Circuit noted as follows:

Even if we assume *arguendo* that Hi Tech's facility falls within the statutory definition of “transportation” and/or “railroad,” the facility still

satisfies only a part of the equation. The STB has exclusive jurisdiction over “*transportation* by rail carrier.” 49 U.S.C. §10501(a), (b) (emphasis added). However, the most cursory analysis of Hi Tech's operations reveals that its facility does not involve “transportation by rail carrier.” The most it involves is transportation “*to* rail carrier.” Trucks bring C & D debris from construction sites to Hi Tech's facility where the debris is dumped into Hi Tech's hoppers. Hi Tech then “transloads,” the C & D debris from its hoppers into rail cars owned and operated by CPR, the railroad. It is CPR that then *transports* the C & D debris “by rail” to out of state disposal facilities.

382 F.3d at 308. Similarly, Sea-3 is not a rail carrier; indeed, unlike Hi-Tech, Sea-3 does not even possess a license from a certified rail carrier. All it does is receive some of its products by a rail carrier, which is not an applicant before the local municipal board, not an appellant in the State Court litigation, and not a petitioner or applicant now before the STB. Sea-3, not Pan Am, built, owns, controls, insures and advertises its facility. Sea-3 is the sole applicant for the expansion and is solely responsible for all costs associated with the proposed expansion of the site. One aspect of Sea-3's expansion is to expand its rail skid offloading capacity. Currently Sea-3 has three rail skids located on one of its two parcels. It seeks to lease land from Pan Am to add five more. This fact, in and of itself, does not qualify its activity as “transportation by rail carrier”, and therefore, the ICCTA does not apply and Sea-3 does not have standing to bring this Petition.

Sea-3's reliance on CSX Transportation, Inc. v. Georgia Public Service Commission, 944 F. Supp. 1573, (N.D.Ga. 1996) seems to be misplaced. In that case, a group of rail carriers sought declaratory and injunctive relief against a state agency that was attempting, in the face of the ICCTA, to directly control the number of employees used by the rail carriers to staff railway agencies, by refusing to grant rail carrier requests to reduce the number of employees at certain railway locations. 944 F. Supp. at 1575-76. No authority in this case has attempted to direct railway operations in any such fashion. Again, the City's interest and desire (and the

interests and desires of other members of the public) was to obtain a study, in accordance with local land use regulation, that would illumine the consequences of the intensified use of a private industrial facility on municipal and regional health, safety and welfare. No request or allegation made by the City in either the zoning appeal or the Superior Court appeal even remotely suggests that the railway must operate in a certain way, with a certain number of employees, at a certain rail speed, or with a specific frequency. Sea-3 attempts to conflate the City's and its neighbors' interest in understanding the consequences of its actions and its expansion with railway operations in order to use ICCTA preemption to ward off legitimate inquiry and legitimate application of local site plan regulations.

Sea-3 is not alleging it is a railroad agency and again, lacks standing to bring this present action.

Sea-3's Misapprehends and Misinterprets City's Appeal and Request for Safety/Hazard Study

Sea-3 misinterprets and misconstrues the City's appeals, and does so perhaps deliberately. The City, in its zoning and Superior Court appeals, is not attempting to deprive Sea-3 of its federal right to receive common carrier rail service over the rail line. There is no conflict between the City's request for a safety/hazard study of the site and Sea-3 use of Pan Am railway for common carrier rail service under the ICCTA. The City is not using local site plan review regulations or zoning ordinance provisions to regulate interstate freight rail network in any way. The City is simply asking Newington to comply with its site review regulations and zoning ordinance as they apply to the site itself, not the rails. See The City of Portsmouth v. Newington Planning Board, Rockingham County Superior Court, Docket No. 218-2014-CV- 00654 attached and incorporated as Exhibit D.

The City's appeals are not an attempt to limit construction of railroad facilities, Sea-3's facilities or an attempt to limit Pan Am or Sea-3's ability to conduct any economic activities. The City alleges that the Planning Board did not comply with its site review regulations and zoning ordinance. The purpose of the City's appeal is to compel Newington's compliance with its own land use regulations. Both the zoning and site plan review regulations require the local land use board to assess whether the project promotes the health, safety and welfare of its residents. In order to carry out that mandate, the City argues, a safety/hazard study of the site, not the rails, is required for review by the Planning Board and that this study is subject to review and comment by the City in order to assess whether the project promotes the health safety and welfare of the residents of Newington and those other affected communities.

Sea-3's allegation that the City's appeal is a request for a rail safety study is not supported by the record. The following paragraphs define the safety/hazard study in the City's appeal to the Superior Court:

50. The City, as an abutter, through its Mayor, Assistant Mayor, City Councilors, City Manager, City Staff and citizens, as evidenced in the record, repeatedly and vociferously **requested that the Planning Board require a safety study/hazard assessment of the site** and of this particular expansion and use intensification prior to approval of the site plan... (Emphasis added)

64. The Planning Board's refusal to conduct, or direct the applicant to conduct or pay for a proper, meaningful, professional and up to date safety, health, welfare and environmental assessment of the potential impacts of the proposed expansion and intensification of the use of the property was unreasonable and unlawful. The Planning Board's failure to require a proper safety, health, welfare and environmental impact assessment was a gross and unreasonably abuse of its discretion. Under the circumstances, **the Planning Board was required to evaluate the site**, and given the nature of the use of land requested, the increased distribution, storing and chilling of SPG, a hazardous material, it should have required and reviewed a safety plan/hazard assessment before approving the site plan.(Emphasis added)

See City's Superior Court Appeal attached and incorporated as Exhibit D.

Again, the reference to the safety/hazard study was clearly for the site, not the rails, and this definition was referenced throughout the Superior Court appeal and the appeal to the Zoning Board of Adjustment as follows:

27. **However, in addition to rail safety**, the City, through those participants mentioned above, repeatedly and vociferously requested that the Planning Board require a comprehensive safety and/or security review of the full scope of Sea-3 proposal, including but not limited to a hazard identification and vulnerability assessment, an environmental risk assessment and an analysis of emergency response for the impacted communities, physical security assessments and incident /hazards response analysis. (“safety/hazard assessment”).

71. The City, through its Mayor, Assistant Mayor, City Councilors, City Manager, City Staff and citizens, as evidenced in the record, repeatedly and vociferously requested that the Planning Board require a **safety study/hazard assessment of the site** prior to approval of the site plan.

See City of Portsmouth’s Appeal of the Decision of the Newington Planning Board to Approve the Site Plan of Sea-3 Inc. Pursuant to RSA 676:5, III and RSA 677:15, I-a (a) attached and incorporated as Exhibit E.

To paraphrase Plato, a City is what it is because its citizens are what they are. The City is not just represented by its elected officials and City staff and their formal or public statements. It is also represented by its citizens who spoke out during the public hearing process to question the safety of the site and request further investigation. Attorney Christopher Cole represented several citizens at the public hearing process and stated their concern about the safety of the site:

neither he nor his clients were trying to regulate the rails, but they were trying to help the Town regulate this site because it had important safety implications. He asked to look at site-specific questions and didn’t think Federal law would agree that was the limit of the Planning Board’s power. He said they also wanted to ensure the site could handle the ingress and egress of traffic with propane...

See Town of Newington NH Planning Board Meeting Minutes dated March 10, 2014 at page 7 attached and incorporated as Exhibit F.

Sea-3's claim that the City's only concern is with the rails is inaccurate. The City is concerned with the site's safety and has every right to be so and to bring its present appeals.

The City's request for a safety/hazard study is not pre-clearance requirement

One of the conditions of the Planning Board's decision was for Sea-3 to update its "safety studies" from its 1996. Paragraph 5 of the Planning Board's decision states as follows:

Several safety plans were adopted in conjunction with the original SEA-3 site plan approval. They shall be reviewed by SEA-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.

See Decision of Planning Board dated May 21, 2014 attached and incorporated as Exhibit G.

An issue on appeal is the appropriateness of this review outside the public process and a request for clarification as to which study Sea-3 will be updating.

Sea-3 last expansion was in 1996. The project was deemed a "development of regional impact" and the City and the Rockingham Planning Commission requested that the Newington Planning Board hire an independent expert. See letters dated May 30, 1996 and May 31, 1996 attached and incorporated as Exhibit H and I. Sea-3 submitted several reports on safety. These reports include the following:

1. *SEA-3, Inc. Newington, New Hampshire. LPG Import Terminal, Hazard Modeling Study for Additional Tankage*, May, 1996, by Fluor Daniel, Inc. (20 pages) attached and incorporated as Exhibit J.
2. *Sea-3 Process Safety Management Manual*, July 15, 1996 (10 pages).
3. *Sea-3 Inc. Newington Marine Terminal, Initial Process Hazard Analysis, Final Report*, 6 October, 1995 by LGA Engineering (45 pages).
4. *Sea-3, Inc. Newington Marine Terminal Fire Safety Analysis, Draft Report*, July 1996 (17 Pages).
5. *Mooring Policy and Procedure Manual, Newington Propane (LPG) Terminal*, May 1993 (31 pages).
6. *Marine Safety Office, Portland Maine, Liquefied Petroleum Gas (LPG) Contingency Plan* (65 Pages).

The Town of Newington, under its then site plan regulations, required Sea-3 to pay for two consultants to review and comment on Sea-3's "safety/hazard report". These two experts were hired and completed their evaluations in less than one month. See Exhibits K, June 17, 1996 letter from James H. Stannard, Jr.; Exhibit L, *A Technical Review of the Proposed Additions to Sea-3's Newington Marine Terminal for the Planning Board of the Town of Newington, New Hampshire* by James H. Stannard, Jr. dated July 10, 1996; and Exhibit M, *Newington Planning Board Sea-3's Application for Additional LPG Storage Technical Review* dated July 10, 1996 by Henry Renfrew, all attached and incorporated hereto.. These consultants also assisted the Newington Planning Board in drafting the conditions of approval of the 1996 site plan. See attached Exhibit N, James H. Stannard, Jr.'s July 12, 1996 letter with comments on draft Planning Board findings, Exhibit O, Fax dated July 15, 1996 from James H. Stannard, Jr. and Henry Renfrew comment on proposed conditions as Exhibit P, all attached and incorporated hereto.

In 1996, the Newington Planning Board reviewed over 200 pages of safety/hazard reports, included in those reports were two evaluations by experts required by the Planning Board prior to approval of Sea-3's site plan. The costs associated with hiring these experts were paid by Sea-3. None of these reports were a rail safety study but were studies focused on the evaluation of the safety and potential hazards of the expansion of Sea-3's facility at the site. The City is appealing the Planning Board's decision, in part, because no such similar safety study of the site was done prior to approval of the site plan. In addition, the City is appealing the safety study post-approval outside of public comment and process.

Sea-3's allegation that the City's request for a safety/hazard study is for a rail safety study is not supported by its own safety studies submitted at its last site plan approval. Sea-3 is

also claiming that any such safety study is an unauthorized preclearance requirement. The prior studies were conducted and completed in one month. These prior studies were safety studies of the site, not rail safety studies. Unlike now, Sea-3 did not file a Petition with the STB or proper federal agency at the time alleging federal preemption in 1996. Sea-3's allegation that a safety/hazard study is a pre-clearance requirement is not supported by the City's Petition, the record of public hearings and Sea-3's own conduct at its last site plan review.

Legal Analysis

Cities and towns are able to exercise their police power over certain sites if the State and local regulation pass a two-part test: 1) it is not unreasonably burdensome, and (2) it does not discriminate against railroads" New York Susquehanna and Western Railway Corporation v. Jackson, 500 F3d 238 (3rd Cir. 2007). "[T]he touchstone is whether the state regulation imposes an unreasonably burden on railroading." Id. at 253. In certain cases, the exercise of local police power will not be allowed if the provisions are typically allowable but are subject to exclusive discretion or may cause unlimited delay to rail operations.

It bears emphasis that no request by the City and no allegation in either of the New Hampshire state appeals burdens a railway or a railway operation. The City's appeal is not about the City issuing a cease and desist order prohibiting rail traffic to warehouse because zoning prohibits use of land as freight yard. See Boston and Maine Corporation and Springfield Terminal Railroad Company, Finance Docket No. 35749 (S.T.B. July 19, 2013). The City's appeal does not require or seek a pre-construction preclearance environment permit. Green Mountain Railroad Corporation v. State of Vermont, 404 F.3d 638 (2nd Cir. 2005). The City's appeal does not involve an ordinance provision that requires a discretionary permit limiting the

number of trucks leaving Sea-3's facility or passing through the City. Norfolk Southern Railway Company v. City of Alexandria, 608 F.3d 150 (4th Cir. 2010).

The City's appeals ask the Town of Newington, in a fundamental sense, to carry out the studies and safety evaluations of the Sea-3 proposal that it directed be done in 1996, in connection with a smaller and less substantial expansion of its operations. The City's appeals seeks the ability to review and comment on safety/hazard assessment, similar to one that was required and reviewed by the Newington Planning Board when Sea-3 expanded its facilities in 1996. Interstate commerce and railway operations are not burdened or delayed by the City's appeal, even if successful. Pan Am has voluntarily agreed to upgrade its tracks and is in the process of doing so. Sea-3 is a going concern and is currently conducting its business at its current facility. Mr. Bogan stated at public hearing that he "expected the project to take a year before it would be operational". See Town of Newington, Planning Board Meeting Minutes dated February 10, 2014 at page 5 attached and incorporated as Exhibit Q. The City is without sufficient information to comment on the business model and statistics quoted by Sea-3 in its Petition but does submit that an evaluation of the safety study in 1996 by the Town of Newington's two experts took less than one month. Any new safety/hazard study would not subject Sea-3 to an unreasonable delay and is not unreasonably burdensome, nor does it discriminate against railroads.

Conclusion and Request for Relief

Sea-3, Inc.'s allegation that the City's sole objective is to block LPG rail traffic from travelling through the City of Portsmouth is a misstatement and misinterpretation of the City's appeal to the Superior Court and Zoning Board of Appeal. The City's concerns about rail safety are legitimate and proper and not subject to the jurisdiction of the Surface

Transportation Board. Admittedly, Congress granted the STB broad authority over the rails. However, it was not the intent of Congress to stifle or prevent a municipality's separate and legitimate inquiry regarding rail safety by urging its representatives in the Senate and Congress and the Governor to request and review information and a potential study of rail safety. These legitimate inquiries are outside the appeal process and are not the subject matter of the City's appeal.

The claim that the City's request for a safety/hazard study of the site is a pre-clearance requirement is not true. The City is not raising non-railroad claims to regulate rail operations. The City is requesting a safety/hazard study of the site similar, to the studies that were performed the last time Sea-3 expanded the site in 1996. Sea-3's allegations that such a study is an impermissible pre-clearance requirement that regulates rail operations is without merit.

Sea-3 is not a rail carrier and the City is not requesting a pre-clearance requirement of rail operations. The City is not preventing the expansion but is simply trying to ensure that the expansion of the site is safe and complies with local zoning and site plan review regulations to protect the public health, safety and welfare. The City requests that the STB issue an order:

- A. Dismissing Sea-3's Emergency Petition for Declaratory Order for lack of standing;
- B. In the alternative, denying Sea-3's Petition for Declaratory Order because the City's appeals and request for review and comment on a safety/hazard study, similar to the one that was performed by Sea-3 at its last expansion, is not a regulation of rail operations and is not a impermissible pre-clearance requirement; and
- C. Granting such further relief as the Board deems proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jane Ferrini', written over a horizontal line.

Jane Ferrini
City of Portsmouth
Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 610-7256

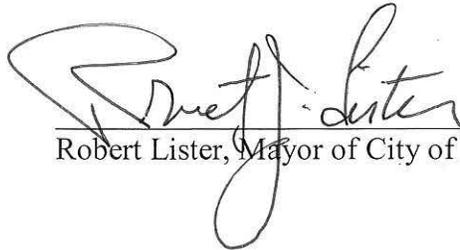
Staff Attorney for the City of Portsmouth

Dated: August 19, 2014

VERIFICATION

I, Robert Lister, Mayor of the City of Portsmouth, being first duly sworn according to law, depose and say that all of the facts and allegations set forth in this document, to the extent based on my personal knowledge, are true and correct to the best of my knowledge, information and belief.

Dated: August 19, 2014



Robert Lister, Mayor of City of Portsmouth

STATE OF NEW HAMPSHIRE
COUTNY OF ROCKINGHAM

Personally appeared the aforementioned and affirmed to me that the facts and recitals set forth in the foregoing document are true and correct to the best of his knowledge, information, and belief.



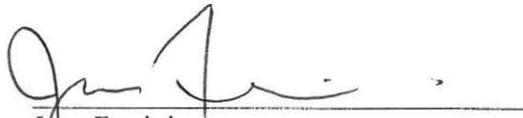
Notary Public/Justice of the Peace
Commission Expires:

JANE M. FERRINI, NOTARY PUBLIC
MY COMMISSION EXPIRES NOVEMBER 9 2016

STATEMENT REGARDING SERVICE

I, hereby certify that on this 19th day of August, 2014, I have served the Petitioner in this proceeding with this document by United States Mail as follows:

Alec L. McEachern
Attorney for Sea-3, Inc.
282 Corporate Drive
P.O. Box 360
Portsmouth, New Hampshire 03802-0360



Jane Ferrini
Staff Attorney, City of Portsmouth

EXHIBIT A

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, February 10, 2014

Chairman Hebert reiterated that he was asking Ms. Scarano with Pan Am and Mr. Bogan with Sea-3 to assist the Town in getting the FRA to meet with them. He said the citizens had a right to know the safety condition of the rails and the Town also needed to hear assurances from the FRA before a decision on the site could be made. Ms. Scarano said the FRA did inspections and would act if there were any issues, including drug and alcohol issues and hours of service. She said they would provide correspondence. Chairman Hebert said they needed to see a face and Ms. Scarano said they were a Federal agency. Chairman Hebert said they would go through Federal representatives if necessary to get a response. Mr. Richardson asked if they could get a copy of the last inspection, and Chairman Hebert said they needed the findings as well as what was being done to improve conditions. Ms. Scarano said the inspection report was done by the FRA and was not Pan Am's document to provide.

Mr. Lewis Brown of Laurel Court said Portsmouth filed a Freedom of Information Act petition and the FRA had dodged the request. He suggested the proposal be put on hold until they received more information.

Ms. Jean Heino asked if Pan Am would be financially responsible in case of a disaster. Board member, Mr. Richardson said they could request a bond from Sea-3, Chairman Hebert said they couldn't ask Sea-3 to be financially responsible for Pan Am.

Mr. Gibbons said Seacoast Media received a response from that the FRA had a backlog of requests. He said he also read that Pan Am would not be responsible for any accidents. Ms. Scarano said the railroad carried a substantial amount of liability insurance.

Mr. Richard Langan asked if an environmental study needed to be done. Mr. Joe Calderola said he hadn't heard much about ground water recharge on the site plan. Chairman Hebert said this was a cursory review, and all of the information was not available yet, but they would get more information as they moved forward.

Ms. Laurie B, from Greenland said one of her concerns was that the tracks be improved to accommodate the increase in propane freight traffic. She asked if the trains would be running at a speed of 25 mph. Board member, Jack Pare said it sounded like they needed to do upgrades to travel at an increase speed, and Ms. Scarano acknowledged that they did. Ms. Scarano said the tracks were currently set up as a Class I for 10 mph, but they would be doing improvements to bring the rails up to a Class II that could go up to 25 mph, though they only intended to run them at 10 mph at this time.

Ms. Pat Ford of Spinnaker Point asked if there were be fewer trucks going out. Mr. Bogan said they used to send out 100-200 trucks a day when they were importing fuel, but this operation would only send out 50 trucks a day. Mr. DiPentima asked how they could verify a certain percentage would be shipped overseas, and Chairman Hebert said the Planning Board was not a regulatory commission.

Mr. Lou Salomi of Portsmouth asked what Sea-3's construction time table would be if approved. Mr. Bogan said they expected the project to take a year before it would be operational.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, February 10, 2014

City Councilor Jack Thorsen asked what action they might take to pursue the use of freighters as an alternate to rails. Chairman Hebert said that would involve changing the Jones Act. Vice-Chair Hebert said that would also require a presidential signature. Mr. Bogan said they had looked into that alternative and were told they could get a short-term waiver, but they would also have to build a vessel in that time period, and they were not in that business. Mr. Thorsen said that was all the more reason to insist that the rails be safe.

Chairman Hebert said the Board could not deny Pan Am's operations, but they could say they needed more safety information from the FRA before they approved Sea-3's proposal for expansion. He said the FRA agreed to meet informally, but they said they wouldn't meet in public. He said the FRA was a servant of this country and they needed the FRA to meet in public for transparency so there would be no perception of behind door deals being made. Vice-Chair Marconi agreed with what Ms. Lamson said that a letter should be written to the congressional delegates to put pressure on the FRA to respond. Mr. Morgan said he had been working with Carol Shea-Porter's staff and Senator Shaheen to gain cooperation and they were preparing a letter to the FRA.

Chairman Hebert informed Sea-3 that they could voluntarily request an extension in writing until more information became available, or the Board of Selectmen or the Planning Board could vote for an extension. Mr. Bogan said he understood the concerns and they weren't avoiding the safety issue of a report from the FRA. Chairman Hebert said Mr. Bogan had been very cooperative with the Board.

Chairman Hebert continued the public hearing to March 10, 2014.

Justin Richardson asked if they would get comments on the project from the Fire Chief and Chairman Hebert said he would meet with the new Fire Chief himself. Mr. Stern said they might also need to review the standards with a qualified consultant.

3) Curb Cut Application: Request by **Victoria & Ben Auger** for a driveway off of **Swan Island Lane**, Tax Map 53, Lot 16.

This item was postponed to March 10, 2014 at the applicant's request.

4) Request for Comments pursuant to RSA 674:41 regarding a proposal by **Great Bay Marine, Inc.** to obtain a building permit to construct a residence off a private road, Tax Map 6, Lot 5.

No one appeared for this discussion so the Board moved on to the next item on the agenda.

5) Old Business: Request by **KWA, LLC** for an extension of site plan approval for office building development off **Shattuck Way**, Tax Map 7, Lot 2A.

John Chagnon, P.E., Ambit Engineering appeared before the Board requesting a two year extension for their application that was first approved in January 2010 and received an extension on December 2011.

EXHIBIT B

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 5, 2014

Board member, Justin Richardson said he wondered if a study would be helpful to accomplish the goals of the zoning ordinance and site plan regulations. He said he had trouble finding an appropriate role for a study. He said the public hearing already reviewed studies and it didn't seem like another study would be helpful and it would only be kicking the can further down the road.

Mr. Richardson read through "Uses Allowed" in the zoning ordinances and said a question of whether the use would create an over intensification of the area might be made in regards to the rails, but they would then be stepping outside of their jurisdiction. Mr. Richardson said the Board had been told the rail standards would be upgraded, and they could accept that finding to satisfy the criteria, or request a study to prove it, but there would need to be a determination first.

Town Planner, Tom Morgan said he started out asking the same questions. He said in November 2013 the Board determined if the project would have a regional impact. Mr. Morgan said he thought a study could help determine what that impact might be and to come up with some non-binding recommendations that would assist the communities that would be impacted. Mr. Richardson said he heard statements on the costs of upgrading crossings in surrounding communities, but he wasn't sure how the cost of the upgrades could be attributed to the Sea-3 project. Mr. Morgan said that was all the more reason to have a professional review. Chairman Hebert said a DOT and FRA representative had come before the Board to discuss their inspection process. He said the Federal government had set up a process so that towns could apply to the State and they would determine how to apportion a fair share of the cost. Mr. Richardson said there might be a need for a study, but it was challenging to define. Chairman Hebert said he didn't think the Board had the authority to ask the State to do a study on a crossing in another town. He said it was also a duplication of effort and cost to require a study that the State already did for free.

Mr. Pare said it might be useful as a part of their findings to include a copy of the RSA: 373 procedures that the town had to follow. He said they had heard from some towns, but not all, including Newfields. He said a letter to those towns that provided information and links to websites would be helpful to them.

Ms. Lamson said she thought an independent safety study was important for the regional impact consideration. Mr. Pare said something more than a paper study such as having the Rockingham Planning Commission or the UNH Complex Systems Group use their GIS capabilities and create a mapping system that would be available online to the surrounding fire departments for common coordinates would be more useful. He said right now they had text and he didn't think it would cost much for the applicant. Mr. Morgan said the study he envisioned would be broader than investigating rail crossings. He said he asked the director of the Rockingham Planning Commission if he would have any interest in administering such a study and was told he would need something specific. He said the Rockingham Planning Commission would be an appropriate agency to look at matters of concern outside of Newington.

Board member, Bernie Christopher said studies would be good except that the studies they already had were only political and didn't have any teeth to add more safety or anything. He said they were told that only the DOT and the FRA had authority

EXHIBIT C



PAN AM RAILWAYS

IRON HORSE PARK
NO. BILLERICA, MA 01862

LAW DEPARTMENT
(978) 663-1126

March 18, 2014

John J. Ratigan, Esq,
Donahue, Tucker & Ciandella, PLLC
225 Water Street
Exeter, NH 03833

Dear Attorney Ratigan:

Please accept this correspondence in response to your inquiry regarding the nature of the existing sidetrack located at the Sea-3 facility in Newington, New Hampshire and possible regulation of Pan Am's service to that side track. As a matter of both statute and case law, side tracks such as those located at the Sea-3 facility are subject to the exclusive jurisdiction of the United States Surface Transportation Board ("STB") pursuant to the Interstate Commerce Act ("ICA"). STB jurisdiction over transportation by rail carriers is established by 49 U.S.C. §10501 and is extremely broad, including jurisdiction over the construction, acquisition, operation, abandonment or discontinuance of side tracks, even if the tracks are located entirely in one state. *49 U.S.C. §10501(b)*. Moreover, "rail carrier" is defined as "...a person providing common carrier railroad transportation for compensation,..." and "railroad" includes "a switch, spur, track, terminal, terminal facility and a freight depot, yard or ground, used or necessary for transportation", while "transportation" is defined as, "a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use", as well as services related to that movement.. *49 U.S.C. §10102(5), (6) & (9)*.

While there is a limited exception to STB jurisdiction for so-called "Private Tracks", that exception does not apply here because service to the Sea-3 facility will continue to be provided by Pan Am, which is a Class II rail carrier subject to the jurisdiction of the STB. Specifically, the STB has found, "Under the statute, the Board has jurisdiction over 'transportation by rail carrier'...and the term 'rail carrier' is defined as 'a person providing common carrier railroad transportation for compensation.' The agency's jurisdiction does not extend to private rail operations (those not operated for hire)...Private tracks constitute a narrow, limited category of rail operations...Operations over private tracks can be conducted by the shipper/owner itself, or the shipper/owner of the private track may arrange for a contractor to conduct operations over

the track. *B. Willis, C.P.A.—Petition for Declaratory Order*, STB Finance Docket 34013 (October 3, 2001).¹

With regard to the Sea-3 sidetrack, operations historically have been performed by a rail carrier subject to STB jurisdiction and not by a private contractor, and therefore the “Private Track” designation is not applicable and the STB retains jurisdiction. “In this proceeding, the Board has exclusive jurisdiction over the planned new track, and local regulation is preempted because the new track will be operated by rail carriers...as part of the interstate rail network. The fact that the track owner...is not itself a rail carrier is not relevant. And the fact that the new track is outside the Board’s licensing authority does not change this outcome.” *The New York City Economic Development Corporation—Petition for Declaratory Order*, STB Finance Docket No. 34429 (July 15, 2004). “Moreover, state and local permitting or preclearance requirements (including environmental requirements) have been found to be preempted because, by their nature, they interfere with interstate commerce by giving the state or local body the ability to deny the carrier the right to construct facilities or conduct operations.” *Fletcher Granite Company, LLC—Petition for Declaratory Order*, STB Finance Docket No. 34020 (June 29, 2001).

Perhaps more importantly, however, the STB has recently held that whether or not the track at issue is Private Track is not determinative. Specifically, when the Town of Winchester, Massachusetts sought to regulate railroad operations on a side track owned by a customer, the STB found: “In interpreting the reach of §10501(b) preemption, the Board and the courts have found that it prevents states or localities from intruding into matters that are directly regulated by the Board (e.g., rates, services, construction, and abandonment). It also prevents states or localities from imposing requirements that, by their nature, could be used to deny a railroad’s ability to conduct rail operations...Applying these well-established preemption principles, we find that the Town’s actions here are preempted by §10501(b)” The STB also found that, “In any event, the dispute between the parties regarding the nature of the track immediately adjacent to the warehouse is not dispositive. Even if we assume this track is private track, this does not permit the Town to deprive Tighe of its federal right to receive common carrier rail service over the track.” *Boston and Maine Corp. and Springfield Terminal Rwy Co.—Petition for Declaratory Order*, STB Finance Docket No. 35749 (July 19, 2013). Interestingly, the STB also noted another recent decision regarding the scope of preemption pursuant to the ICA, citing a Fourth Circuit decision that found attempts to regulate interstate commerce indirectly by regulating truck traffic was also preempted by Section 10501(b), *Norfolk S. Ry. v. City of Alexandria*, 608 F.3d 150 (4th Circuit, 2010). Perhaps most tellingly, the STB noted that:

“Otherwise, states and localities could engage in impermissible regulation of the interstate freight rail network under the guise of regulations directed at shippers who would use the network, and thereby create the patchwork of conflicting local regulations that Congress sought to avoid in the Interstate Commerce Act.

¹ This exception to STB jurisdiction is also confused by the fact that the STB does not have licensing authority relating to the construction and operation of sidetracks. 49 U.S.C. §10906. In laymen’s terms, this means that no STB permit or license is required to construct or operate a sidetrack, but does not remove STB jurisdiction from the sidetrack.

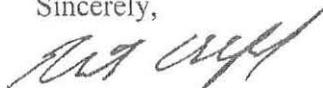
Furthermore, there is also a factual issue present here in the sense that Sea-3 has been receiving rail traffic at its existing siding for well over 30 years, and is not seeking to alter that siding in this proceeding before the Planning Board. Rather, additional trackage will be constructed on Pan Am's property to serve the expanded facility, further removing those new tracks from any Private Track designation.

As a final note, we are also concerned because the Planning Board has made repeated references to the proposed class of track and the possibility of conditioning Sea-3's use of rail to the condition of the track or other rail related issues. To be clear, any attempt to directly or indirectly regulate track speeds, track class or routing of propane would be preempted by the ICA and the Federal Railroad Safety Act ("FRSA").

While Pan Am appreciates the Planning Board's desire to address the safety of propane transportation and its belief that it may have some "police power" authority to do so, that authority is very narrow pursuant to the FRSA and the ICA. Specifically, the FRSA permits state regulation of railroad safety under certain circumstances, but this exception has been interpreted as being extremely limited in its application. In fact, courts have noted that "an essentially local safety hazard" is one that is not statewide in character and not capable of being addressed within national uniform standards. *Duluth, Winnipeg and Pacific Railway Company v. City of Orr*, 529 F.3d 794 (2008), *CSX Transportation, Inc. v. Williams*, 406 F.3d 667 (2005). In analyzing whether a condition meets this exception, courts have further found that such factors as: (a) proximity of buildings to railroad rights of way; (b) the location of propane tanks near the right of way; (c) the transportation of hazardous materials near the U.S. Capitol; and (d) the location of water bodies near the railroad tracks are all issues statewide in character and capable of being addressed by uniform national regulation. Furthermore, courts have also examined the other two prongs of the local regulation exception in the FRSA, noting that local governmental attempts to regulate track conditions and hazardous materials routing would also conflict with federal regulations and unduly burden interstate commerce. Accordingly, none of the conditions discussed to date by the Planning Board or any other municipality in this proceeding would meet the exception to preemption established by the FRSA. To be clear, therefore, while Pan Am is willing to voluntarily improve the existing track conditions should Sea-3 transport by rail sufficient volumes to support those improvements, the Planning Board does not have any jurisdiction to require such upgrades or the continued maintenance of them.

I trust that this information is responsive to your inquiry. In addition, Cyndi Scarano and I are available to meet with you this week to discuss this matter further, and I would ask that you propose some dates to meet with you in your offices if you feel that would be appropriate.

Sincerely,



Robert B. Culliford
Senior Vice President &
General Counsel

EXHIBIT D

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

THE CITY OF PORTSMOUTH
1 Junkins Avenue
Portsmouth, New Hampshire 03801

v.

NEWINGTON PLANNING BOARD
205 Nimble Hill Road
Newington, New Hampshire 03801

PETITION FOR APPEAL OF THE TOWN ON NEWINGTON PLANNING BOARD'S DECISION PURSUANT TO RSA 677:15, I AND 677:15, I-a (a)

NOW COMES the City of Portsmouth, a municipal corporation with an address of 1 Junkins Avenue and appeals a decision by the Town of Newington Planning Board pursuant to RSA 677:15, I and RSA 677:15 I-a (a) as follows:

PARTIES

1. The Petitioner/Appellant is the City of Portsmouth, a municipal corporation with an address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801 ("City").
2. The Newington Planning Board is a local land use board established by the Town of Newington pursuant to RSA 673 ("Planning Board").

JURISDICTION AND VENUE

3. The Zoning Ordinance of the Town of Newington requires that the Planning Board review site plans pursuant to its Site Plan Review Regulations. (RSA 674.43, RSA 674.44, Town of Newington Site Plan Review Regulations, Section 1).
4. This Court has jurisdiction pursuant to RSA 677:15, I and RSA 677:15, I-a (a). Venue is proper pursuant to RSA 507:9.

BACKGROUND

5. Sea-3 Inc. ("Sea-3") owns two parcels of property located off Shattuck Way in Newington, New Hampshire. These two lots are divided and separated by the rail way owned and operated by Boston and Maine Corporation/Springfield Terminal Railway Company d/b/a Pan Am Railways ("Pan Am").

6. Sea-3 presently uses both parcels to import foreign Liquefied Petroleum Gas (“LPG”) by ship to distribute domestically by rail and truck.

7. The first parcel is depicted on the Town of Newington’s Tax Map at Map 20, Lot 13 (“Lot 13”). This parcel is 7.02 acres located within both the General Industrial District (“I”) and the Waterfront Industrial and Commercial District (“W”). The Zoning District boundary bisects the western most LPG storage tank. Lot 13 is located west of the rail line and contains a main building, truck loading racks, two large storage tanks for the storage of Liquefied Petroleum Gas (LPG), a smaller distribution tank and associated pipelines.

8. The second parcel is depicted on the Town of Newington’s Tax Map at Map 20, Lot 2 (“Lot 2”). This parcel is 3.92 acres located within the Waterfront Industrial and Commercial District (“W”). Lot 2 contains a small building, 3 rail berths with pipelines to transport LPG between the waterfront loading docks through pipes located in Lot 2 to the storage tanks located in Lot 13.

9. Sea-3 has submitted an application (“Application”) for the Newington Planning Board’s review and approval to reconfigure its property and construct improvements to convert its operation from one that imports foreign LPG for domestic distribution by rail and truck to one that primarily exports domestic LPG received by rail and truck to foreign markets by ship.

10. This change in use requires construction of new facilities on the site to accommodate a substantial increase in volume of LPG that will be received, stored, chilled and distributed from the site for distribution to primarily foreign markets.

11. The improvements proposed by Sea-3 are located on three separate parcels, on Lots 13 and 2 as described above and on land owned by Pan Am that includes the railway and surrounding property that divides Lots 13 and 2. The proposed improvements are as follows:

1. Lot 13: The installation of new piping to transport LPG to tanks located on Lot 13;
2. Lot 2: The construction of three 90,000 gallon storage tanks, unloading compressors, pumps, condensers, dryers and heaters along with a machinery building for refrigeration equipment and the relocation of the flare tower; and
3. Property owned by Pan Am: The construction of five rail unloading berths new rail sidings and new pipes to transport LPG from Lot 2 to the storage tanks on Lot 13.

12. Pan Am is not the Applicant and only after (7) seven public hearings was the site plan revised to list Pan Am as the owner of the property described above.
13. There is no lease between Pan Am and Sea-3 for the use of Pan Am's property described above.

PROCEDURAL HISTORY

14. In August of 2013, Sea-3 submitted preliminary site plans of the project to the Newington Town Planner.
15. By letter dated October 28, 2013, the Town of Greenland requested that the Sea-3 project be deemed a development of regional impact pursuant to RSA 36:54-58.
16. By letter dated October 30, 2013, Sea-3 challenged the determination by the Newington Town Planner that both Lots required variances from Article VI and Article XIII of the Newington Zoning Ordinance because the Lots did not have sufficient frontage on a public right of way and did not comply with minimum set backs.
17. On November 5, 2013, Sea-3 filed an Application for site plan review with the Newington Planning Board.
18. On November 6, 2013, Sea-3 filed an Administrative Appeal of the Town Planner's decision that variances were required and also filed for a variance requests for the frontage and set back issues raised by the Town Planner.
19. On November 25, 2013, the Zoning Board of Adjustment held a public hearing on Sea-3's administrative appeal and variance requests. The Zoning Board of Adjustment denied the administrative appeal but granted Sea-3's request for variances.
20. On December 9, 2014, the Town of Newington deemed the project a "development of regional impact" pursuant to RSA 36:55.
21. A "developments of regional impact" is a project that will impact neighboring communities for various reasons, including but not limited to the project's proximity to another communities border, the project's effect on the transportation network and its effect on anticipated emissions such as light, noise, smoke, odor or particles or proximity to aquifers or surface water that transcends municipal borders. See RSA 36:55, II-V.
22. Notice was sent to the Rockingham Planning Commission and four affected communities, including the City of Portsmouth, the Town of Greenland, the Town of Statham and the Town of Newfields in order for the Commission and these affected communities to have appropriate notice in order to provide comment on the project to the Planning Board for its consideration. See RSA 36:54-58.

23. Public hearings were held on the Sea-3 project on December 9, 2014, February 10, 2014, March 10, 2014, March 24, 2014, April 14, 2014 and May 5, 2014.

24. The City of Portsmouth actively participated in these public hearings, including but not limited to the attendance, submission of written testimony, submission of letters and public comment by the following: Senator Martha Fuller Clark, Mayor, Robert Lister, Assistant Mayor, Jim Splaine, City Councilors Ester Kennedy, City Councilor Stephany Shaheen, City Councilor Jack Thorsen, City Officials, including City Manager John P. Bohenko, Deputy City Manager Dave Allen, Environmental and Sustainability Director Peter Britz, and numerous concerned citizens from Portsmouth, including but not limited to Rich DiPentima, Catherine DiPentima, Lewis Brown, Joe Calderola, Abdullah Alhamdan, Pat Ford, Beth Moreau, Bob Gibbons, Jean Heino, Richard Langan, John Sutherland, Jane Sutherland, David Rheaume, and Lou Salomi. The City Council also voted unanimously not to support the project.

25. The City of Portsmouth, through those participants listed above, initially raised concerns about rail safety because Sea-3's proposal would increase the volume and speed of railcars transporting hazardous materials through its residential neighborhoods and through its downtown. This concern prompted United States Senators Jeanne Shaheen and Kelly Ayotte and Congresswoman Carol Shea-Porter to request the Federal Railroad Administration to inspect the tracks, and later to request a comprehensive safety study of the rails. In addition, the City met with Department of Transportation and officials from Pan Am on the issue of rail safety and created a website with pertinent documents regarding Sea-3's Application.

26. Through the public hearing process the City, through various participants, repeatedly raised its concerns about rail safety and requested that the Planning Board require rail safety reports and hire an expert to assess rail safety. However the Planning Board denied these requests due to its belief that federal preemption, pursuant to the Interstate Commerce Commission Termination Act, prohibited the Planning Board from addressing any site-related or site-specific issues that touched on the rails or "railway operations."

27. However, in addition to rail safety, the City, through those participants mentioned above, repeatedly and vociferously requested that the Planning Board require a comprehensive safety and/or security review of the full scope of Sea-3 proposal, including but not limited to a hazard identification and vulnerability assessment, an environmental risk assessment and an analysis of emergency response for the impacted communities, physical security assessments and incident/hazards response analysis. ("safety/hazard assessment").

28. Site Plan Review Regulations authorize the Planning Board to require "any other exhibits or data that the Planning Board may require in order to adequately evaluate the proposed development for site review." Section 8, (q), Town of Newington Site Plan Review Regulations.

29. The Planning Board uniformly denied all requests from the City for a safety/hazard assessments and granted Sea-3's site plan Application at its May 19, 2014 meeting, conditioning approval on receipt of an updated "safety plan" from its site plan approved in 1996 before a building permit will issue.

31. The City appeals the Planning Board's decision as unlawful and unreasonably for the reasons set forth below, but primarily because the Planning Board's failed and refused to require a safety/hazard assessment after repeated requests from the City before approving Sea-3's site plan.

STANDING

32. A non-abutter has standing to appeal a decision of a Planning Board if the Court finds, after a review of the facts, that the party has sufficient interest in the outcome. See Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541 (1979).

33. The Weeks Court lists certain factors that must be considered when evaluating whether a non-abutter has standing:

... Whether a party has a sufficient interest in the outcome of a planning board or zoning board proceeding to have standing is a factual determination in each case. The trial court may consider factors such as the proximity of the plaintiff's property to the site for which approval is sought, the type of change proposed, the immediacy of the injury claimed, and the plaintiff's participation in the administrative hearings.

119 N.H. at 544-45.

34. The Court in Weeks also opined that the list of factors was not exhaustive and that Courts should consider "any other relevant factors bearing on whether the appealing party has a direct, definite interest in the outcome of the proceeding." Weeks at 544-45.

35. In several recent cases, the Supreme Court has further discussed these factors established by Weeks in evaluating whether a non-abutter has standing to appeal, and has further defined what it means to be "directly affected". Golf Course Investors of New Hampshire v. Town of Jaffrey, 161 N.H. 675 (2011); Hannaford Brothers Co. v. Town of Bedford, 164 N.H. 764 (2013).

36. Participation in administrative hearings before land use boards, although not the only factor, is a major factor the Court will consider in determining whether a non-abutter has a direct, definite interest in the outcome and is a person directly affected. See Golf Course Investments at 684.

37. Standing will not be extended to all persons in the community who feel they are injured by a local administrator's decision (Goldstein v. Town of Bedford, 154 N.H. 393, 395 (2006)); or those who only have a generalized interest in the outcome of a decision of land use board (Nautilus of Exeter v. Town of Exeter, 139 N.H. 450, 451-52 (1995)); or those who allege a speculative injury (Joyce v. Town of Weare, 156 N.H. 526 (2007)); or to those whose only injury is potential economic loss due to business competition. See also Flannaford at 769.

38. Proximity:

The City of Portsmouth is a community that abuts Newington. Although it does not own property immediately adjacent to the site itself, the City and Newington share common transportation systems of rivers, roads and rails. In terms of proximity, any catastrophic event at the site would likely require the evacuation of City's residents and the loss of property and damage. Any significant logistical issues relating to bringing materials into the Sea-3 facility by rail would have a substantial effect on the logistics and operations of ordinary traffic and concourse in and for the City of Portsmouth.

39. Type of Change of Use:

The type of change of use requested by Sea-3 is an expansion and intensification of use of not only its property, but the shared transportation systems of river, road and rail through the City due to the increase in volume of LPG being delivered, stored, chilled and distributed from the site. Although the Planning Board is not able to unduly restrict the railroad from conduction operations or unreasonably burden interstate commerce, its decision to allow Sea-3's expansion has caused an impact and increased burden on the City by increasing traffic of hazardous material and their associated risks by river, roads and rail throughout the City.

40. Immediate Impact:

The impact of Sea-3's expansion will be immediate because Pan Am has represented that it would be improving the tracks to accommodate a larger volume of LPG transported by rail cars that can travel at higher speeds. The City would be required to improve several rail crossings at an estimated cost of \$2,400,000.00 million dollars. Although part of the cost may be deferred by working with NH DOT, some 20% of these costs will be borne by City taxpayers. Citizens of Portsmouth will not only be obligated to pay for improved roadways at rail crossings, but will be supplementing Newington's Fire Department, given their limited number of fire fighters and equipment, in the event of an incident at the site. The City's taxpayers will pay for this burden and will not receive any of the tax benefit Newington receives from Sea-3. The City also supplies water to Newington at the site and to the Newington Fire Department and the City's water resources would be impacted in the event of an incident at the site. In addition, on information and belief, there will be a diminution in value of property in the City, specifically those residential neighborhoods that abut the railway, reducing the City's tax base.

41. Participation in administrative hearings:

As previously stated, the City submitted written testimony, letters and provided thoughtful, well researched and pointed public comment during the seven public hearings. There were more citizens, elected officials and staff from the City than any other stakeholder or representatives of any other towns at most of these hearings.

42. Towns are not “isolated enclaves, far removed from the concerns of the area in which they are situated. As subdivisions of the State, they do not exist solely to serve their own residents, and their regulations should promote the general welfare, both within and without their boundaries.” Britton V. Chester, 133 NH 434, 441 (1991).

43. Newington is not an isolated enclave. It must promote, and at least give meaningful consideration to, the general welfare of the City. Its failure to do so, and its unwillingness to order or provide for a safety/hazard assessment was a decision that clearly does not promote, but hinders – or at least largely and unreasonably ignores- the general welfare of the City. At the same time, Newington will receive a financial benefit from the tax revenue it receives from Sea-3, Newington is imposing a financial burden on the City to improve roads and to provide services of its first responders, all while it denies the City its request for a safety/hazard assessment of the project.

44. The City anticipates that its standing to bring suit will be challenged. This challenge will likely be based on the fact that the City became an abutter when it was given notice by the Town of Newington that the project of was development of regional impact because RSA 36:57 defined abutters “for the limited purpose of notice and providing comment”.

45. However, the Court must look at the statutory scheme as a whole, in that RSA 36 is the enabling legislation for the creation of the Regional Planning Commissions, which are “political subdivision of the state” as established in RSA 36:49-a and have only the authority expressly provided for in the statute, providing that “nothing in this subdivision shall be deemed to reduce or limit any of the powers, duties or obligations of planning boards in individual municipalities.” RSA 36:47.

46. The statutory scheme of RSA 36 was carefully drafted to create and empower these Commissions without granting them the ability to rest control from local land use boards. Thus, the limitation as an abutter for the limited purpose of notice and comment may apply to the Rockingham Regional Planning Commission, but not to the City of Portsmouth, as it has demonstrated above that it is a “person aggrieved” and a “person directly affected”.

47. The City of Portsmouth is a “person aggrieved” and “person directly affected” for the aforementioned reasons and it has a direct define interest in the outcome of the Planning Board’s decision to grant Sea-3’s Application and appeals the decision of the Newington Planning Board because it was unlawful and unreasonable.

PROCEDURAL ERRORS AND IRREGULARITIES

A. FAILURE TO COMPLY WITH REQUIRMENTS OF RSA 36

49. The only mention by the Planning Board regarding a safety/hazard assessment is in one of its conditions of approval dated May 19, 2014. The fifth condition provides as follows:

5. Several safety plans were adopted in conjunction with the original Sea-3 site plan approval. They shall be reviewed by Sea-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.”

50. The City, as an abutter, through its Mayor, Assistant Mayor, City Manager, City Councilors, City Manager, City Staff and citizens, as evidenced in the record, repeatedly and vociferously requested that the Planning Department require a safety study/hazard assessment of the site and of this particular expansion and use intensification prior to approval of the site plan.

51. The Planning Board’s condition of approval requires that Sea -3 update “safety plans” and submitted to “public officials (including the Newington Fire Chief) for its review and approval prior to the issuance of a building permit.”

52. The requirement that this safety plan be submitted directly to “public officials”, after site plan approval and outside the scope of any public hearing process violates the intent and purpose of (the site plan regulations themselves and) RSA 36, which requires Newington land use boards to give prompt, advance and effective notice to affected communities that the pending development proposal will have “regional impact,” in order to facilitate comment on the project before it is approved by the Newington Planning Board.

53. Review of updated “safety plans” – outside the public hearing process and the scrutiny of residents of the Town and abutters from other affected municipalities – denies the affected communities a meaningful opportunity to review, understand and comment on how these “updated safety plans” affect their communities. The Planning Board’s post-approval “update” condition denies the City and others the opportunity to comment on these “safety plans,” in violation of RSA 36 and constitutes a procedural error. As such, the Planning Board’s decision to approve the Application should be overturned.

54. Nothing in the record indicates that the current Planning Board or any of its members reviewed these original “safety plans” referenced in condition five. Sea-3’s last site plan was in 1996 when they expanded their facilities. The Planning Board does not have the same members it did almost 20 years ago. And even if they did, federal

regulations regarding the transportation, handling and storage of LPG has changed as well as surrounding populations, abutters and transportation routes which would render the original safety plans outdated. It is also unclear from the condition what "plans" the Planning Board is referring to as, on information and belief, there are six different "plans" or reports in the 1996 site review file.

55. The Planning Board's approval of the site will increase truck and rail traffic throughout more than just the four affected communities that received notice. The scope of this project's impact was too narrowly defined and as such, other affected communities did not receive adequate notice in violation of RSA 36, and as such, the Planning Board's decision to approve the site plan was unlawful and unreasonable and should be overturned.

56. In addition to the Planning Board's violates the intent and purpose of RSA 36, the Planning Board's approval of a site plan without first reviewing a site/hazard assessment is in violation of Newington's Site Plan Regulations.

B. DELAY IN DECLARING PROJECT OF DEVELOPMENT OF REGIONAL IMPACT

57. The City was prejudiced and other abutters were prejudiced in the Planning Board's delay in declaring this a "development of regional impact."

58. A request that this project be deemed a "development of regional impact" was received by the Town on October 28, 2013 but the Town delayed until December 9, 2013 to declare the project a "development of regional impact"

59. RSA 36:56 provides that a "local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. **Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.**" Emphasis added.

60. The appeal and request for variances were filed on November 6, 2013 and noticed for Zoning Board of Adjustment hearing on November 25, 2013, at which time the appeal was denied and the request for variances was granted.

61. Abutters were not given notice of the hearing and were denied the ability to comment on the project.

62. Failure of the Town to give abutters notice of application for variance, after request received almost one month prior, was procedural error and as such, unreasonable and unlawful.

C. FAILURE TO ABIDE BY SITE PLAN REVIEW REGULATIONS

1. Public Health, Safety and Welfare

63. Planning Boards must abide by and properly apply their own site plan regulations. The Newington Site Plan Regulations explicitly require compliance “in all respects [with] any and all pertinent ordinances and regulations.” Town of Newington Site Plan Regulations, Section 2. The Site Plan Regulations expressly indicate that the purpose of site plan review “is to protect the public health, safety and welfare; ...[and] to avoid development which may result in negative environmental impacts.” Town of Newington Site Plan Regulations, Section 2. In fact, Section 19 of the Site Plan Regulations provides the Board with the ability to require the applicant to reimburse it and the Town for “administrative expenses and costs of special investigation and other matters,” including review by consulting engineers or other consultants to assess the environmental impact, hydrological impact ground water quality impact, traffic impact, or any other study deemed necessary by the Planning Board in order to make an informed decision. Town of Newington Site Plan Regulations, Section 19. As previously stated, the City, through its citizens, Mayor, Assistant Mayor and City Councilors, City Manager, City Staff and numerous citizens repeatedly requested that the Planning Board require and review safety study/hazard assessment. The Planning Board repeatedly denied all requests by the City (and individual citizens of the City of Portsmouth) to perform a meaningful and professional assessment of the safety and health consequences of the proposed expansion and intensification of the use of the property.

64. The Planning Board’s refusal to conduct, or direct the applicant to conduct or pay for a proper, meaningful, professional and up to date safety, health, welfare and environmental assessment of the potential impacts of the proposed expansion and intensification of the use of the property was unreasonable and unlawful. The Planning Board’s failure to require a proper safety, health, welfare and environmental impact assessment was a gross and unreasonable abuse of its discretion. Under the circumstances, the Planning Board was required to evaluate the site, and given the nature of the use of land requested, the increased distribution, storing and chilling of LPG, a hazardous material, it should have required and reviewed a safety plan/ hazard assessment before approving the site plan.

65. Specifically, the Town of Newington Site Plan Review Regulations provides:

Sites for non-residential development shall be reviewed so as to minimize traffic congestion, traffic hazards, unsightliness, annoyance to other nearby land uses, erosion and other effects detrimental to the abutter, the neighborhood, the environment of the Town. In order to attain these goals, the Planning Board shall determine that:

- e) loading
- h) light, glare, odor, noise
- i) street (access)

l) The public health, safety and welfare will be otherwise protected

66. The Planning Board could not determine that the public's health, safety and welfare would be protected if it never reviewed a safety study/hazard assessment before granting site plan approval. Any "update" to "safety reports" received after approval of the site plan could not support the Planning Board's finding prior to their receipt that the project would promote the health, welfare and safety of the public without first reviewing any such assessment.

67. In addition to the City, a safety/hazard assessment was recommended by the Newington Town Planner, who acknowledged abutters concerns on safety and recommended the name of firm to Planning Board. This recommendation was ignored.

68. The only safety/hazard report reviewed by the Planning Board was a "Study of the Safety Impacts of Ethanol Transportation by Rail through Boston, Cambridge, Chelsea, Everett, Somerville, & Revere" dated March 29, 2013, which was brought to the Board's attention by a private citizen in order to demonstrate that safety and health assessments were understood to be appropriate in these sorts of circumstances. The Planning Board ignored the study and the purpose for which it was offered, finding "the circumstances of this study are not related to this application". Minutes of Town of Newington, NH, Planning Board, May 19, 2014.

69. In addition to its authority under Section 19 of the Site Plan Regulations, the Planning Board had the power to require additional exhibits or data to assist in adequately evaluating the proposed development for site review. Town of Newington Site Plan Regulations, Section 8(q). The Board's failure to seek further data, and to require a professional assessment of this proposal was unlawful and unreasonable, and its decision should be overturned, and the matter remanded to the Planning Board with directions to conduct the study and seek relevant current data on the project with public comment.

70. "Municipalities do not exist solely to serve their own residents and thus their regulations should promote the general welfare, both inside and outside their boundaries." Britton, 134 N.H. at 441.

71. The failure to address safety, hazards and environmental concerns and concluding the project promoted the health safety and welfare of the public was unlawful and unreasonable. The decision of the Planning Board should be overturned, and the matter should be remanded back to the Planning Board with instructions from the Court to conduct or cause the Applicant to conduct a proper, professional and current assessment of the impacts of the proposed development, in accordance with the Newington Site Plan Regulations.

2. Loading, Street Access, Traffic

72. The Planning Board approved the site plan without receiving a traffic study. The Planning Board received a memorandum, not a traffic impact study, from the Applicant

that was reviewed by the Town's own expert, Dirk J. Grotenhuis, PE, LEED, AP. In a peer review memorandum dated April 10, 2014, the Planning Board's own expert concluded that Sea-3's memorandum was incomplete and affirmed this opinion during his comments at the April 14, 2014 Planning Board Meeting. See Minutes of Town of Newington, NH Planning Board, April 14, 2014. The Planning Board's finding in paragraph 24, inaccurately summarized Mr. Grotenhuis' opinion on the incompleteness of the memorandum and failed to address his concerns about the lack of information provided in the traffic memorandum submitted by the Sea-3.

73. A representative of Sea-3 at the public hearings represented that there would be no change in the number of trucks because it would only process 10 trucks per hour. The Town's own retained expert, however, drafted a memorandum to the Newington Town Planner, raising 11 unanswered questions and issues that were Mr. Grotenhuis indicated had not been adequately addressed by Sea-3, including, but not limited to: (i) the inability to assess effects on the adjacent highway because there was no information on peak hour trips; (ii) the potential for queuing or congestion at the entrance or adjacent intersections and queuing on site; (iii) the fact that there was no information regarding the difference between off loading from ships versus rails and that no data was provided relating to public highway safety records (vehicle crashes) or the occurrence and location of vehicle crashes on nearby roads and intersections. The Board's failure to address these questions and shortcomings, or require the applicant to address them, was unreasonable and unlawful.

74. The proposed expansion would transform the facility from a seasonal facility to a year round operation, impacting traffic during the summer months and there was no analysis provided by Sea-3 regarding how this change in use would affect traffic.

75. Planning board decisions must be based on more than mere opinions. Smith v. Town of Wolfeboro, 136 N.H. 337, 344 (1992).

76. While a municipal body "is entitled to rely, in part, upon its own judgment and experience when reviewing applications for various land uses, its decision... must be based upon more than the mere personal opinion of its members." Richmond Co. v. City of Concord, 149 N.H. 312, 316 (2003).

77. The Planning Board may not base its decision solely on its opinion, ignoring its own expert recommendations, relevant questions, and concerns. Failing to address their own expert's concerns regarding incomplete information regarding the potential impact of the project on traffic was unreasonable and unlawful. On this basis, the decision of the Planning Board should be overturned and the matter should be remanded back to the Planning Board with instructions from the Court to address the traffic issues raised by Mr. Grotenhuis, as required by the Site Plan Regulations.

3. Failure to Address the Issue of Odor of Hazardous Materials/Substances

78. Federal safety regulations differ when transporting, handling and storing nonodorized rather than odorized LPG. LPG is odorized in order for a leak to be detected. Unodorized LPG is impossible to detect without special sensors.

79. In discussing the issue of odorant in LPG, the Town of Newington's own expert engineer recommended that a condition of approval be that LPG was odorized.

80. The Planning Board ignored its own expert's recommendation and made no such condition of approval.

81. The Planning Board has authority to impose conditions reasonably related to the purpose set forth in the site regulations to promote safe and attractive development, even if those conditions not specifically mentioned in ordinance. Summa Humma Enterprises, LLC d/b/a MB Tractor v. Town of Tilton, 151 N.H. 75, 78-79 (2004).

82. No discussion of federal regulations regarding requirements of odorizing LPG was presented by Sea-3 to the Planning Board. Sea-3 indicated that it would be an odorless facility, thereby making LPG gas undetectable if it leaked. Failure of the Planning Board to inquire regarding federal regulations on required odorization of LPG was unreasonable and unlawful.

83. There was an assessment of the site performed by SFC Engineering Partners, Inc. for the benefit of the Town. In both its January, 2014 and April, 2014 report it required "details of any non-odorized LPG to be stored at the site" before a permit could be issued. These report indicate that the Planning Board's own expert and the Planning Board did not have adequate information regarding whether LPG would be unodorized at the site, and that information is critical to determine and assess the safety of the site and its impact on the public's health, welfare and safety and the Planning Board's approval of the site plan without adequate information regarding whether LPG would be odorized or non-odorized was unlawful and unreasonable and as such, the Planning Board's decision should be overturned.

84. No information regarding the properties of LPG gas was provided to the City after several requests, other than a reply from Planning Board members that "it evaporates". There was evidence submitted to the Planning Board that LPG is not lighter than air and goes to ground when it leaks, presenting a completely different risk to the public health and safety. Failure of the Planning Board to ascertain the properties of LPG and its potential risk to the public's health and safety prior to granting site plan approval was unlawful and unreasonable.

85. Condition 4 states that final design plans shall meet the requirements of the NH Fire Code and NFPA Code. Perhaps in other types of site review final plans are not required before a site plan is approved but when the Planning Board is charged with evaluating the project of this nature with inherent risk to public's health, safety and welfare, approving the site plan without critical information necessary to determine compliance with state and federal fire codes as required by the Newington Zoning

Ordinance, Article V, Section 6, D (3) a-c, was unlawful and unreasonable and the Planning Board's decision should be overturned.

4. **The Failure to Address Issues Relating to Light, Noise, Air and Water Quality**

86. The Planning Board did not evaluate whether the site would have an effect on air quality due to idling trucks and increase rail traffic. Sea-3 will operate 24 hours a day, 365 days a year, 7 days a week. Truck traffic will queue, start and stop, idle, increase rail traffic will increase and no evaluation regarding the cumulative impact from fumes from diesel engines, increase ship stack emissions, any emissions from flares was reviewed by the Planning Board's. The Planning Board's lack of review of impact on air quality was in violation of its site review regulations and was unlawful and unreasonable, and therefore the decision of the Planning Board should be overturned.

87. In addition to the impact on air quality, there was no information presented or any assessment of the noise due to idling trucks and increase rail traffic and noise from idling railcars, noise from flare on tanks, noise from ships or any noise from emergency generators. The Planning Board is required to assess noise in evaluating a site plan and its failure to do so was unreasonable and unlawful and therefore its decision should be overturned.

88. Because no information on peak hours of trucks was given and no assessment on the impact on light and glare was assessed in contravention of the site plan review regulations. Also, SFC Engineering Partners, Inc. never reviewed a site lighting plan. Approving a site plan without assessing the sites lighting plan and its impact is in violation of site plan review regulations and as such, the decision of the Planning Board was unlawful and unreasonable and should be overturned.

89. If public water is being used, and there is a catastrophic event at the site, no analysis was done regarding the adequacy of the water supply and how it would affect abutting communities. Failing to assess the site's impact on the water supply was unlawful and unreasonable and the decision of the Planning Board should be overturned.

5. **The Applicant's Failure to Demonstrate Its Right, Title and Interest in and to the Subject Property**

90. Throughout the review of the Application at seven (7) public hearings, the Applicant maintained that Pan Am was not an applicant, perhaps as part of a plan to ensure that Pan Am did not itself submit to local land use authority and retain the full leverage of its constant assertion of "federal preemption" of all such local regulation. Late in the hearing process, however, it was finally revealed that a portion of the proposed improvements to the site are located on land owned by Pan Am, not on land owned by the Applicant. The Applicant represented that it would have a lease with Pan Am in the future for the use of its land, but never represented that it had a lease for the

use of the property at the time of the Application and at the time of the decision of the Planning Board. Pan Am represented that the lease was being negotiated.

91. Newington Site Plan Review Regulations provide that Applications must be properly complete; site plans must show entire property and all facilities and name and address of owners of record. See Newington Site Plan Review Regulations, Section 7(a), (b) and (d).

92. Paragraph 19 of the Planning Board's findings indicate that the Applicant would add a second means of emergency access to the site over the property of Pan Am Railways. However, the Applicant may not add any additional access to the site over property it does not own, have an easement or have a lease.

93. Because the Applicant did not have right, title and interest to part of the land upon which site improvements and a second means of emergency access are to be located, the decision of the Planning Board to grant the Application was unlawful and unreasonable and should be overturned.

WHEREFORE, the City respectfully prays that this Court grant it the following relief:

A. That the decision of the Planning Board be overturned and the Application should be denied; or

B. In the alternative, that the Court remand this matter back to the Planning Board to comply with site plan review regulations which include, but are not limited to requiring a traffic study and a safety/hazard assessment be performed and reviewed by the Planning Board and by abutting communities after proper notice pursuant to RSA 36 for further public hearings on the Application; and

C. For such other and further relief as the Court may deem appropriate.

The City of Portsmouth
By and through its Attorney

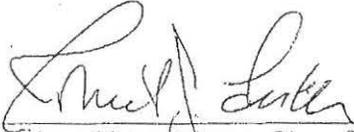


Jare Ferrini, Staff Attorney
NHBM # 6528
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7256

VERIFICATION

I, Robert Lister, Mayor of the City of Portsmouth, being first duly sworn according to law, depose and say that all of the facts and allegations set forth in this document, to the extent based on my personal knowledge, are true and correct to the best of my knowledge, information and belief.

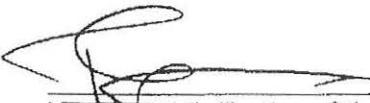
Dated: June 16, 2014



Robert Lister, Mayor, City of Portsmouth

STATE OF NEW HAMPSHIRE
COUTNY OF ROCKINGHAM

Personally appeared the aforementioned and affirmed to me that the facts and recitals set forth in the foregoing document are true and correct to the best of his knowledge, information, and belief.



~~Notary Public/Justice of the Peace~~
Commission Expires 9/18/17

EXHIBIT E

Town of Newington, New Hampshire

Application Form

Zoning Board of Adjustment

Appellant

Property Owner		Applicant's Agent	
Name	City of Portsmouth	Name	_____
Address	1 Jenkins Ave Portsmouth NH 03801	Address	_____
Telephone	603 610 7256	Telephone	_____
Fax	603 427 1577	Fax	_____
Email	j.ferrini@cityofportsmouth.com	Email	_____

Location of Property	Fee
Address <u>Shattwell Way</u>	\$50
Tax Map <u>20</u> Lot <u>13</u>	
Taxmap <u>20</u> Lot <u>2</u>	

Applicant's Request(s)

(Check applicable requests)

- Variance from Article _____ in order to _____
- Special Exception to allow _____
- ~~Administrative~~ Appeal from the decision of Newington Planning Board on 5/19/14 (date) regarding site plan approval for Sea-3 Inc.
See attached.
- Equitable Waiver of Dimensional Requirements
- Rehearing

Property Owner's Consent

I have read Newington's land use regulations and will comply with all the requirements therein.

Jane M. Ferrini

Signature(s) of all property owners & date signed
 Jane M. Ferrini,
 Staff Attorney
 City of Portsmouth

STATE OF NEW HAMPSHIRE

THE CITY OF PORTSMOUTH'S APPEAL OF THE DECISION OF THE
NEWINGTON PLANNING BOARD TO APPROVE THE SITE PLAN OF SEA-3 INC.
PURSUANT TO RSA 676:5, III AND RSA 677:15, I-a (a)

PARTIES

1. The Petitioner is the City of Portsmouth, a municipal corporation with an address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801.
2. The Newington Planning Board is a local land use board established by the Town of Newington pursuant to RSA 673.
3. The Town of Newington's Zoning Ordinance requires that the Planning Board review site plans under its Site Plan Review Regulations. No site plan will be approved until it complies in all respects to any and all pertinent zoning ordinances. (RSA 674.43, RSA 674.44, Town of Newington Site Plan Review Regulations, Section 1 and 2).
4. This City appeals the decision of the Planning Board pursuant to 676:5, III and 677:15, I-a (a) because it misapplied and misinterpreted the Newington Zoning Ordinance.

BACKGROUND

5. Sea-3 Inc. ("Sea-3") owns two parcels of property located off Shattuck Way in Newington, New Hampshire. These two lots are divided and separated by the rail way owned and operated by Boston and Maine Corporation/Springfield Terminal Railway Company d/b/a Pan Am Railways ("Pan Am").
6. Sea-3 presently uses both parcels to import foreign Liquefied Petroleum Gas ("LPG") by ship to distribute domestically by rail and truck.
7. The first parcel is depicted on the Town of Newington's Tax Map at Map 20, Lot 13 ("Lot 13"). This parcel is 7.02 acres located within both the General Industrial District ("I") and the Waterfront Industrial and Commercial District ("W"). The Zoning District boundary bisects the western most LPG storage tank. Lot 13 is located west of the rail line and contains a main building, truck loading racks, two large storage tanks for the storage of Liquefied Petroleum Gas (LPG), a smaller distribution tank and associated pipelines.
8. The second parcel is depicted on the Town of Newington's Tax Map at Map 20, Lot 2 ("Lot 2"). This parcel is 3.92 acres located within the Waterfront Industrial and Commercial District ("W"). Lot 2 contains a small building, three (3) rail berths with

pipelines to transport LPG between the waterfront loading docks through pipes located in Lot 2 to the storage tanks located in Lot 13.

9. Sea-3 has submitted an application (“Application”) for the Newington Planning Board’s review and approval to reconfigure its property and construct improvements to convert its operation from one that imports foreign LPG for domestic distribution by rail and truck to one that primarily exports domestic LPG received by rail and truck to foreign markets by ship.

10. This change in use requires construction of new facilities on the site to accommodate a substantial increase in volume of LPG that will be received, stored, chilled and distributed from the site for distribution to primarily foreign markets.

11. The improvements proposed by Sea-3 are located on three separate parcels, on Lots 13 and 2 as described above and on land owned by the owner of the rail lines, Pan Am, which includes the railway and surrounding property that divides Lots 13 and 2. The proposed improvements are as follows:

1. Lot 13: The installation of new piping to transport LPG to tanks located on Lot 13;
2. Lot 2: The construction of three 90,000 gallon storage tanks, unloading compressors, pumps, condensers, dryers and heaters along with a machinery building for refrigeration equipment and the relocation of the flare tower; and
3. Property owned by Pan Am: The construction of five rail unloading berths new rail sidings and new pipes to transport LPG from Lot 2 to the storage tanks on Lot 13.

12. Pan Am is not the Applicant and only after seven (7) public hearings was the site plan Application presented to the Planning Board revised to list Pan Am as the owner of the property described above.

13. There is no lease between Pan Am and Sea-3 for the use of Pan Am’s property described above.

PROCEDURAL HISTORY

14. In August of 2013, Sea-3 submitted preliminary site plans of the project to the Newington Town Planner.

15. By letter dated October 28, 2013, the Town of Greenland requested that the Sea-3 project be deemed a “development of regional impact” pursuant to RSA 36:54-58.

16. By letter dated October 30, 2013, Sea-3 challenged the determination by the Newington Town Planner that both Lots required variances from Article VI and Article

XIII of the Newington Zoning Ordinance because the Lots did not have sufficient frontage on a public right of way and did not comply with minimum set backs.

17. On November 5, 2013, Sea-3 filed an Application for site plan review with the Newington Planning Board.

18. On November 6, 2013, Sea-3 filed an Administrative Appeal of the Town Planner's decision that variances were required and also filed for variance requests for the frontage and set back issues raised by the Newington Town Planner.

19. On November 25, 2013, the Zoning Board of Adjustment held a public hearing on Sea-3's administrative appeal and variance requests. The Zoning Board of Adjustment denied the administrative appeal but granted Sea-3's request for variances.

20. On December 9, 2014, the Town of Newington Planning Board deemed the project a "development of regional impact" pursuant to RSA 36:55.

21. A "development of regional impact" is a project that will impact neighboring communities for various reasons, including but not limited to the project's proximity to another community's border, the project's effect on the transportation network and its effect on anticipated emissions such as light, noise, smoke, odor or particles or proximity to aquifers or surface water that transcends municipal borders. See RSA 36:55, II-V.

22. Notice was sent to the Rockingham Planning Commission and four affected communities, including the City of Portsmouth, the Town of Greenland, the Town of Stratham and the Town of Newfields, in order for the Commission and these affected communities to have appropriate notice in order to provide comment on the project to the Planning Board for its consideration. See RSA 36:54-58.

23. Public hearings were held on the Sea-3 project on December 9, 2014, February 10, 2014, March 10, 2014, March 24, 2014, April 14, 2014 and May 5, 2014.

24. The City of Portsmouth actively participated in these public hearings, including but not limited to the attendance, submission of written testimony, submission of letters and public comment by the following: Senator Martha Fuller Clark, Mayor Robert Lister, Assistant Mayor Jim Splaine, City Councilors Ester Kennedy, City Councilor Stephany Shaheen, City Councilor Jack Thorsen, City Officials, including City Manager John P. Bohenko, Deputy City Manager Dave Allen, Environmental and Sustainability Director Peter Britz, and numerous concerned citizens from Portsmouth, including but not limited to Rich DiPentima, Catherine DiPentima, Lewis Brown, Joe Calderola, Abdullah Alhamdan, Pat Ford, Beth Moreau, Bob Gibbons, Jean Heino, Richard Langan, John Sutherland, Jane Sutherland, David Rheame, and Lou Salomi. The Portsmouth City Council also voted unanimously not to support the project.

25. The City of Portsmouth, through those participants listed above, initially raised concerns about rail safety because Sea-3's proposal would increase the volume and speed

of railcars transporting hazardous materials through its residential neighborhoods and through its downtown. This concern prompted United States Senators Jeanne Shaheen and Kelly Ayotte and Congresswoman Carol Shea-Porter to request the Federal Railroad Administration to inspect the tracks, and later to request a comprehensive safety study of the rails. In addition, the City met with Department of Transportation and officials from Pan Am on the issue of rail safety and created a website with pertinent documents regarding Sea-3's Application.

26. Through the public hearing process the City, through various participants, repeatedly raised its concerns about rail safety and requested that the Planning Board require rail safety reports and hire an expert to assess rail safety. However the Planning Board denied these requests due to its belief that federal preemption, pursuant to the Interstate Commerce Commission Termination Act, prohibited the Planning Board from addressing any site-related or site-specific issues that touched on the rails or "railway operations."

27. However, in addition to rail safety, the City, through those participants mentioned above, repeatedly and vociferously requested that the Planning Board require a comprehensive safety and/or security review of the full scope of Sea-3 proposal, including but not limited to a hazard identification and vulnerability assessment, an environmental risk assessment and an analysis of emergency response for the impacted communities, physical security assessments and incident /hazards response analysis. ("safety/hazard assessment").

28. Site Plan Review Regulations authorize the Planning Board to require "any other exhibits or data that the Planning Board may require in order to adequately evaluate the proposed development for site review." Section 8, (q), Town of Newington Site Plan Review Regulations.

29. The Planning Board uniformly denied all requests from the City for a safety/hazard assessment and granted Sea-3's site plan Application at its May 19, 2014 meeting, conditioning approval on receipt of an updated "safety plans" from Sea-3's prior site plan approval in 1996 before a building permit will issue.

30. The City has also appealed the Planning Board's decision to the Superior Court pursuant to RSA 677:15, I and RSA 677:15, I-a (a).for its failure to properly apply its site review regulations.

31. The City appeals the Planning Board's decision as unlawful and unreasonably because it misapplies and misinterprets the Town of Newington Zoning Ordinance as more fully set forth below.

STANDING

32. A non-abutter has standing to appeal a decision of a Planning Board if the Court finds, after a review of the facts, that the party has sufficient interest in the outcome. See Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541 (1979).

33. The Weeks Court lists certain factors that must be considered when evaluating whether a non-abutter has standing:

...Whether a party has a sufficient interest in the outcome of a planning board or zoning board proceeding to have standing is a factual determination in each case. The trial court may consider factors such as the proximity of the plaintiff's property to the site for which approval is sought, the type of change proposed, the immediacy of the injury claimed, and the plaintiff's participation in the administrative hearings.

119 N.H. at 544-45.

34. The Court in Weeks also opined that the list of factors was not exhaustive and that Courts should consider "any other relevant factors bearing on whether the appealing party has a direct, definite interest in the outcome of the proceeding." Weeks at 544-45.

35. In several recent cases, the Supreme Court has further discussed these factors established by Weeks in evaluating whether a non-abutter has standing to appeal, and has further defined what it means to be "directly affected". Golf Course Investors of New Hampshire v. Town of Jaffrey, 161 N.H. 675 (2011); Hannaford Brothers Co. v. Town of Bedford, 164 N.H. 764 (2013).

36. Participation in administrative hearings before land use boards, although not the only factor, is a major factor the Court will consider in determining whether a so-called non-abutter has a direct, definite interest in the outcome and is a person directly affected. See Golf Course Investments at 684.

37. Standing will not be extended to all persons in the community who feel they are injured by a local administrator's decision (Goldstein v. Town of Bedford, 154 N.H. 393, 395 (2006)); or those who only have a generalized interest in the outcome of a decision of land use board (Nautilus of Exeter v. Town of Exeter, 139 N.H. 450, 451-52 (1995)); or those who allege a speculative injury (Joyce v. Town of Weare, 156 N.H. 526 (2007)); or to those whose only injury is potential economic loss due to business competition. See also Hannaford at 769.

38. Proximity: The City of Portsmouth is a community that abuts Newington. Although it does not own property immediately adjacent to the site itself, the City and

Newington share common transportation systems of rivers, roads and rails. In terms of proximity, any catastrophic event at the site would likely require the evacuation of City's residents and the loss of property and damage. Any significant logistical issue relating to bringing materials into the Sea-3 facility by rail would have a substantial effect on the logistics and operations of ordinary traffic and concourse in and for the City of Portsmouth.

39. Type of Change of Use: The type of change of use requested by Sea-3 is an expansion and intensification of use of not only its property, but the shared transportation systems of river, road and rail through the City due to the increase in volume of LPG being delivered, stored, chilled and distributed from the site. Although the Planning Board is not able to unduly restrict the railroad from conducting operations or unreasonably burden interstate commerce, its decision to allow Sea-3's expansion will cause a material and substantial impact and increased burden on the City by increasing traffic of hazardous material and their associated risks by river, roads and rail throughout the City.

40. Immediate Impact: The impact of Sea-3's expansion will be immediate because Pan Am has represented that it would be improving the tracks to accommodate a larger volume of LPG transported by rail cars that can travel at higher speeds. The City would be required to improve several rail crossings at an estimated cost of \$2,400,000.00 million dollars. Although part of the cost may be deferred by working with NH DOT, some 20% of these costs will be borne by the City and its taxpayers. Citizens of Portsmouth will not only be obligated to pay for improved roadways at rail crossings, but will be supplementing Newington's Fire Department, given their limited number of fire fighters and equipment, in the event of an incident at the site. The City taxpayers will pay for this burden but will not receive any of the tax benefit Newington receives from Sea-3. The City also supplies water to Newington at the site and to the Newington Fire Department and the City's water resources would be impacted in the event of an incident at the site. In addition, on information and belief, there will be a potentially substantial diminution in value of certain property in the City, specifically those residential neighborhoods that abut the railway, reducing the City's tax base.

41. Participation in administrative hearings: As previously stated, the City submitted written testimony, letters and provided thoughtful, well researched and pointed public comment during the seven public hearings. There were more citizens, elected officials and staff from the City than any other stakeholder or representatives of any other towns at most of these hearings.

42. Towns are not "isolated enclaves, far removed from the concerns of the area in which they are situated. As subdivisions of the State, they do not exist solely to serve their own residents, and their regulations should promote the general welfare, both within and without their boundaries." Britton V. Chester, 133 NH 434, 441 (1991). This is particularly true where, as in this matter, the municipalities are closely connected by economic and resource concerns, and where the municipalities effectively share infrastructure and logistics.

43. Newington is not an isolated enclave. It must promote, and at least give meaningful consideration to, the general welfare of the City. Its failure to do so, and its unwillingness to order or provide for a safety/hazard assessment was a decision that clearly does not promote, but hinders – or at least largely and unreasonably ignores – the general welfare of the City. At the same time, Newington will receive a financial benefit from the tax revenue it receives from Sea-3, Newington is imposing a financial burden on the City to improve roads and to provide services of its first responders, all while it denies the City its request for a safety/hazard assessment of the project.

44. The City anticipates that its standing to bring suit will be challenged. This challenge will likely be based on the fact that the City became an abutter when it was given notice by the Town of Newington that the project of was development of regional impact because RSA 36:57 defined abutters “for the limited purpose of notice and providing comment”.

45. However, the Court must look at the statutory scheme as a whole, in that RSA 36 is the enabling legislation for the creation of the Regional Planning Commissions, which are “political subdivision of the state” as established in RSA 36:49-a and have only the authority expressly provided for in the statue, providing that “nothing in this subdivision shall be deemed to reduce or limit any of the powers, duties or obligations of planning boards in individual municipalities.” RSA 36:47.

46. The statutory scheme of RSA 36 was carefully drafted to create and empower these Commissions without granting them the ability to rest control from local land use boards. Thus, the limitation as an abutter for the limited purpose of notice and comment may apply to the Rockingham Regional Planning Commission, but not to the City of Portsmouth, as it has demonstrated above that it is a “person aggrieved” and a” person directly affected”.

47. The City of Portsmouth is a “person aggrieved” and “person directly affected” for the aforementioned reasons and it has a direct define interest in the outcome of the Planning Board’s decision to grant Sea-3’s Application and appeals the decision of the Newington Planning Board because it misapplied and misinterpreted its Zoning Ordinance.

THE PLANNING BOARD MISINTERPRETED AND MISAPPLIED THE NEWINGTON ZONING ORDINANCE

ZONING DISTRICT

48. No site plan will be approved until it complies in all respects to any and all pertinent ordinances and regulations. Town of Newington Site Plan Regulations, Section 2.

49. Article III, Section 1 of the Newington Zoning Ordinance divides the Town of Newington into different districts or zones and provides that “the boundaries of these districts are hereby established as shown on the Official Zoning Map. Said map is hereby made a part of this ordinance.”

50. Article III, Section 3 provides that “unless otherwise indicated, the district boundary lines are the nearest lot lines, the center lines of the streets or such lines extended, pier head or bulk head lines, or the town boundary lines.”

51. Zones districts must be described with certainty. Nottingham v. Harvey, 120 NH 889 (1980).

52. The fixing of zoning lines is a matter of legislative discretion and necessarily results in classifications of uses on either side of the line. Windham v. Alford, 129 NH 24, 31 (1986).

53. Each district has separately delineated “Description and Purpose”, uses permitted and uses prohibited and no district incorporates by reference the description and purpose, uses permitted and prohibited from any other district.

54. Article IV, Section 1 of the Town of Newington Zoning Ordinance, provides that “no structure shall be erected, constructed, reconstructed, moved or altered unless in conformity with all regulations herein specified for the district in which it is located. The omission of a use from the list of those allowed in a particular district constitutes prohibition of that use in that district.”

55. Lot 13 is in both the “I” and “W” district and Lot 2 is in the “W” district. The Town of Newington Zoning Map clearly bisects Lot 13 with one half of the lot closer to the railroad being in the “W” district and the other half located in the “I” district. The lot line passes through the smaller of the two LPG storage tanks on the lot.

56. Storage above or below the ground of any explosive or hazardous fluid (including waste), toxic or noxious matter, or material causing odor, dust, fire hazard, smoke, gas or fumes is a use prohibited in the General Industrial “I” Zone. Town of Newington Zoning Regulation, Article V, Section 5, C (3).

57. Storage and handling of above or below the ground of any material which is explosive, toxic, noxious, or capable of causing odor, dust, fire hazard, smoke, gas, or fumes shall be a permissible use in the Waterfront Commercial District when the use complies with the shipping, handling and storage requirements and regulations of the National Fire Protection Association Standards (NFPA), Department of Transportation (DOT) and Environmental Protection Agency (EPA). Town of Newington Zoning Regulations, Article V, Section 6, D (3) a-c.

58. LPG is explosive and a fire hazard. The storage tank partially located in the “I” zone is, therefore, not a permitted use under the current zoning ordinance, therefore, on

information and belief, this tank is either currently unlawful or was a pre-existing non-conforming use and no variance has been granted to allow this nonconforming use in the "I" District.

59. The Applicant did not request a variance for the tank in its present Application. Article XIII, Section 1 of the Zoning Ordinance expressly provides that "non-conforming uses and non-conforming structures shall not be enlarged, expanded or extended." Absent a variance or proof that the site proposal does not "enlarge, expand or extend" the existing non-conformity, the Applicant's operations currently run afoul of the Zoning Ordinance and the proposal simply exacerbates a non-conforming use, in violation of New Hampshire law.

60. Paragraph 50 of the Minutes of May 19, 2013, sets forth Findings whereby "[t]he Board expressly finds that this proposed expansion of a long-standing use that is permitted in the Industrial Zone is consistent with the aim of Newington Zoning Ordinance Article V, Section 5, A, which anticipates that land zoned Industrial will be able to accommodate "expansion of existing industry.. and to enhance economic development and employment opportunities."

61. However, the Planning Board misinterprets and misapplies the Town of Newington's Zoning Ordinance because storage and handling a gas that is explosive material and is a fire hazard and is not a permitted use in the General Industrial Zone, of which Lot 13 is a part.

62. Paragraph 51 of the Findings set forth in the Planning Board's minutes of May 19, 2014 states that "[t]he Board expressly finds, as is required by Newington Zoning Ordinance Article V, Section 5, B that per the terms of this site plan application, "the proposed location, construction and operation will not injure present or prospective industrial development in the district, or the health and welfare of residential districts in the vicinity". The Board expressly finds that this application is precisely the type of business development and land use that the Industrial District is intended to protect and promote."

63. Again, the Planning Board misinterprets and misapplies the Town of Newington's Zoning Ordinance because storage and handling of LPG, an explosive material that is a fire hazard, is a prohibited use in the General Industrial Zone.

64. Paragraph 52 of the Findings set forth in the Planning Board's minutes of May 19, 2014 states that "[t]he Board expressly finds and recognizes that, in the aftermath of the recent economic recession, the importance of supporting business in the Industrial District, and promoting economic development and local employment, cannot be understated as an important purpose of this Industrial District."

65. Yet again, the Planning Board misinterprets and misapplies the Town of Newington's Zoning Ordinance because the storage and handling of explosive material and material that is a fire hazard is a prohibited use in the General Industrial District.

66. The Planning Board's approval of the site plan was based on its reliance on a provision of the Zoning Ordinance that prohibits the proposed use at the site and as such, the Planning Board's decision was illegal and unreasonable and should be reversed.

67. Because the tank is a non-conforming and not a permitted use, at a minimum, the Applicant's request, involving the site's expansion to increase the delivery, storage and distribution of LPG, is an impermissible expansion of a non-conforming use. Because no variance was granted, the Planning Board misapplied the Zoning Ordinance, and as such, its decision to approve the site plan should be overturned.

PUBLIC HEALTH SAFETY AND WELFARE

68. Article 1 of the Town of Newington's Zoning Ordinance provides that the purpose of the zoning ordinance is to "promote the health, safety, morals, convenience and general welfare of the community" and Article 3 provides that the purpose of the ordinance is for "promoting the health, safety, morals, prosperity, convenience or general welfare."

69. The Planning Board misapplied and misinterpreted Article 1 and Article 3 of the Zoning Ordinance because it did not require and review a safety/hazard assessment prior to granting site plan approval.

70. The only mention by the Planning Board regarding a safety/hazard plan is in one of its conditions of approval dated May 19, 2014. The fifth condition provides as follows:

5. Several safety plans were adopted in conjunction with the original Sea-3 site plan approval. They shall be reviewed by Sea-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.

71. The City, through its Mayor, Assistant Mayor, City Councilors, City Manager, City Staff and citizens, as evidenced in the record, repeatedly and vociferously requested that the Planning Board require a safety study/hazard assessment of the site prior to approval of the site plan.

72. The Planning Board's condition of approval requires that Sea -3 update "safety plans" submitted to "public officials (including the Newington Fire Chief) for its review and approval prior to the issuance of a building permit."

73. The requirement that this safety plan be submitted directly to "public officials", after site plan approval and outside the scope of any public hearing process violates the intent and purpose of RSA 36 that requires Newington to give prompt and effective notice to affected communities of "development of regional impact" in order to facilitate comment on the project.

74. Review of updated “safety plans” -outside public hearing process and the scrutiny of residents of the Town and abutters from other affected municipalities- denies the affected communities the opportunity to review, understand and comment on how these “updated safety plans” affect their communities. The Planning Board’s post-approval “update” condition denies the City and other the opportunity to comment on these “safety plans” in violation of RSA 36 and constitutes a procedural error and also violates the Zoning Ordinance because approving a site plan without a safety/hazard assessment does not promote the health, safety and general welfare of the community, which in this case, includes the City, and as such, the Planning Board’s decision to approve the Application should be overturned.

75. Nothing in the record in the current proceeding indicates that the Planning Board or any of its members reviewed these original “safety plans” referenced in condition five. Sea-3’s last site plan was in 1996 when they expanded their facilities. The Planning Board does not have the same members it did almost 20 years ago. And even if they did, federal regulations regarding the transportation, handling and storage of LPG has changed, as have surrounding populations, abutters and transportation routes, rendering the original plans outdated. It is also unclear from the condition what “plans” the Planning Board is referring to as, on information and belief, there are six different “plans” or reports in the 1996 site review file.

76. The Planning Board’s approval of a site plan without first reviewing a site/hazard assessment was a misapplication and misinterpretation of the Zoning Ordinance as it could not evaluate whether the site promoted the health welfare and safety of the public without first reviewing a site/hazard assessment.

77. Because the Planning Board misinterprets and misapplied the zoning ordinance, its decision should be reversed and the Application denied.

DELAY IN DECLARING PROJECT OF DEVELOPMENT OF REGIONAL IMPACT

78. The City was prejudiced and other abutters were prejudiced in the Zoning Board’s delay in declaring this a “development of regional impact”.

79. A request that this project be deemed a “development of regional impact” was received by the Town on October 28, 2013, but the Town delayed until December 9, 2013 to declare the project a development of regional impact.

80. RSA 36:56 provides that a “local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. **Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.**” RSA 36:56 (emphasis added).

81. The appeal and request for variance was filed on November 6, 2013 and noticed for Zoning Board of Adjustment hearing on November 25, 2013, at which time the appeal was denied and the request for variance was granted.

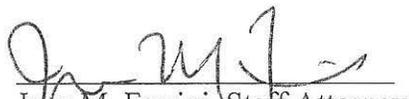
82. Abutters were not given notice of the hearing and were denied the ability to comment on the project.

83. Failure of the Town to give abutters notice of application for variance, after request received almost one month prior, was a procedural error and as such, unreasonable and unlawful.

CONCLUSION

84. For all the foregoing reasons, the Zoning Board of Adjustment should deny the approval of the site plan. In the alternative, the Zoning Board of Adjustment should remand the matter to the Planning Board for further proceedings consistent with the Town of Newington's Zoning Ordinance.

The City of Portsmouth
By and through its Attorney


Jane M. Ferrini, Staff Attorney
NHBM # 6528
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7256

CERTIFICATE OF SERVICE

I, the undersigned, Jane Ferrini, Attorney for the Appellants, the City of Portsmouth, hereby certify that on this 17 day of June, 2014, a true and correct copy of the foregoing Appeal was served upon the Town of Newington and hand delivery to the following counsel of record:

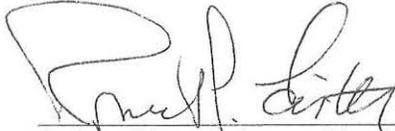
John Ratigan, Esquire
225 Water Street
Exeter N.H. 03833


Jane M. Ferrini

VERIFICATION

I, Robert Lister, Mayor of the City of Portsmouth, being first duly sworn according to law, depose and say that all of the facts and allegations set forth in this document, to the extent based on my personal knowledge, are true and correct to the best of my knowledge, information and belief.

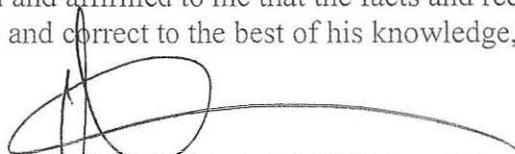
Dated: June 16, 2014



Robert Lister, Mayor, City of Portsmouth

STATE OF NEW HAMPSHIRE
COUTNY OF ROCKINGHAM

Personally appeared the aforementioned and affirmed to me that the facts and recitals set forth in the foregoing document are true and correct to the best of his knowledge, information, and belief.



~~Notary Public~~/Justice of the Peace
Commission Expires

9/18/14

EXHIBIT F

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, March 10, 2014

only recourse they would have to protect the public's safety would be to deny the application. Attorney McEachern said it would be illegal to do so because the town did not have the authority to regulate railroad operations. He said they could only enforce their zoning in respect to Sea-3's property, and could not deny the application based on the railroad lines, which was under Federal jurisdiction only. Mr. Richardson said some of the cases ruled that towns were in their authority to deny an application when it did not comply with the zoning ordinance when considering the health, safety and welfare of the public. Mr. Richardson asked if they were to accept that there was a capital improvements plan to upgrade the railroad without any documentation. Attorney McEachern said they had to rely on Federal law in respect to their jurisdiction of the railroad.

Chairman Hebert said he understood what Attorney McEachern was saying in regards to Federal jurisdiction of the railroad lines, but asked if Sea-3 if they would be willing to tell Pan Am they would not accept LPG delivery by rail unless they brought the railroad lines up to safe standards. Attorney McEachern replied that they were suggesting another party besides the FRA regulate the rails and that was illegal.

Ms. Susan Parker of 23 Bayridge Road in Greenland asked if an environmental study be done and what the change of classification might do to the environment. Mr. Killoy said the railroad owned the tracks and it was in their interest to make the tracks stable. Ms. Parker said as a former executive for the Department of Labor she knew how regulations change over time based on new science. She said she thought she heard Mr. Killoy say senators had to go through the same process to obtain information from the Freedom of Information Act just as citizens did. Mr. Killoy said senators couldn't release information without going through the process. Ms. Parker said her experience was that if a Senator Harkin sent a letter, an answer would be expected.

Attorney Chris Cole, a representative for several citizens of Portsmouth said neither he nor his clients were trying to regulate the rails, but they were trying to help the Town regulate this site because it had important safety implications. He asked to look at site-specific questions and didn't think Federal law would agree that was the limit of the Planning Board's power. He said they also wanted to ensure the site could handle the ingress and egress of traffic with propane. Attorney Cole referred to his letter requesting a comprehensive study for the 20 million gallons of propane they were bringing in annually. Chairman Hebert said he planned on asking Pan Am those questions later as they progressed through the review of the proposal.

Mr. Lou Salomi of Spinnaker Way asked what it would take to get the rails to Class II and who would decide if the speed would stay at 10 mph or if it could go up to 25 mph. Mr. Salomi read from a study that said out of 40,000 incidents, there was no loss of product when the train's speed was less than 5 mph, but even at 10mph there was a great risk of damages.

Chairman Hebert asked Pan Am for clarification on whether they were only keeping their speeds at 10mph prior to an upgrade and when they would be upgrading. Ms. Scarano said Pan Am was there to answer questions, but repeated that they were

EXHIBIT G



PLANNING
BOARD

The Town of Newington New Hampshire

Incorporated 1764

May 21, 2014

Paul Bogan, Vice President
Sea-3
190 Shattuck Way
Newington, NH 03801

RE: Proposed Terminal Expansion, 190 Shattuck Way,
Tax Map 14 Lot 2, and Map 20, Lot 13

Dear Mr Bogan:

On May 19, 2014, the Newington Planning Board voted to approve your proposal to reconfigure your terminal in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and to export same via ocean-going ships and via truck to customers in New England. The vote was subject to the following stipulations:

- 1) Trucks exiting the SEA-3 facility shall make a right hand turn only and shall travel north on Shattuck Way to the Spaulding Turnpike's Exit 4.
- 2) The SEA-3 facility shall be authorized to receive no more than 16 rail tank cars carrying LPG per day. Any proposal by SEA-3 to receive more than 16 tank cars carrying LPG per day shall require further site plan review and approval by the Newington Planning Board.
- 3) Any lease between SEA-3 and Pan Am (or their successors or assigns) on land leased to SEA-3 for the siting of the unloading racks and other improvements to be constructed and operated by SEA-3 on such leased land, shall contain a provision that SEA-3 shall remove all such improvements prior to any termination of the lease. The lease shall further provide that if SEA-3's operation is ever moved or discontinued, such improvements shall not be transferred to Pan Am. These required lease provisions shall be submitted to the Planning Board for review and approval by the Board and its legal counsel, and any proposal to amend such lease provisions shall require the pre-approval of the Planning Board.
- 4) The final design and plan shall meet the requirements of the N.H. Fire Code and the NFPA Code, per the opinion of the Newington Fire Chief and the Town's Fire Safety Consultants.

- 5) Several safety plans were adopted in conjunction with the original SEA-3 site plan approval. They shall be reviewed by SEA-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.
- 6) If, after the track has been upgraded to a Class II status, SEA-3 learns, or has reason to know, that the Class II track has degraded to a lower level of service, or there is a carrier mandated reduction in rail car deliveries to 5 cars or less, the Selectmen and the Planning Board shall be notified in writing by SEA-3 of this reduction in the level of service within seven (7) business days of receiving such information. This is to allow Newington officials to notify the proper authorities.

Should you have any questions on this matter, feel free to contact me, or Town Planner Tom Morgan, at 436-1252.

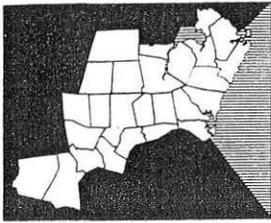
Yours truly,



Denis Hebert, Chairman
Newington Planning Board

cc: Alec McEachern, Esq.
Cynthia Scarano, Pan Am Railways

EXHIBIT H



Rockingham Planning Commission

121 Water Street, Exeter, N.H. 03833
603-778-0885 Fax 603-778-9183

May 30, 1996

Mr. Marlon S. Frink, Chairman
Newington Planning Board
205 Nimble Hill Road
Newington, N.H. 03801

Dear Mr. Frink:

This letter is in response to the abutters notice that the Rockingham Planning Commission (RPC) received regarding the site plan for Sea 3, Inc. to construct an 187,000 cubic foot refrigerated propane storage tank, located at 103 Old Dover Road in Newington.

A meeting of the RPC's Developments of Regional Impact Committee was held on May 29, 1996 to review the proposal. The Committee is composed of RPC Commissioners and RPC staff planners. The Committee reviewed a copy of the site plan (revision date March 8, 1996), prepared by Fluor Daniel and the minutes of the Newington Planning Board meeting of May 2, 1996. Based on their review, the Committee feels that the proposal could have a potentially serious regional impact in the area of public safety due to the intensification of an existing potential hazard. The Committee feels that the safety issues need to be addressed by the appropriate state and local public safety agencies. From a regional perspective, we fully support the Planning Board's hiring of an independent expert to review the proposal.

Thank you for the opportunity to provide input on the proposed development.

Sincerely,

Steven L. Bird
Assistant Director

/sb

cc: Barbara Hill and Christopher Cross, RPC Commissioners - Newington
Martha Fuller Clark, David Holden, David Allen, Kevin Lafond, and Ken Smith, RPC Commissioners - Portsmouth
Arthur Parrott, Portsmouth Planning Board Chairman
RPC Developments of Regional Impact Committee Members

D:\RPC\COMMISS\REGIMPAC\NEWING96.LET

Atkinson • Brentwood • Danville • East Kingston • Epping • Exeter • Fremont • Greenland • Hampstead • Hampton • Hampton Falls • Kensington • Kingston • New Castle
Newfields • Newington • Newton • North Hampton • Plaistow • Portsmouth • Rye • Salem • Sandown • Seabrook • South Hampton • Stratham • Windham

City of Portsmouth - 000068

EXHIBIT I



CITY OF PORTSMOUTH

Municipal Complex, P.O. Box 628
Portsmouth, New Hampshire 03802-0628
(603) 431-2000 Fax (603) 427-1526

May 31, 1996

Marlon S. Frink, Chairman
Newington Planning Board
205 Nimble Hill Road
Newington NH 03801

Re: Regional Impact Notice relative to proposed expansion of Sea-3's site by the construction of an additional 187,000 barrel refrigerated tank

Dear Mr. Frink:

On behalf of the Portsmouth Planning Board, I have had an opportunity with the Acting Planning Director, David Holden, to review particulars in regards to the above proposed expansion. Given that the town's public hearing on this request will occur prior to the Portsmouth Planning Board meeting for the month of June, I am offering the following comments in an attempt to address what may be a regional impact.

The expansion of this use does contain the potential for a regional impact in the area of public safety. It is proper for this issue to be identified and to be addressed. This use, if properly assessed, should prove to be a benefit to the region in meeting existing and future energy needs. However, public safety is an area that should be considered to the degree necessary.

Therefore, we urge the Newington Planning Board to seek additional expertise in the review of this proposal so that public safety issues can be properly addressed. I would like to thank the Board for this opportunity to provide input on this request.

Yours truly,

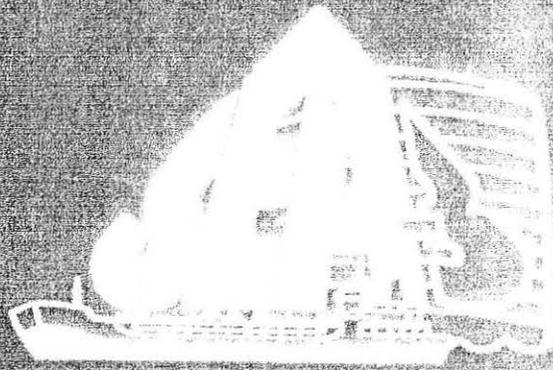
Arthur E. Parrott, Chairman
Planning Board

David M. Holden, Acting Planning Director

aep/dmh/bbd

cc: James A. McSweeney, City Manager
Honorable Mayor and Members of the City Council
Randal P. Sage, Chief, Fire Department
Planning Board

EXHIBIT J



SEA-3, Inc.
Newington, New Hampshire

LPG Import Terminal

***Hazard Modeling Study
for Additional Tankage***

May 1996



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APPENDIX A - Fire Control Systems and New Tank Position Drawing

1.0 INTRODUCTION

Sea-3, Inc. has initiated a project to expand the storage capacity at their LPG Terminal in Newington, New Hampshire. The project will involve the installation of a second LPG tank. The Newington Planning Board requested the execution and presentation of a *hazard modeling study* as a part of the permitting procedure. The goal of the hazard modeling study is to obtain a measure of the overall risk associated with the new tank and associated equipment, and to identify all elements and considerations which need to be applied to the detailed engineering in order to assure an acceptable risk level.

The hazard modeling effort was undertaken by the Process Safety and Reliability Group in Fluor Daniel's Houston Office. The study methodology was formulated with the intention of producing a useful, understandable study which meets the objective stated above. The technical approach employed in the study utilizes standard techniques which are currently recognized by the Process Safety industry.

In October of 1995, a Process Hazards Analysis (PHA) was performed on the existing tank and associated systems. The Occupational Safety and Health Administration (OSHA), requires operating facilities to conduct PHA as a means for hazard identification. PHA seeks to discover possible deviations from normal operation or design intention. In all cases, the cause of a deviation is examined, along with the associated consequences. Existing safeguards are documented, and, based on the PHA team's perception of the risk associated with the identified hazard, recommendations are made.

Thus, the PHA identified existing hazards and a number of potential loss-of-containment scenarios. Accordingly, the findings of the PHA were used as a starting point for the hazard modeling study. The modeling effort concentrates on a number of identified loss-of-containment scenarios, based in part on issues raised and discussed during the PHA. Each of the scenarios was computer-simulated to determine the extent of the resulting hazard zone as well as to obtain an estimate of the associated probability of occurrence.

The pages which follow provide the technical details underlying the preparation and development of the hazard modeling study.

2.0 FUNDAMENTALS OF HAZARD MODELING

2.1 Basic Terms

A *hazard* is formally defined as any condition which has the potential to result in human injury or equipment damage. Associated with every hazard is a certain amount of *risk*, where risk is a measure of projected loss expressed in terms of both the magnitude and likelihood of the expected damage. *Hazard modeling*, or *hazard evaluation*, is an attempt to obtain some measure of the risk associated with an identified hazard, generally in quantitative terms.

Thus, hazard evaluation involves two components: *consequence analysis* and *probability analysis*.

2.2 Introduction to Consequence Analysis

Consequence analysis involves the simulation of postulated accident scenarios to determine the potential effects on nearby population, equipment, or the environment. In general, the simulation is performed with the aid of computer software programs.

Consequence modeling generally involves the use of at least two distinct types of models, viz., *source term models* and *vapor dispersion models*. Source term models, often referred to as *discharge* or *outflow* models, are used to characterize the state of the material immediately upon release. As such, source term models calculate the release rate, liquid fraction, expanded temperature, and other conditions based on input such as process conditions, hole size, material properties, etc.

Dispersion models use the source term output as a starting point. Based on atmospheric conditions, it is then possible to determine the concentration-distance profile of the released vapor as it travels. In this manner, the dispersion model can be used to predict the *hazard zone*, i.e., the area within which the concentration is high enough that the flammable or toxic properties of the vapor cloud are considered significant.

Other models which may be used in a consequence analysis include: thermal radiation models which, for example, can be used to calculate the effects resulting from a liquid pool fire; explosion models, which compute the associated overpressure wave resulting from an explosion; and toxic impact models which help determine the effects of toxic vapor clouds on potential receptors.

The results of a consequence model for any given release case can be expressed in many different formats. Some of the most common include: the size of the hazard zone, or

cloud footprint, which is an indication of area potentially impacted; the number of people potentially exposed; and the monetary cost associated with equipment damage or lost production.

2.3 Probability Concepts

The definition of *probability* is fairly intuitive, but actually several meanings exist, and the distinctions are of some practical importance. Three useful definitions are:

- Equal Likelihood - If a situation has n equally likely and mutually exclusive outcomes and if n_A of these outcomes are event A , then the probability, $P(A)$, of event A is:

$$P(A) = \frac{n_A}{n}$$

This probability can be calculated *a priori* and without doing experiments. A good example is the toss of an unbiased die, which has six equally likely outcomes. The probability of throwing any individual number is $1/6$.

- Relative Frequency - If an experiment is performed n times and if event A occurs on n_A of these occasions, then the probability, $P(A)$, of event A is:

$$P(A) = \lim_{n \rightarrow \infty} \frac{n_A}{n}$$

This definition of probability is the most widely used in engineering. In particular, it is this definition which is implied in the estimation of failure probability from field failure data.

- Personal Probability - This definition relates probability to a degree of belief. It is a numerical measure of the belief which a person has that an event will occur. A good example of this is a meteorologist's claim of, "70% chance of rain tomorrow." Personal probability is sometimes referred to as Bayesian probability.

Regardless of which definition is implied, a probability is a dimensionless number between 0 and 1. Related to probability is *frequency*, which is a measure of how often an event occurs over time. A frequency can be greater than 1 and must have units of time^{-1} . Examples of frequencies are: 6.4×10^{-4} per year, 3.1 per million hours, 3 per day.

The inverse of frequency is *recurrence period*, which indicates the expected length of time before a failure. Thus, an event with a frequency of 1.0×10^{-2} /year would be expected to occur approximately once every 100 years. Thus, for this event, the recurrence period, or *Mean Time Between Failures (MTBF)* is 100 years. Noteworthy is the fact that a high MTBF is indicative of high reliability.

A more general term is *likelihood*, which is often used to speak of probability or frequency interchangeably.

2.4 Introduction to Probability Analysis

Probability analysis is concerned with the calculation of the likelihood of identified accident scenarios. In general, this is based on some collection of failure data, although in some cases an estimate may be developed based solely on the basis of engineering judgement.

When dealing with complex failures or multiple-failure scenarios, an accurate analysis of event likelihood requires a *systems engineering* approach. A *system* is a composite set of devices, or subsystems. Each individual component or failure mode contributes in some way to the likelihood that the system will perform its required function. Accordingly, systems analysis requires a profound understanding of the logical relationships between the various failures and the various components which make up the system.

2.4.1 Basic Probability Relations

The following mathematical relations are fundamental to probability analysis and are integral to the systems approach.

Consider an event A , which has a probability of occurrence P_A . The event that A does *not* occur, $\sim A$, has a probability of $P_{\sim A}$ as given below:

$$P_{\sim A} = 1 - P_A$$

This relation is simply a consequence of the fact that events A and $\sim A$ are *mutually exclusive*, i.e., both cannot occur simultaneously, and they are *exhaustive*, i.e., they represent the entire range of possible outcomes and so their probabilities sum to 1 (i.e., 100%).

Thus, if event A represents system success, then event $\sim A$ represents system failure and:

$$P_{failure} = 1 - P_{success}$$

For any two *independent* events A and B , with probabilities P_A and P_B respectively, the probability that A and B both occur is the *intersection* of sets A and B as given below:

$$P_{A \text{ and } B} = P(A \cap B) = P_A \times P_B$$

For any number of *independent* events A, B, \dots, N with probabilities P_A, P_B, \dots, P_N respectively, the probability of all events occurring simultaneously is:

$$P_{all} = P\left(\bigcap_{i=A}^N P_i\right) = P_A \times P_B \times \dots \times P_N$$

Thus, for any number of independent *necessary events*, i.e., events which are required to satisfy a secondary condition, the probability of the secondary condition is calculated by multiplying the probabilities of the necessary events.

For the same two events A and B , the probability that at least one of them occurs is the *union* of sets A and B and is given as follows:

$$P_{A \text{ or } B} = P(A \cup B) = P_A + P_B - (P_A \times P_B)$$

The product $P_A \times P_B$ is subtracted to avoid "double-counting" the intersection. For small values of P_A and P_B , this product is negligibly small and the union can be calculated simply as the sum of P_A and P_B .

For independent events A through N , the probability of at least one occurring is given as follows:

Very often the probabilities considered are small enough that the higher order terms can

$$P_{\geq 1} = P\left(\bigcup_{i=A}^N P_i\right) = P_A + P_B + \dots + P_N - (P_A \times P_B) - (P_A \times P_C) - \dots - (P_{N-1} \times P_N) \\ + (P_A \times P_B \times P_C) + (P_A \times P_B \times P_D) + \dots \\ (P_{N-2} \times P_{N-1} \times P_N) + \dots (-1)^{n-1} (P_A \times P_B \times \dots \times P_N)$$

be neglected and the above equation reduces to:

$$P_{\geq 1} = P\left(\bigcup_{i=A}^N P_i\right) = P_A + P_B + \dots + P_N$$

Thus, for any number of independent *sufficient events*, i.e., those events where only one is required to satisfy a secondary condition, the probability of the secondary condition can be calculated by adding the probabilities of the sufficient events (given that the probabilities involved are small).

3.0 METHOD

3.1 General Approach

At the core of this hazard modeling study is a set of specified incident cases. Each incident represents a separate loss-of-containment scenario which may pose some degree of risk to exposed individuals. The list of cases is by no means exhaustive, but the selected cases are intended to be representative of a range of event types which could occur.

Each incident case was simulated to determine the potential effects if the incident were to happen. This was done using a state-of-the-art computer simulation program. The software uses fundamental equations of chemistry, physics, and thermodynamics to accurately model the behavior of hypothetical releases.

In addition to this analysis of consequences, the likelihood of each case was estimated. Toward this end, a survey of relevant data on equipment failures was conducted. The data survey was designed to identify and utilize available data which were most relevant to the Sea-3 facility.

3.2 Definition of Failure Cases

The release cases were selected based on engineering judgement and with reference to the recently conducted Process Hazards Analysis (PHA) study. The PHA utilized the "What-if" technique, which is a standard method for hazard identification and is one of the techniques specifically listed in the U. S. OSHA 1910.119 regulation.

One of the first steps in the hazard modeling study was a review of the PHA report. All cases where the PHA identified a possibility of loss-of-containment were highlighted and considered as candidates to be modeled. Following this, a meeting was conducted with members of the PHA team to discuss the candidates and make further suggestions.

Based on this selection process, the cases listed in Table 1 were determined to be a representative group.

3.3 Description of Failure Cases

The case descriptions given in Table 1 provide a concise characterization of each case and are relatively self-explanatory. Provided below are more detailed descriptions, which explain some of the assumptions and specificities which had to be conceived in order to develop a model for each case.

Table 1 List of Incident Cases

Case #	Case Description
1	Failure of a pump seal on one of the cold product pumps
2	Failure of the 2" line on the cold pump discharge piping
3	Failure in the 12" expansion joint on the suction side of the cold product pumps
4	Failure in the expansion joint in the area of the 16" fill line on the LPG tank
5	Instantaneous release of entire tank inventory

Pump Seal Leak

A typical event which can be expected to happen during the lifetime of any petroleum, chemical, or petrochemical facility is the failure of a mechanical seal on a pump. Typically, this event will have insignificant consequences. The only effect worthy of consideration is the relatively unlikely event that the released propane is ignited immediately and a jet fire ensues, producing a small ellipse of thermal radiation effects. With this in mind, this case was conservatively modeled as a ¼" leak with immediate ignition.

Downstream Pump Discharge Line Break

A loss-of-containment event which is more significant than a pump seal leak is a rupture of the pump discharge pipe. The case is modeled as a rupture of a 2" pipe, i.e., one of the branch lines associated with the pump discharge. The pressure driving the release is taken to be the pump discharge pressure.

Expansion Joint Failure on Pump Suction Line

With regard to larger loss-of-containment scenarios, the most credible leak sites are the expansion joints within the system. With this in mind, the third case was taken to be a failure of the 12" expansion joint on the suction side of the product pumps. This is modeled as having an equivalent hole diameter equal to 25% of the pipe diameter. Thus, it is modeled as a 3" hole at the normal operating pressure of the pump suction line.

Expansion Joint Failure on Tank Fill Line

Another event included in the analysis was a failure of the expansion joint on the 16" tank fill line. This line only contains propane during a filling operation, so the failure was modeled as occurring during such time. As above, the case is modeled as a significant crack in the joint, equal to 25% of the pipe diameter. Thus, the case is modeled as a 4" hole in the fill line at the operating pressure during a filling operation.

Instantaneous Release of Tank Inventory

Although no cases were identified for such an event anywhere in the world, this case is included solely at the request of the Newington Planning Board and for hypothetical reasons only. The case is modeled as an instantaneous release of 15,000 metric tons of refrigerated propane into the existing diked containment area.

4.0 CONSEQUENCE ANALYSIS

4.1 Input Data

The analysis of the consequences of a simulated release requires a considerable amount of data describing the release and the surrounding area. General types of input data include:

- Release conditions
- Meteorological conditions
- Other ambient/geological conditions
- Material properties

The material properties needed to model the cases are built into the software program. For modeling purposes, the releases were treated as pure propane.

4.1.1 Release Conditions

Release conditions include process conditions, such as pressure and temperature, and also other features which describe the release, such as hole size and release inventory. The process conditions were provided by Sea-3 personnel. Line sizes, valve locations, and other necessary inputs were obtained by a review of relevant Piping and Instrumentation Diagrams (P&IDs) obtained from Sea-3 personnel and projected to exist with the new installation.

The more important input data describing each case are given in Table 2.

4.1.2 Weather Conditions

In order to characterize the behavior of the vapor cloud upon release, it was also necessary to obtain data describing the typical and worst-case weather conditions in the area around the terminal. The most important of these data are wind speed and atmospheric stability.

Wind direction was not considered to be a critical piece of input. Despite the existence of a predominant wind direction, it is certainly the case that the wind blows toward each different direction (with greater or lesser probabilities) on different days throughout the year. Thus, hazard distances were calculated without regard to wind direction.

Table 2 Input Data for Each Case

Case #	Case Description	Process Conditions		Hole Diameter (in)	Comments
		Temp. (°F)	Press. (psig)		
1	Failure of a pump seal on one of the cold product pumps	-42	125	¼	
2	Failure of the 2" line on the cold pump discharge piping	-42	125	2	
3	Failure in the 12" expansion joint on the suction side of the cold product pumps	-42	21	3	Liquid head pressure for maximum liquid level of 95 ft
4	Failure in the expansion joint in the area of the 16" fill line on the LPG tank	-42	50	4	
5	Instantaneous release of entire tank inventory	-42	0	--	Maximum inventory of 15,000 tons

It was decided to use the following two weather categories to represent the range of conditions which could occur:

- Pasquill Stability Class *D* - 10 mph
- Pasquill Stability Class *F* - 3 mph

Pasquill stability categories range from *A* to *G*, with class *A* representing the least stable atmosphere. Class *D* is representative of neutral conditions (typical clear, daytime conditions) and stability class *F* indicates stable conditions. Typically, dispersion distances are greatest for stable air, at low wind speeds, i.e., the hazard zone tends to decrease with increasing wind velocity.

4.1.3 Other Ambient Conditions

Other ambient conditions which affect the case modeling is as follows:

- Ambient Temperature - 80°F
- Relative Humidity - 70%
- Surrounding Terrain - Open countryside; some hills

4.2 PHAST Software

The consequence analysis was carried out using PHAST (Process Hazards Analysis Software Tool), which is a state-of-the-art software package for conducting such studies. PHAST allows engineers to examine the progress of a potential incident from initial release, through the formation of a cloud and/or pool, to its dispersion. The program automatically applies the correct entrainment and dispersion models as the conditions change. PHAST integrates these models such that the transition from one behavior pattern to another is smooth and continuous.

For operating plants, PHAST can help to identify the major sources of hazard from releases of toxic or flammable materials. Action can then be taken to reduce the hazard and/or to establish emergency procedures.

The program's results are presented in tables which show the concentrations and flammable effects against distance for a range of weather conditions and wind speeds.

Hazardous Releases

The consequences of a release from process equipment or pipework vary depending on such factors as physical properties of the chemical, its toxicity or flammability, weather

conditions and mitigation factors. The effects may impact plant personnel or inhabitants of surrounding houses. Buildings both onsite and offsite may be damaged.

When using PHAST, the engineer defines the release scenario by specifying the equipment involved. This could be, for example, the rupture of a vapor line from a pressurized storage tank. From the material released, line size and tank information, PHAST estimates the discharge and dispersion rates to calculate the ground level concentrations along the path of the release. Blast and radiation effects are also calculated for flammable materials.

Discharge

Pipe and tank leaks and ruptures, relief valve venting, reactor runaway and tank explosions are some of the causes of a hazardous release. The volume of material and its release rate are key factors in determining the effects.

PHAST calculates the release rate and velocity for the conditions specified by the user. The release may be liquid, vapor or mixed phase from an atmospheric, pressurized or cryogenic tank.

The catastrophic failure of a tank is modeled by PHAST as an instantaneous release whereas a leak or rupture releases material over a period of time. The release rate may be affected by heat from an external fire or from an internal reaction.

Dispersion

When a vapor or volatile liquid is released, it forms a cloud which may, or may not, be visible. The cloud is carried downwind as vapor and as suspended liquid droplets and is dispersed by mixing with air until the concentration falls to a safe level. PHAST automatically determines the quantity of droplets in the cloud and also calculates the distance to pre-defined concentrations.

The cloud initially expands rapidly because of the energy of the material until the pressure drops to atmospheric. A heavy cloud spreads over the ground and air is entrained due to the momentum of the release. The turbulence of the cloud assists uniform mixing.

As concentration drops, atmospheric turbulence becomes the main mixing mechanism and a concentration profile develops across the cloud. PHAST predicts which phenomena manifest themselves, the sequence in which they occur and calculates all related parameters.

The main factors in determining the relevant phenomena are:

- Cloud Density
- Height and Direction of Release
- Discharge Velocity
- Storage Temperature
- Ground Conditions
- Weather

4.3 Hazardous Effects Considered

A number of distinct hazardous effects were considered in this analysis and are discussed in turn below.

Jet Fire

A jet fire results when a high-momentum release ignites very close to the source of ignition. The result is a jet of ignited material oriented in the direction of the release which presents an elliptical footprint of thermal radiation effects, where the edges of the ellipse represent the thermal radiation endpoint criterion. The hazard distance is reported as the distance to the downwind edge of the ellipse. This conservatively assumes that there are no obstacles in the path of the jet.

Pool Fire

A pool fire results when a liquid spill of flammable material is ignited. Radiation effects can be felt downwind of the pool. The hazard distance is reported as the distance to a set radiation level.

Flash Fire

A flash fire occurs when a dispersing cloud of flammable vapor encounters an ignition source at some distance downwind from the release point. The result is a short-lived flame which "flashes back" toward the source of the release. In a flash fire, the flame speed is low enough (ca. 14 ft/s) such that no overpressure wave is produced. The effect distance for a flash fire is given as the dispersion distance to the LFL (Lower Flammable Limit), since this is the farthest point downwind at which ignition could occur.

Vapor Cloud Explosion

A vapor cloud explosion originates similarly to a flash fire. The difference is that the

flame speed approaches sonic velocity, thereby producing an overpressure wave, which will potentially result in a circle of blast damage. This analysis conservatively assumes that the blast circle will be centered about the ignition source. Thus, the maximum hazard distance can be considered as the dispersion distance to the LFL plus the blast radius, since this is the farthest distance downwind at which the blast damage will be realized.

4.4 Endpoint Criteria

As a released vapor cloud travels downwind, it becomes less and less concentrated, eventually reaching a point where it is no longer considered hazardous. A dispersion model produces a concentration vs. distance profile for the release and can produce results down to very low concentrations. Generally, the results of the calculation are reported at a specific point of interest. The conditions at which the models are commanded to stop are referred to as the *endpoint criteria*. The results of a dispersion model are often given as the distance at which this endpoint is reached.

Propane, like other flammable materials, has *flammable range* of concentrations where a mixture of flammable gas and air can be ignited. The flammable range is bounded by the *limits of flammability*, viz., the *Upper Flammable Limit (UFL)* and the *Lower Flammable Limit (LFL)*. At concentrations above the UFL the cloud is too rich to support ignition; below the LFL the mixture is too lean. Thus, after a cloud of flammable material has dispersed below its LFL concentration, it is no longer capable of supporting ignition and may therefore be considered non-hazardous.

Thus, for purposes of this study, the hazard distance for vapor dispersion effects is defined as the distance to the LFL of propane, or 2.15% by volume propane to air. Similarly, for other effects, the hazard zone is taken as the distance to a suitable endpoint criterion. Since all wind directions must be considered, the hazard zone may be thought of as a circle, centered about the point of release, with a radius equal to the hazard distance. This is illustrated in Figure 1.

It then remains to define the endpoints for the various types of hazardous effects. These are given in Table 3.

Figure 1 Illustration of Hazard Zone

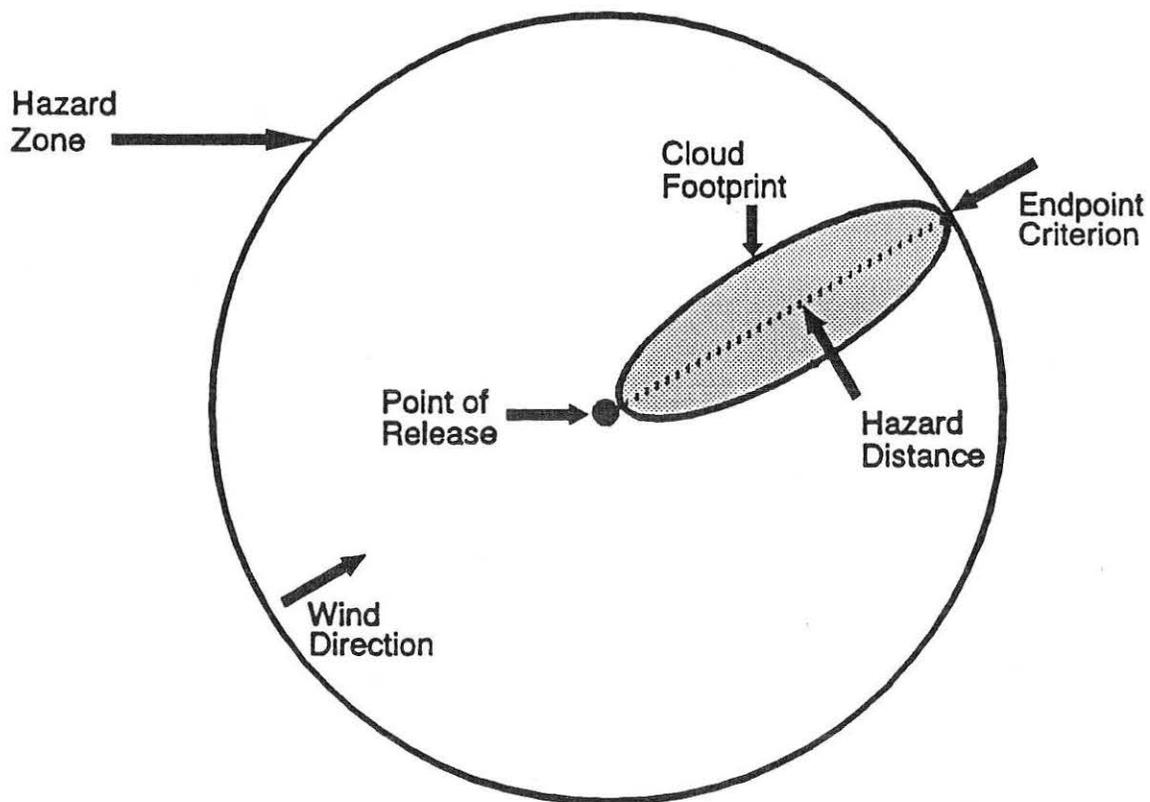


Table 3 Endpoint Criteria for Flammable Effects

Flammable Effect	Endpoint Criterion	Comments
Thermal Radiation	4000 BTU/ft ²	Pain threshold reached in 4 seconds; significant chance of injury/fatality for extended exposure
Vapor Dispersion	Lower Flammable Limit (LFL) concentration	Concentration reported as measured along cloud centerline
Overpressure	Overpressure level of 5 psig (i.e., 5 psi greater than atmospheric pressure)	Major damage to buildings and process equipment; significant chance of injury/fatality for individuals inside exposed buildings

4.5 Consequence Modeling Results

Table 4 summarizes the results of the consequence models for each case. The results in the table are for the weather condition giving the largest hazard zone for each particular case. Typically, this is the high wind speed condition (Class D Stability) for thermal radiation effects, and the Class F stability case for dispersion and overpressure effects.

Table 4 Consequence Modeling Results

Case #	Case Description	Hazard Distance (ft)			
		Jet Fire Radiation	Pool Fire Radiation	Vapor Dispersion	Overpressure
1	Pump Seal Leak	90	-	72	-
2	Pump Discharge Line Failure	-	-	233	87
3	Failure of 12" Expansion Joint	-	256	640	186
4	Failure of 16" Expansion Joint	-	337	955	245
5	Instantaneous Release	-	839	7746	1615

Note: Two weather conditions were considered for each case -

- Class D Stability @ 10 miles per hour
- Class F Stability @ 3 miles per hour

5.0 PROBABILITY ANALYSIS

The probability analysis focussed on calculating the *initiating event* frequencies for the seven selected cases. This was accomplished by the use of available data on equipment failures, historical experience at the Sea-3 facility, and recognized techniques for failure data analysis.

5.1 Applicability of Data

There are a number of sources for equipment reliability and failure rate data. It is essential to determine the applicability of a particular source for a given use. Failure rates will differ for equipment operating in dissimilar services and environments. Furthermore, the rates quoted by the various sources may be inconsistent for reasons pertaining solely to the method of data collection. Accordingly, in most cases, it is necessary to conduct a thorough search through the various sources to find the most useful data for a given application.

To be useful the data applied must meet two important criteria:

- the data must be relevant to the industrial application under consideration
- the data base must be extensive, so that the data obtained have statistical significance

The data selected for use in this study are thought to be representative of the equipment reliability which can be expected at the Sea-3 facility.

5.2 Application of Data

Case 1 - Pump Seal Leak

As documented in the PHA report, Sea-3's experience at their facility indicates that a pump seal can be expected to leak on the average of once per year. This is roughly representative of industry experience as a whole with regard to mechanical seal failure. Note that this is the frequency of a seal leak only; the frequency of a seal fire must include the conditional probability of ignition and will therefore be significantly lower. *No seal fires (or other fires) have ever occurred at the Sea-3 facility.*

Case 2 - Pump Discharge Line Failure

The data for pipe failures was taken from the WASH-1400 data base. WASH-1400 was

a landmark risk assessment in the nuclear industry, and the data generated for that study have been used in subsequent risk assessments in various industries. WASH-1400 gives a range of values for pipe failures. For pipe diameters less than 3", the most conservative estimate is a rupture frequency of 3×10^{-8} per hour, which equates to 2.6×10^{-4} per year. This equates to one event every 3846 years. *No such events have ever occurred at the Sea-3 facility.*

Case 3 - Failure of 12" Expansion Joint

The WASH-1400 data gives a frequency of 3×10^{-7} per hour for expansion joints. Converting the units to a yearly frequency results in an estimate of 2.6×10^{-3} per year. This value compares well with data found from other sources, e.g., Green and Bourne. This equates to one event every 385 years. *No such events have ever occurred at the Sea-3 facility.*

Case 4 - Failure of 16" Expansion Joint

It is likely that this case would have a frequency somewhat lower than Case 3, since the size of the event is somewhat larger. However, no data were found which present expansion joint failure rates in relation to the size of the associated pipework. Accordingly, this case was conservatively assumed to have the same frequency as the previous case, or 2.6×10^{-3} per year (one event per 385 years). *No such events have ever occurred at the Sea-3 facility.*

Case 5 - Instantaneous Release

No data were found for this case. That is, no instances were identified where a tank of similar construction, in similar service, suffered this type of accident. Failure rates for *pressurized* tanks are in the range of $1 / 10,000$ per year to $1 / 1,000,000$ per year. It is likely that the failure rate for this *refrigerated* tank would be one to two orders of magnitude lower than this. *No such events have ever occurred at the Sea-3 facility.*

5.3 Summary of Event Likelihoods

Table 5 presents the initiating event likelihoods for each case.

Table 5 Initiating Event Frequencies

Case #	Case Description	Initiating Event Frequency (/year)
1	Pump Seal Leak	1
2	Pump Discharge Line Failure	1 / 3846
3	Failure of 12" Expansion Joint	1 / 385
4	Failure of 16" Expansion Joint	1 / 385
5	Instantaneous Release	No instances were identified where a tank of similar construction, in similar service, suffered this type of accident. Failure rates for <i>pressurized</i> tanks are in the range of 1 / 10,000 to 1 / 1,000,000 per year. It is likely that the failure rate for this <i>refrigerated</i> tank would be one to two orders of magnitude lower than this.

6.0 STUDY BASIS / ASSUMPTIONS

Of necessity, a number of estimations and approximations have been made throughout the course of this study. Furthermore, there are a number of sources of uncertainty associated with some of the input data which were used as a basis for the risk calculations. However, this in no way detracts from the usefulness of the numbers generated. It is important to understand the sources of uncertainty and the effect of each on the final results of the study.

In general, the various assumptions upon which the study is based have been noted throughout the text. The following list summarizes the more important general assumptions, introduces and explains some of the more specific assumptions, and describes the nature of the uncertainty introduced by each.

- The estimates and assumptions made throughout the course of this analysis were based on the best judgement of the analyst. However, when dealing with safety issues, it is advisable wherever necessary to err on the side of conservatism. By definition, an estimate or assumption which is conservative is one which would tend to *overpredict* the associated risk, i.e., it is somewhat pessimistic. Thus, throughout the study, when faced with a choice of two reasonable approaches or assumptions, the more conservative alternative was selected.
- Throughout the course of the probability analysis, a considerable amount of historical data was used. While the data employed in this study are thought to be the best available, the statistical uncertainties associated with this type of information are unavoidable.
- As with any consequence analysis, the number of different discretely identifiable loss-of-containment scenarios is considerable. As is often the case, it was necessary to select a small number of release scenarios to serve as a representative set. Effectively, each case represents a range of scenarios of similar type. Thus, a set of process conditions used to model a particular release actually represents a range of conditions at which that release might actually occur. The implicit assumption here is that the consequences do not vary dramatically across this range of conditions. The various cases were selected and modeled in such a fashion that this assumption is thought to be correct.
- The LPG in the tank at the Sea-3 facility is 94-98% propane. For purposes of the consequence analysis, the cases were modeled as releases of pure propane. Since the remaining components in the LPG have properties similar to propane, so this approximation will have an insignificant effect on the case results.

- Some of the input to the consequence models regards information which changes slightly throughout the year. That is, seasonal effects have an impact on the weather conditions, ground temperature, and even the operating pressures used to model the cases. The ambient temperature was estimated based on the expected value for a summer day. This is a conservative approximation, since the operating pressures are highest during the summer months. Thus, the results calculated for this study are somewhat conservative for events which occur during other times of the year.

7.0 CONCLUSIONS

This analysis has served to simulate some loss-of-containment scenarios and estimate the associated frequency and consequences, which in combination, represent the risk associated with the facility. The judgement as to what constitutes a tolerable risk is, of course, a very subjective one. The analysis performed here and the results generated serve as a useful tool in arriving at such a judgement.

Several useful means exist for evaluating risk acceptability, including:

- Comparison of risk to the associated *benefits* gained
- Comparison of *cost* of reducing risks against the benefits and disadvantages from accepting them
- Comparison of *alternatives* for achieving the same objective
- Comparison with *unrelated* risks (e.g., other industries)
- Comparison with *natural* or background risk levels (e.g., earthquakes, hurricanes)

With these considerations in mind, the following conclusions are offered:

- Based on the results of this analysis, it is considered that the risk associated with the Sea-3 facility is neither clearly intolerable nor clearly negligible. That is, no cases were identified which posed an inordinate amount of risk to residents in the nearby community. However, neither are the risks so low as to be considered trivial. As with all chemical or petroleum facilities, a certain amount of risk exists. Of course, a facility with zero-risk is unachievable; the goal is to control the hazards in such a manner that the risk is considered to be As Low As Reasonably Practicable (ALARP).
- *The incremental increase in risk associated with the addition of the new LPG tank appears to be minimal. The reason for this is that no new hazards are being introduced to the facility. No new chemicals or new equipment types are being added. Furthermore, the volume of the additional tank is less than that of the existing tank. Thus, the consequences of the worst-case accident will not increase. Moreover, when considering the level of existing risk (which must also include the risk posed by other industrial facilities in the area), it is considered that the presence of a second LPG tank in the Sea-3 facility will not perceptibly increase the risk to individuals in the local community.*

- Of the cases modeled, the greatest risk appears to be that associated with the expansion joint failures. The predicted likelihood of such a failure is somewhat higher than associated with, for example, a pump discharge line rupture, while the associated consequence are also higher. Thus, if measures for risk mitigation are to be adopted, they should be directed in the first instance at these events.
- A number of safety features are planned at the Sea-3 facility to mitigate a loss-of-containment if it were to occur. Two features in particular are a sub-impounding basin and a water spray mitigation system. The sub-impounding basin will help to contain spilled liquid, thereby reducing both pool fire effects and also the vapor dispersion resulting from evaporation of the liquid pool. A high-intensity water spray directed at a released vapor cloud will help to entrain air and cause dispersion of the cloud thereby reducing concentrations and hence the resulting hazard zone. A second benefit of the water spray is that it can be used to cool tanks and other equipment when necessary.

The consequence models indicated that for the cases considered in this study, there are two mechanisms by which LPG vapor results. The first is the initial, vapor *flash* upon release. That is, when the propane goes from its operating temperature and pressure to ambient temperature and atmospheric pressure, a certain percentage of the propane immediately vaporizes. Some of the propane that does not flash immediately remains suspended in the cloud while the rest falls to the ground and forms a liquid pool. The second mechanism for generating propane vapor is evaporation from the liquid pool.

In all cases, the consequence models indicated that the more important mechanism for vapor generation is the initial flash. That is, the resulting hazard zones are primarily due to the amount of vapor that is generated immediately upon release; by comparison, the hazard posed by pool evaporation is much less important.

This leads to the conclusion that the water spray mitigation (away from the area of the sub-impounding basin) is the more critical event reduction measure, and should be seen as the first line of defense. While the sub-impounding basin is a very useful safety feature for reducing the hazard posed by a liquid pool, its benefit will be most evident when the water spray system can succeed in reducing the concentration in the cloud produced by the initial flash.

- In reviewing the intermediate results of the consequence models, the benefits of refrigerated LPG versus pressurized LPG are evident. For example, for the case of an instantaneous release of refrigerated propane, fully 93.6% of the mass in the tank "rains out", i.e., falls to the ground and forms a liquid pool. That is,

less than 4% of the mass in the tank participates in the initial flash to the vapor state, whereas with pressurized LPG, the flash fraction would be much higher, approaching 100% depending upon the temperature in the tank. Since the size of the cloud footprint is a function of the mass in the vapor cloud, full refrigeration of the tank *significantly reduces* the size of the cloud footprint and therefore the associated hazard.

8.0 SUMMARY

Fluor Daniel, Inc. has been requested by Sea-3, Inc. to conduct a hazard modeling study in support of its application to install a second refrigerated tank at its terminal site in Newington, New Hampshire. The analysis, which is being required by the Newington Planning Board, utilizes a standard technical approach and state-of-the-art computer software to model hypothetical propane release cases and evaluate their associated risk.

Risk, by definition, is a measure of loss expressed in terms of both the magnitude and likelihood of the expected damage. Accordingly, the hazard modeling study included an analysis of the consequences of potential releases as well as the probability that such releases will actually occur. The analysis was based on a total of five simulated events, as identified by a Process Hazards Analysis (PHA) study, performed in accordance with Occupational Safety and Health Administration (OSHA) regulations by Sea-3 and LGA Engineering.

The Newington Planning Board requested the development of a worst-case scenario whereby the proposed tank would hypothetically rupture by some extreme means and its full capacity released. No data were found for this case, i.e., no instances were identified where a tank of similar construction and in similar service suffered this type of accident anywhere in the world. Failure rates for *pressurized* tanks have a failure rate in the range of one in ten thousand years (1 / 10,000 years) to one in one million years (1 / 1,000,000 years). It is likely that the failure rate for this *refrigerated* tank would be one to two orders of magnitude less frequent than this, i.e., one in one hundred thousand years (1 / 100,000 years) to one in one hundred million (1 / 100,000,000 years).

The results of the study were presented in terms of hazard distance and event likelihood. A summary of the vapor dispersion distance and initiating event frequencies is presented in Table 6.

Based on the results of the study, it is considered that no drastic measures or major additional capital expenditures for risk mitigation are warranted. Moreover, when considering the level of background risk due to existing facilities in the area, it is considered that the proposed addition of the new tank and associated equipment does not appreciably impact the overall risk levels currently present in the area.

Table 6 Summary of Results

Case #	Case Description	Dispersion Distance to LFL* (ft)	Initiating Event Frequency (/year)
1	Failure of a pump seal on one of the cold product pumps	72	1
2	Failure of the 2" line on the cold pump discharge piping	233	1 / 3846
3	Failure in the 12" expansion joint on the suction side of the cold product pumps	640	1 / 385
4	Failure in the expansion joint in the area of the 16" fill line on the LPG tank	955	1 / 385
5	Instantaneous release of entire tank inventory	7746	Reference page 27 paragraph 3

* Lower Flammable Limit concentration (see page 15)

9.0 REFERENCES

During the course of the analysis, a number of literature sources were consulted. These are listed below.

- (1) Center for Chemical Process Safety (CCPS), *Guidelines for Chemical Process Quantitative Risk Analysis*, American Institute of Chemical Engineers, New York, N.Y., 1989.
- (2) DNV Technica, Inc., *PHAST User Manual*, Temecula, CA., 1992.
- (3) Federal Emergency Management Agency (FEMA), U. S. Department of Transportation (DOT), U. S. Environmental Protection Agency (EPA), *Handbook of Chemical Hazard Analysis Procedures*, Washington, D. C., 1988.
- (4) Green and Bourne, *Reliability Technology*, Wiley, 1972.
- (5) Lees, Frank P., *Loss Prevention in the Process Industries*, 2 Volumes, Butterworths, London, U.K., 1980.
- (6) WASH-1400 (NUREG 75/014), *Reactor Safety Study*, Appendices III and IV, 1975.

NOTICE

This study has been prepared by Fluor Daniel, Inc. for the specific purpose of obtaining a measure of overall risk to the community that may be associated with the installation of a second LPG tank at Sea-3's LPG Terminal in Newington, NH. This study was done in accordance with generally accepted engineering practices and using data developed by Fluor Daniel, Inc., Sea-3, Inc., and those organizations referenced in the study. No other warranty, expressed or implied is made.

APPENDIX A

Fire Control System and New Tank Position Drawing

EXHIBIT K

STANNARD & COMPANY
ENGINEERS

P.O. BOX 175, BASKING RIDGE, NJ 07920 (908) 766-7300, FAX (908) 766-7301

June 17, 1996

Mr. Marlon S. Frink, Chairman
Newington Planning Board
Town of Newington, NH

VIA FAX

Dear Mr. Frink:

It was a pleasure to make your acquaintance over the phone on Saturday evening. You asked that I provide you with a few thoughts regarding the permitting process for the new Sea-3 refrigerated propane tank.

First, I would comment that the *Safety Standards and Procedures Manual*, the *Contingency Plan*, the *Mooring Policy and Procedure Manual* and the *Material Safety Data Sheet Handbook* that have been prepared and submitted by Sea-3 are all excellent and in keeping with the dedication toward safety that seems to be a hallmark of the Sea-3 organization. Likewise, the U.S. Coast Guard's *Contingency Plan* appears to be complete and well thought out.

The Quality Assurance manuals of both CBI and Pitt-Des Moines are well-prepared policy statements regarding the design, procurement and inspection policies of each of those companies however neither one of them specifically addresses a refrigerated propane tank that is to be designed, fabricated and tested in accordance with NFPA 58 and API 620. Those issues, of course, belong in the specifications and the contract between the purchaser and the builder and would not be included in such a general policy statement.

The *Hazard Modeling Study for Additional Tankage* that was prepared by Flour Daniel, in my mind, is less than adequate in that it is based upon the WASH-1400 data base that even the NRC has long ago discredited. I believe that the numbers that have been generated in this particular study may overstate the risk by several orders of magnitude. Furthermore, after determining the risk of the initiating event, there is no mention of any mitigating measures that could prevent or deter the escalation of that initiating event into a major event. Those mitigating measures

Mr. Marlon S. Frink, Chairman
Newington Planning Board

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will assure a safe operation.

The one drawing entitled *Fire Control Systems & New Tank Position* is quite interesting, but it lacks the specific details that are necessary to judge the technical adequacy of either the fire control systems or the tank itself. I realize that the final design drawings have not been completed and ready for release. However I am of the opinion that conceptual P&IDs illustrating the interconnection of the new and old piping, as well as the basic control logic should have been included in their submittal to you.

Chapters 9 and 10 of NFPA 58 specifically address the concerns that must be addressed at the Sea-3 facility. In addition, there are other provisions elsewhere in NFPA 58 that are germane to the overall facility. The transfer operations addressed in Chapter 10 are already in place and should not be a subject of the current permitting process. However, Chapter 9 is totally pertinent to the proposed added tank and selected portions of Chapter 3 will clearly involve the piping tie-ins and boil-off refrigeration modifications.

Among the applicable portions of the standard are provisions that adopt, by reference, both ASME B31.3, *Chemical Plant and Refinery Piping*, and API 620, *Design and Construction of Large, Welded, Low-Pressure Storage Tanks*.

3-2.3.1—All metallic LP-Gas piping shall be designed and installed in accordance with ASME B31.3, *Chemical Plant and Petroleum Refinery Piping*. All welding and brazing of metallic piping shall be in accordance with ASME *Boiler and Pressure Vessel Code, Section IX*.

9-1.6—All piping that is part of a refrigerated LP-Gas container shall be in accordance with ASME B31.3, *Chemical Plant and Refinery Piping*. This container piping shall include all piping internal to the container, within the insulation spaces, and external piping attached or connected to the container up to the first circumferential external joint of the piping. Inert gas purge systems wholly within the insulation spaces are exempt from this provision.

9-1.1.2—For pressures below 15 psi (103 kPa), API 620, *Design and Construction of Large, Welded, Low-Pressure Storage Tanks*, including Appendix R, shall apply.

Both Section IX of the ASME *Boiler and Pressure Vessel Code* and ASME B31.3 have specific requirements dealing with inspection and the qualification of inspectors. In addition, NFPA 58 specifically addresses the subject of inspection of refrigerated containers during construction and prior to commissioning in 9-1.9:

9-1.9—*Inspection of Refrigerated LP-Gas Containers.*

9-1.9.1—During construction and prior to the initial operation or commissioning, each refrigerated LP-Gas container shall be inspected or tested in accordance with the provisions of this standard and other applicable referenced codes and standards. Such inspections or tests shall be adequate to assure compliance with the design, material specifications, fabrication methods, and quality required by this and the referenced standards.

9-1.9.2—The inspections or tests required by 9-1.9.1 shall be the responsibility of the operator who shall be permitted to delegate any part of those inspections to his or her own employees, to a third party engineering or scientific organization, or to a recognized insurance or inspection company. Each inspector shall be qualified in accordance with the code or standard that is applicable to the test or inspection being performed.

Mr. Marlon S. Frink, Chairman
Newington Planning Board

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Furthermore, API 620 is very specific in its qualification of inspectors and it clearly requires that the inspectors shall be employed by the purchaser or an organization regularly engaged in making inspections. I believe that you have had some verbal assurances that the provisions of the applicable codes will be strictly adhered to. However, I do believe that those assurances should be reduced to writing in the permitting process.

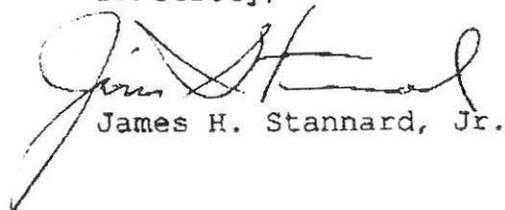
NFPA 58 also addresses the subject of geotechnic and seismic qualification of the site. Those items should have been considered prior to any design or construction and the reports should be available at this time for evaluation.

NFPA 58, in section 3-10 requires the preparation of a fire safety analysis as well as incident planning that has been coordinated with the emergency handling agencies. I believe that Sea-3's Contingency Plan is evidence of such coordination and planning in the past. However I also believe that a fire safety analysis is in order at this time. Furthermore, I believe that such a fire safety analysis would serve a more useful purpose than the Hazard Modeling Study that was submitted.

I do not believe that an agency, such as the Newington Planning Board, should be involved with the business decisions of an applicant. However, I do believe that permitting agency should be provided with documentation that will permit the agency to act responsibly. Furthermore, I do not know whether or not the State of New Hampshire has adopted NFPA 58. If not, I would recommend that the Planning Board specifically include compliance with NFPA 58 as a condition of any permit.

My past experience with Sea-3 has given me considerable confidence that they intend to construct a safe facility that is in full compliance with all the applicable codes. However, I do believe that those intentions should be fully documented as a part of their application.

Sincerely,



James H. Stannard, Jr.

EXHIBIT L

A TECHNICAL REVIEW
OF THE PROPOSED ADDITIONS
TO
SEA-3'S
NEWINGTON MARINE TERMINAL
FOR THE PLANNING BOARD
OF THE
TOWN OF NEWINGTON, NEW HAMPSHIRE

by

JAMES H. STANNARD, JR

July 10, 1996

Stannard & Company
Basking Ridge, New Jersey

BACKGROUND

Sea-3, Inc. owns and operates the Newington Marine Terminal in Newington, New Hampshire (Port of Portsmouth) for the purposes of importing, storing and reselling propane. The terminal is located on the Piscataqua River and shares a pier with the adjacent tank farm that receives, stores and distributes refined petroleum products. In addition to the tank farm, there are several other nearby industrial operations along the river in the same vicinity that could be best described as an industrial area.

The terminal receives fully refrigerated propane (at -44° F) by ship and it is also equipped to receive propane at ambient temperature by rail. The propane is currently stored as a refrigerated product in a single 400,000 barrel (63,600 m³) externally insulated container. The resale, or distribution, of the product is at ambient temperature, in "over-the-road" propane transport vehicles that are owned and operated by others. It is possible to load railcars in the same siding used for the potential receipt of product. However, there have been few receipts or deliveries by rail in the past and it would appear that few, if any, are contemplated in the future. The terminal has been in continuous operation since 1975 with an unblemished safety record. During that period, there have been several hundred shiploads of propane that have passed through the terminal without a significant incident.

In recent years, a number of new refrigerated gas ships have entered the trade and those ships have a larger capacity than the ships in service when the terminal was constructed. Many of the newer ships have a cargo capacity that almost equals the total capacity of the present storage container at the terminal. The economics of a marine terminal, such as Sea-3's, dictate that the terminal be capable of receiving a full ship load with each delivery. In order to make room for a full load, it has often been necessary for the operators of the terminal to essentially deplete their entire inventory before each ship's arrival. Considering the uncertainty of the weather and the day to day availability of ships,

such a policy has caused a near complete shutdown of the terminal sales upon several occasions because of the lack of supply.

In order to eliminate the probability of future supply shortfalls, the management of Sea-3 has decided to add the additional refrigerated storage container that was envisioned at the time of the original plant design. That second tank, which was shown as a "future tank" on the drawings submitted to the Town of Newington in 1974 as a part of the initial permitting process, will provide the necessary cushion after the inventory has been drawn down to accommodate a full shipload of product.

Sea-3 has retained Fluor Daniel, Inc. to act as the project manager for the proposed addition. Fluor Daniel's initial assignment was to prepare the preliminary design concept, bid specifications and permitting documents as the first step in making that additional storage space available. Sea-3 has applied to the Town of Newington's Planning Board for the approval of those plans and permission to proceed with the project with the issuance of a building permit. In turn, the Planning Board has retained this writer and Mr. Henry L. Renfrew as experts to review those plans and to advise the Board as it deliberates the merits of the project. This report will attempt to address the technical issues as they relate to public safety and to review the present conceptual plans with respect to compliance with relevant codes and standards.

Mr. Renfrew and I have met several times with Mr. Paul Bogan, Sea-3's Terminal Manager, and Mr. George King of Fluor Daniels who have provided us with additional drawings and documents that were not available at the time of the public meeting on June 20. In addition, both of us have had the opportunity to examine specific items of equipment in the facility and to review relevant records that are kept at the terminal.

EXISTING FACILITY

The Newington Marine Terminal was constructed during the period 1974-75 and was commissioned in 1975. While the design of portions of the facility conformed to the then relevant requirements of the 1972 edition of the National Fire Protection Association's (NFPA) standard NFPA 58 *Standard for the Storage and Handling of Liquefied Petroleum Gases*, the terminal was sited, designed and constructed to comply with the American Petroleum Institute's (API) 1970 edition of API 2510, *The Design and Construction of Liquefied Petroleum Gas Installations at Marine and Pipeline Terminals, Natural Gas Processing Plants, Refineries and Tank Farms*, which was the recognized compliance document at that time.¹ The storage container was designed, built, inspected and tested by the Pittsburgh-DesMoines Steel Company (now Pitt-DesMoines Corp.) in compliance with the then recommended rules API 620 *Recommended Rules for Design and Construction of Large, Welded, Low-Pressure Storage Tanks*.

The existing storage container has a capacity of 400,000 bbls, (16,800,000 gallons or 63,600 m³). It is of a single wall, welded construction that utilizes low temperature steel, in accordance with API 620 Appendix R, surrounded by a composite wood and aluminum foil insulation system. The tank was erected upon a reinforced concrete ringwall and its foundation incorporates an electrically powered heating system to prevent the formation of a frost lens that could damage the tank. Its design maximum working pressure is 1.8 psig. The design boiloff rate for the insulated container is only 4,214 lb/hr. or 0.12 %/Day.

The design of both the vapor and liquid handling systems are such that there should be no venting of propane to the atmosphere as the result of any normal, and most

¹The National Fire Protection Association's standard NFPA 58, *Standard for the Storage and Handling of Liquefied Petroleum Gases*, did not include marine terminals within its scope until the 1989 edition, and that coverage was deferred to the API 2510 standard prior to that edition.

abnormal, operations of the facility. All process relief valves, hydrostatic relief valves and drains are directed into a closed vent collection system that terminates at the flare. All excess vapor that is generated through normal boiloff, barometric pressure changes, pump recirculation or displacement during transfer is reliquefied with the cold liquid returned to storage. All normal transfer operations from either ships or railcars include the use of a vapor return line which precludes the need to vent vapor during the transfer operation.

The reliquefaction system is generously sized to accommodate vapor generation from all of those sources, even when they occur simultaneously. If the reliquefaction system should prove to be incapable of handling the total vapor generation either because of equipment problems or because the total vapor generation volume simply overwhelms its capacity; the total vapor stream, or a portion of the stream, will be diverted to the flare. The flare is sized to accommodate and safely dispose of any and all excess vapor generation of the entire facility. The flare pilot remains lit at all times so it can safely dispose of any potential excess release of vapor generated for any reason throughout the facility. The transfer of propane to the transports is into the vapor space of the transport so as to also prevent either a vapor return or atmospheric venting.

In addition to those redundant vapor handling systems that control the pressure within the main storage container, the tank is also provided with four emergency relief valves discharging directly to the atmosphere. Those relief valves, which have been sized for fire exposure plus all other normal sources of vapor generation within the container, such as pump recirculation, in accordance with API 2000 *Venting Atmospheric and Low-Pressure Storage Tanks*, provide a third level of redundancy against tank over-pressuring. It should be noted that an unimpeded, vertical jet of light hydrocarbon gases, such as propane, will be diluted below the lower flammable limit (LFL) within a very short distance.

Therefore, the operation of the emergency relief valves will not create any additional hazards.²

There are three submerged liquid connections into the storage container (*i.e.*, they enter the container below the liquid level). All three of those lines are arranged or valved so as to prevent an uncontrolled flow of liquid from the tank in the event of a piping or equipment failure. This is consistent with the concept of *product control*, or retention, that has been promoted through many added requirements contained in the last several editions of NFPA 58

The smaller one of the three connections, which is a 3" IPS, is intended for use only when the tank is to be completely emptied and to be taken out of service. That connection also provides a small tap for the liquid side of a differential pressure transmitter (ΔP), which is one of the several liquid level gauges measuring the liquid content of the tank. That 3" pipe has been provide with a blind flange on its outlet valve so as to prevent an accidental spill from that point. That blind flange will only be removed to permit the final drainage of the last few inches of propane when the tank is being taken out of service. Therefore that relatively small penetration, which will be supervised when used, should present no threat as the source of a spill.

There is one 14" connection that enters the tank horizontally through the wall of the vessel. That connection is the "fill line", serving the ship unloading line and the return from the reliquefaction system. The direction of flow in that line is always into the tank. A check valve has been provided next to the manual valve which is adjacent to the tank penetration. In addition to the check valve and manual valve, there are also pneumatically operated fail-safe valves in that line that can shutoff the line in an emergency.

²See Appendix A-6.1.1 NFPA 59 *Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants*, 1995 edition.

The 12" "liquid withdrawal line", which penetrates the floor of the container is equipped with a manual valve followed, almost immediately, by a pneumatically operated fail-safe valve. All of the pneumatically operated valves in the liquid lines that were mentioned above, are of a fail-safe design, are a part of the plant emergency shutdown system (ESD), can be closed locally or remotely and they will automatically close if they are exposed to the heat of a fire. Also, there are automatic emergency shutdown (ESD) valves located ahead of the hoses at the dock area as well as similar valves at all of the transfer stations.

With the combination of the automated tank valves and transfer valves, the maximum credible liquid spill within the facility should be less than the liquid inventory within the piping systems. From a more practical point of view, the maximum spill would be limited to the inventory within a piping subsystem, such as the ship liquid line, which is not interconnected with the truck loading system and the reliquefaction. Furthermore, because of the redundancy that has been incorporated into the systems, a major spill would require the simultaneous failure of two or more independent devices to even initiate such an event.

In addition to the many accident, or initiating incident, avoidance features that have been incorporated into the design of the facility, the plant has been well equipped with numerous *fire protection* systems including emergency shutdown systems that may be initiated either automatically or manually at numerous locations throughout the facility. The fire protection systems include fire detection, combustible gas detection and automatic water spray systems on buildings or equipment that could be adversely affected by fire exposure. Many of those systems, as well as basic plant equipment, have been voluntarily up-graded over the years as a result of code changes, operating experience, recommendations resulting from the periodic safety audits by outside consultants and finally the recommendations of the Hazard Analysis Team who prepared the *Initial Process Hazard Analysis* (IPHA). Furthermore, the plant personnel have been well trained in their normal

duties as well as emergency procedures and they are required to immediately report any observed equipment or procedural deficiencies.

PROPOSED ADDITIONAL TANK AND ACCESSORIES

As indicated above, Sea-3 is seeking permission to install the second storage container that was originally contemplated at the Newington Marine Terminal. That second container will have a net capacity of 160,000 bbls (6,720,000 gallons or 25,440 m³). Sea-3 has agreed that the new container, its associated piping and modified reliquefaction equipment will comply with the 1995 edition of NFPA 58 and the 1990 edition of API 620, which is adopted by reference in NFPA 58 and is now a standard that has been retitled as, *Design and Construction of Large, Welded, Low-Pressure Storage Tanks*. (It might be noted that there have been significant additions to NFPA 58 during the last two decades, including separate chapters devoted to refrigerated storage, marine terminals and the concept of *product control* or retention during emergencies.) Since the additional storage capacity will have virtually no effect upon the throughput of the facility there will be no necessity to alter either the receiving or delivery transfer systems.

A soils investigation of the proposed tank site has been completed, as required by NFPA 58, and it has been determined that the location within the present dike area is suitable and that the foundation design will be based upon the soils engineer's report. It has also been determined that only a slight improvement to the existing dike will be required to achieve the capacity requirements of NFPA 58 when the volumetric displacement of the new tank is considered. The proposed location of the second container will also comply with the clearance distances and other siting criteria of NFPA 58 and will not place any of the existing equipment or piping out of compliance with the original siting criteria. However an unresolved issue with respect to the clearance distances, as required by the later editions of NFPA 58, between the existing dike and an adjacent property line may require some action by either the Board or the Fire Chief.

At the request of the Newington Planning Board, Sea-3 and Fluor Daniel prepared a *hazard modeling study*, which has already been presented to the Board. The writer is of the opinion that the study greatly overstates many of the risks because of the use of an inappropriate data base and the failure to recognize equipment designed to mitigate an initiating event. However, that study could be the basis for the fire safety analysis presently being undertaken by Sea-3 and Fluor Daniel as mandated by NFPA 58 in section 3-10.2.3. It should be evident that the NFPA Technical Committee was thinking of the conventional ambient temperature, pressurized storage of propane when they drafted the language for the requirements for the fire safety analysis. However the concept of, *product control* as expressed in the second paragraph of 3-10.2.3, is quite appropriate for a refrigerated storage container.

"The first consideration in any such analysis shall be an evaluation of the total product control system including emergency internal and shutoff valves having remote and thermal shutoff capability and pull away protection."

Sea-3 has provided preliminary flow diagrams detailing the proposed piping modifications, including the connections and valving of the new tank. Those drawings, which will be the basis for the final engineering drawings, also indicate Sea-3's plans to upgrade the existing tank (TK-01) after the second tank is in service. Not only do those drawings indicate that Sea-3 intends to duplicate the product control valves that were installed with the first tank, but they also are planning to provide remotely operable internal valves on the active liquid lines, a check valve on the penetration of the overhead cool-down line and fail-safe pneumatic operators on the vapor valves that are on the roof of the tank. Furthermore those same drawings reveal that Sea-3 intends, as an additional safety measure, to retrofit the present tank with internal valves as well as the valve operators and a check valve on the top entry lines after the second tank is in service and when there is an available time "window" to take the original tank out of service.

The flow diagrams, coupled with the plot plan, clearly indicate that the interconnection of the piping of the original and new tanks will be very simple and all in the vicinity of the existing product transfer pumps. Essentially, the concept is to make the two tanks operate as one. The second tank will be of the same vertical height and on the same elevation so that there can be no gravitational overfilling of either tank. It will be possible to separate the tanks, if required for operation or maintenance reasons. For example, the two tanks will be separated during the time that the retrofit of the old tank takes place and the tank has been purged to permit entry and hot-work inside. The normal operation will be to have the withdrawal lines of both tanks always open to a common manifold and the boil-off and vapor transfer lines always interconnected and open.

The flow diagrams also indicate that the flare system and the reliquefaction system will be upgraded to accommodate the additional vapor generation that may result with the installation of the new tank. In addition, the fire water system will be extended into the impounding area to permit the installation of two remotely controlled water monitors. Those two monitors will be located so as to permit the application of either solid streams, spray or fog onto the surface of either tank or onto the piping and pumps located between the two tanks.

The plot plan indicates that the second tank will block the line-of-sight observation of the tank valves and product pump area from the control room. In order to compensate for that loss, the plans also call for the addition of closed circuit TV cameras (CCTV) to permit the operators to have a continuous and unobstructed view of that area. It might be noted that the *hazard modeling study* mentions that gland leaks from the transfer pumps are not uncommon, though easily controlled. For that reason alone, the addition of the CCTV is an important part of the proposed modification.

Both NFPA 58 and API 620 contain specific language that requires the owner to be responsible for the testing and inspection, as well as specifying the qualifications of the

inspection personnel. Sea-3 has designated Fluor Daniels, in their role as project manager, as the owner's inspection agency of both the facility and the tank during construction and prior to placing the facility in operation. That inspection and testing, which may take the form of auditing the contractor's inspection, will be in addition to that normally performed by the contractor. Furthermore, Sea-3 has agreed to retain an independent fire safety engineering consultant to oversee all phases of the construction so as to assure safe procedures during the construction phase of the project. That consultant will be given full authority to monitor the entire project for potentially unsafe conditions and to stop or curtail any activity, by either Sea-3 or the contractor, which he may deem to be unsafe or imprudent.

CONCLUSIONS

After a thorough review of the presently available documents and after several site visits, the writer is satisfied that the proposed additions to the Newington Marine Terminal have been given proper consideration with regards to both on-site personnel and public safety. The proposed changes and additions do not compromise the codes or standards under which the plant was original designed and constructed and will not create any new risks or significantly increase even the perceived existing risks to the Town of Newington.

A refrigerated propane tank is not subject to the *Boiling Liquid Expanding Vapor Explosion* (BLEVE) that has become the perceived nemesis of the Fire Services. Likewise, the catastrophic failure of a refrigerated container that has been designed, constructed, inspected, tested and utilizing the material specified in API 620 is most improbable. The combination of the design criteria and metallurgical properties specified by API 620, if verified by inspection and good quality control, will produce a container that remains ductile at its design temperature, which means that an obvious and observable leak would develop long before a "brittle" failure could occur.

If such a container were to become involved in an engulfing fire, the results might be spectacular but they would not have a major impact upon the surrounding neighborhood. The boiling liquid within the container would act as a heat sink that would prevent the overheating and failure of the shell below the liquid level, thereby preventing the uncontrolled or catastrophic release of the tanks remaining contents.

The combination of good design and construction coupled with the exemplary operations and maintenance practices should minimize the probability of any incident occurring that could escalate to significant proportions. Furthermore, the product control, or retention, capabilities that have been incorporated into the plant design philosophy should limit the magnitude of any incident that might occur. With the later addition of the internal valves and valve operators on the original tank, the concept of product control will be complete.

The writer has not seen a final version of the fire safety analysis that is being prepared by Sea-3 and Fluor Daniels. However, the writer is satisfied that no serious hazard exists and that the safety systems and fire protection systems, including *fire prevention systems*, are quite sufficient, with the possible exception of some additional combustible gas detection systems in the vicinity of the three transfer pumps.

It was noted earlier that one unresolved code compliance issue remains. When the facility was permitted and constructed in the mid 70's, the recognized code document was the APU stand API 2510. While that standard included impoundment as a requirement, it specified clearance distances from the wall of the container. Since that time, the API standard has been replaced by the NFPA standard as the code of compliance. The NFPA standard contains the following provision:

"9-3.3—The edge of a dike, impoundment, or drainage system intended for a refrigerated LP-Gas container shall be 100 ft (31 m) or more from a property line that can be built upon, a public way, or a navigable waterway."

The plot plan, as submitted in 1974 and the most recent plot plan, clearly indicate that the top of the dike along the southern boundary of the property is only about 80' from the property line and is considerably closer along the northern boundary. It could be argued that the property to the north is a tank farm and the property line could not be built upon. However the property to the south belongs to one of the industrial neighbors who probably will not, but could, encroach as close as 20' from the property line.

It is the writer's opinion that the facility was in compliance with the API 2510 standard when it was built and that the additional tank and its accessories will not add a significant risk to its immediate neighbors, let alone the Town of Newington. On that basis, I believe that it would be appropriate to consider the location of the second tank as being "grandfathered" under the original building permit that was issued in 1974. I believe that such a decision would be consistent with the intent of the retroactivity clause in NFPA 58, which reads:

"1-1.5-Retroactivity.—The provisions of this standard are considered necessary to provide a reasonable level of protection from loss of life and property from fire and explosion. They reflect situations and the state of the art prevalent at the time the standard was issued.

Unless otherwise noted, it is not intended that the provisions of this document be applied to facilities, equipment, appliances, structures, or installations that were in existence or approved for construction or installation prior to the effective date of the document, except in those cases where it is determined by the authority having jurisdiction that the existing situation involves a distinct hazard to life or adjacent property. Equipment and appliances include stocks in manufacturers' storage, distribution warehouses, and dealers' storage and showrooms in compliance with the provisions of this standard in effect at the time of manufacture."

RECOMMENDATIONS

It is my recommendation that either the Newington Fire Chief or the Planning Board, acting as the *Authority Having Jurisdiction* as defined by NFPA, waive the requirements of NFPA 58, section 9-3.3 with regards to the clearance distance from a "property line that can be built upon on the basis that the concept of the second tank was approved in the original building permit in 1974 and that the additional tank creates no new or additional risks to either the general public or Sea-3's immediate neighbors. NFPA's definition of the Authority Having Jurisdiction reads:

Authority Having Jurisdiction.—The organization, office, or individual responsible for approving equipment, an installation, or a procedure.

NOTE:—The phrase "authority having jurisdiction" is used in NFPA documents in a broad manner, since jurisdictions and approval agencies vary, as do their responsibilities. Where public safety is primary, the authority having jurisdiction may be a federal, state, local, or other regional department or individual such as a fire chief; fire marshal; chief of a fire prevention bureau, labor department, or health department; building official; electrical inspector; or others having statutory authority. For insurance purposes, an insurance inspection department, rating bureau, or other insurance company representative may be the authority having jurisdiction. In many circumstances, the property owner or his or her designated agent assumes the role of the authority having jurisdiction; at government installations, the commanding officer or departmental official may be the authority having jurisdiction.

On the basis of the information that has been made available to me and the inspections that I have made, it is my recommendation that the Planning Board of the Town of Newington approve the plans and submissions of Sea-3, Inc with respect to the planned additions at the Newington Marine Terminal with the following conditions

1. That Sea-3's inspection agency, which will most likely be Fluor Daniels, submit to the Planning Board prior to the cooldown of the new tank an affidavit that the design, construction, inspection and tests of the facility have been in conformance with the applicable codes and standards. If there have been any deviations from those codes or standards, such deviations shall be noted and explained.
2. That Sea-3 provide some additional combustible gas detectors, possibly of the optical type if they prove acceptable to Sea-3 from a reliability standpoint and appropriate for the location.

It is also my recommendation that Sea-3 pursue their planned up-grade of the existing tank, which will add significantly to the safety of the facility. That up-grade includes the installation of the internal valves and equipping the valves at the top of the tank with either operators or check valves as appropriate. It should be understood by the Planning Board that such an endeavor is a major undertaking that will require careful planning, taking the tank out of service for several months and possibly curtailing the throughput of the terminal during that period. Therefore it would be inappropriate to establish either a start or completion date at this time.

EXHIBIT M

HENRY RENFREW

Compliance and Response Management, Inc.

Phone (203) 276-1919 Fax (203) 620-0071

NEWINGTON PLANNING BOARD

SEA-3'S APPLICATION FOR ADDITIONAL LPG STORAGE

TECHNICAL REVIEW

July 10, 1996

BACKGROUND INFORMATION

On June 10, 1996, the Town of Newington New Hampshire Planning Board requested technical assistance in its review of Sea-3's application for additional storage of refrigerated Liquefied Petroleum Gas (propane) at Sea-3's facility on a private road off Old Dover Road. The scope of work requested was a review and evaluation of the adequacy of:

- emergency response and contingency planning;
- fire protection, monitoring and response systems;
- leakage monitoring systems;
- plant security, communications and emergency notification systems; and

recommending procedural enhancements that would provide an additional margin of safety to firefighters, emergency response personnel, and the general public.

The board also hired Mr. James Stannard to review compliance with the National Fire Protection (NFPA) Standard 58 entitled Storage and Handling of Liquefied Petroleum Gases, other applicable NFPA and American Petroleum Institute (API) standards; and determine if proposed new tank storage and piping, segregation via dike, proposed water spray cannons and alternatives are adequate; and recommend enhancements to provide additional margins of safety.

OVERVIEW OF THIS REPORT

This facility has been in continuous operation since 1975. For over 20 years, Sea-3 has demonstrated a commitment to safety. Operating, safety, and fire protection equipment has been effectively maintained and upgraded through a detailed preventive maintenance program. Process operations and emergency response procedures have been under continuous review and updated. Incidents or problems have been evaluated with new safer equipment being installed and procedures updated. The facility has an excellent safety record.

The existing bulk refrigerated storage tank and other operating and safety equipment have been installed in accordance with existing codes and the manufacturer's installation procedures.

1842 Meriden-Waterbury Road PO Box 794 Milldale, CT 06467-0794

Sea-3 Proposed Additional Storage

The proposed new additional bulk storage and safety equipment and safeguards will insure system integrity and safety. The next twenty (20) years of operations should mirror Sea-3's safety record for the last twenty (20) years.

There are three code compliance issues that Sea-3 is in the process of complying with.

Two issues involving compliance with state regulations are still being developed by Sea-3.

- Fire Safety Analysis (required by NFPA 58) is required by section 3-10 for the facility and Mr. Bogan is working with Fire Chief Wahl to develop it.
- The available Water supply for the deluge system is being evaluated in accordance with NFPA 15 Dated 1990 Standard for Water Spray Fixed Systems for Fire Protection. Mr. Bogan is contacting a Fire Protection Engineering firm to confirm compliance with NFPA 15 and going to submit the information to the Fire Chief.

One issue involving compliance with federal OSHA regulation is being developed by Sea-3.

- OSHA Process Safety Management (PSM) Standard 1910.119 is being developed by Sea-3 with technical assistance from LGA Engineering of Hanover Massachusetts.

SEA-3 - STATEMENT ON SAFETY, OPERATIONS AND FIRE PROTECTION

The following statement summarizes Sea-3's commitment to safety, operations and fire protection at the facility. The statement was taken from their draft Fire Safety Analysis which is being prepared at this time. A final copy will be available for review by the Planning Board upon completion.

The goal of Sea-3, Inc. is to limit the overall risk to the surrounding industries and communities to as low a level as good engineering and process management will allow. The Sea-3, Inc. facility, through its management and concern for safety, has continually strived for a zero accident policy. The facility was designed and updated over the last twenty years to incorporate the latest in fire detection and prevention equipment. Maintenance of existing equipment and systems has always been a high priority and has resulted in Sea-3 maintaining a safe and efficient operation over the last twenty years. This attitude and engineering will follow through to the new construction.

IMPORTANCE OF THE SEA-3 FACILITY / PROPOSED ADDITIONAL STORAGE

The safety of continuous operations of the facility is important. Sea-3 supplies propane to wholesale and retail propane companies (dealers) located throughout New England. It has been estimated that Sea-3 supplies to these dealers 40% of the propane used by over one million households (1 out of every 16 in New England) and numerous industrial locations. Any interruptions of operations during peak winter months can create a serious heating fuel shortage throughout New England.

For several years, Sea-3 has been operating under difficult circumstances. Because ships delivering product have increased in size, Sea-3 has been required to reduce its inventory on hand to accommodate the capacity of the arriving ships. Any delay in

Sea-3 Proposed Additional Storage

arrival, during peak demand periods, can consume the remaining on hand inventory before arrival of the new product. Last year for example, Sea-3 ran out of product four (4) times due to scheduling problems and delays in ship arrivals. These conditions create a variety of potential safety problems including:

- off loading product from a ship "under pressure" to get the product to the dealers ASAP; and
- on-site traffic and local road congestion after "out of product period".

The proposed new storage tank will help to eliminate these two (2) potential safety problems. The proposed additional storage will allow the facility to continue delivery of product to dealers without any interruptions with the existing tank basically empty awaiting delivery of product via ship. The traffic into the facility should be more spread out and prevent a crisis backed up of transports waiting to load.

STATE ADOPTED SAFETY STANDARDS

The State of New Hampshire has adopted the NFPA 58 Standard entitled Storage and Handling of Liquefied Petroleum Gases dated 1989. NFPA 58 addresses the design, construction, installation and operation of the proposed new storage tank (Chapter 8 has this specific requirements for the installation of Refrigerated LPG storage.) In Chapter 9 Referenced Publications and considered part of the requirements of NFPA 58, is NFPA 15 Standard for Water Spray Fixed Systems for Fire Protection dated 1985. Fixed water spray systems at the facility include protection of the day tank, loading rack and building with deluge water systems covered by this standard. NFPA 15 covers the design, installation, maintenance, and testing of water spray fixed systems for fire protection.

The State of New Hampshire is in the process of adopting current additions of these standards as state requirements: NFPA 58 1995 and NFPA 15 1990.

Since 1989, NFPA 58 was updated in 1992 and in 1995. In the 1992 edition, the chapter dealing with refrigerated storage was completely rewritten. In the 1995 edition, major changes to the chapter dealing with Marine Shipping and Receiving were made to conform to US Coast Guard regulations.

The State of New Hampshire is in the process of adopting the 1993 edition of the NFPA 72 Standard for the Installation, Maintenance, and Use of Protective Signaling Systems. This standard deals with the application, installation, performance, and maintenance of local, auxiliary, remote station, proprietary, and emergency voice/alarm protective signaling systems, and combinations thereof and their components.

The Authority Having Jurisdiction for public safety issues in these standards is Newington Fire Chief/Fire Marshal Larry Wahl. Technically, only the state adopted editions of these applicable standards can be required by the Fire Chief/Fire Marshal. The Planning Board can assist the Fire Chief/Fire Marshal in ensuring that the most current editions are used for the design, installation of new equipment. See Recommendations to Enhance Safety section of this report.

EMERGENCY RESPONSE AND CONTINGENCY PLANNING

Sea-3 Personnel Emergency Response Training and Preparedness

Mr. Lawrence Heffron, Senior Vice President of Sea-3 is a member of the State of New Hampshire Hazardous Material Transportation Advisory Board which provides guidelines and recommendations on legislation dealing with hazardous materials. Mr. Heffron has been associated with Sea-3 for over 20 years.

Mr. Paul Bogan, Terminal Manager, has been employed at the facility for over 20 years. He has for six years been a member of the NFPA Technical Committee for Liquefied Petroleum Gases responsible for writing NFPA 58. He is Chairman of the Propane Gas Association of New England (PGANE) Emergency Response Committee. The committee is responsible for developing and maintaining a PGANE Propane Emergency Response Plan. The plan has been distributed to all fire department throughout New England. The Committee annually offers a three day hands on propane fire training course for the industry and emergency responders at the Massachusetts Fire Academy. He is one of the instructor for the three day course. In 1989, Mr. Paul Bogan attended a three day fire fighter training course at Texas A & M University which includes training on how to handle large scale LPG (propane) and flammable cryogenic liquid incidents. Based on his training and experience, he is a hazardous material specialist. A Haz Mat Specialist (in this case) is a person with extensive knowledge of the hazards of propane and emergency response procedures.

The employees of Sea-3 receive continuous emergency response training. There are 14 employees and no one new has been hired for over 6 years. Two of the senior employees are Haz Mat Techicians (emergency responders expected to use specialized chemical-protective clothing and specialized control equipment) Every other year, all employees attend the 2 day propane training course a the Massachusetts Fire Academy. New Employees receive two weeks of initial training and orientation.

Newington Fire Department Emergency Response Training and Preparedness

Newington Fire Chief Larry Wahl has been the chief of the department since 1981 (15 years). He has been a firefighter for over thirty (30) years and a member of the Newington Fire Department for over 23 years. He is a member of the State of New Hampshire Hazardous Material Transportation Advisory Board and sub chair of the Water Transportation Committee. This board provides guidelines and recommendations on legislation dealing with hazardous materials. He is also a member of the Port Safety Forum which meets quarterly with the Captain of the Port.

In 1989 - Fire Chief Wahl attended a three day fire fighter training course at Texas A & M University which included training in handling large scale LPG (propane) and flammable cryogenic liquid incidents.

He has responded to prior incidents and inspected the facility on several occasions and participated in several drills and a drafting water from the river training sessions. Chief Wahl is also the town Fire Marshal and responsible for code compliance in addition to fire suppression issues.

Sea-3 Proposed Additional Storage

Since 1995, 15 Newington firefighters received specific training dealing with hazardous material related incidents and emergencies. Five (5) received initial "awareness", eight (8) operational" and two (2) Haz Mat Technician hazardous material training.

Operational training is designed to help firefighters during initial response in a defensive fashion to control the release from a safe distance and keep it from spreading and protecting nearby persons, the environment, or property from the effects of the release. Hazardous materials technicians training is for emergency responders expected to use specialized chemical-protective clothing and specialized control equipment.

In 1991 seven (7), 1992 two (2), and 1995 one (1) Newington firefighters received training in Incident Command Systems (ICS) which is critical to managing a major hazardous material emergency. ICS training identifies how to establish and enforce scene control including control zones, emergency decontamination, evacuations/in-place protection and communications based on standard operating procedures and local emergency response plans.

Sea-3 Emergency Management and Contingency Plan

Sea-3's Contingency Plan was last updated in June 1987. In the event of a fire at the facility, the Newington Fire Department is notified automatically via signal alarm panel system. Depending on the location, specific valves and equipment are automatically shutdown and in some areas with fixed water spray systems activate prior to notification of the Fire Department.

The response to fire conditions at the facility are not spelled out in the plan. They are in the Sea-3 Interlock schedule which is a cause and effect diagram attached to this report.

Upon arrival of the fire chief, Sea-3's plan clearly places the Fire Chief in charge or the Fire Office in Charge. Sea-3 has prepared a small booklet version of their contingency plan for area emergency responders. During meetings with Chief Wahl and Mr. Bogan, the chief informed Mr. Bogan that the plan and booklet version phone numbers will have to be changed because the State of New Hampshire has enhanced 911 effective July 5, 1995

Town of Newington Emergency Management Plan

The Town of Newington is required by federal and state laws to have a town Emergency Management organization and plan. The current Emergency Management (EM) Plan was written in March 1995 by Eliza Smith, EM Director. On May 25, 1995, Fire Chief Wahl made a minor revision to one section. The plan was approved by the Newington Board on September 29, 1995. The EM Plan is over 70 pages long with function specific responsibilities for town departments outlined in the plan.

In developing the plan, page two (2) states that Hazardous Materials Accidents were the first priority for consideration. There are 14 other categories included man-made and natural disasters and emergencies.

Sea-3 Proposed Additional Storage

Part II Section H of the Newington EM Plan addresses evacuations. The Fire Department will provide recommendations on areas to be evacuated, assist in traffic control, provide post-evacuation fire surveillance and assist in rescue operations. The Board of Selectman will assume over-all direction and control of the evacuation procedures and make the necessary evaluations and recommendations to protect the lives of the citizens. The EM Director, Police and Highway Departments also have important responsibilities during any evacuations.

In the event of a major fire or emergency at this facility, when in the judgement of the Board of Selectman, The State of New Hampshire Emergency Management Plan can be activated for further assistance.

The Town of Newington Plan was recently tested using a plane crash at Pease with several town departments participating in the drill.

FIRE PROTECTION, MONITORING AND RESPONSE SYSTEMS

Sea-3 has multiple levels of fire protection, monitoring and response systems in place throughout the facility. These levels include hand held fire extinguishers, stationary extinguishers, UV and CV detectors, manual pull fire boxes, water deluge systems and automatic shutdown of equipment. Here is an example of the different types of detection, fire protection equipment and systems and shut down activities at one particular location.

Truck Loading Rack Equipment and Systems.

Hand Held	Dry Chemical 30 # Lb	Hand Held 30 pound
Stationary Units	Dry Chemical 2,000 Lb	Gate Motor
Stationary Units	Dry Chemical 2,000 Lb	Front of Day Tank
UV Detectors	Group #02	#07,#08,#09,#10,#11,#12,#13,#14,#15,#16,#17,#18
Fire alarm Pull Box #2	Exit Gate	By Maintenance Bldg.
Fire alarm Pull Box #2	Entrance Gate	Truck Entrance
C.V. Detectors	Group #02-(4 units)	#05,#06,#07,#08
	Group #03-(4 units)	#09,#10,#11,#12
	Group #04-(4 units)	#13,#14,#15,#16
Water Deluge System	Two zones	each approx. half rack
System Shutdown	Pumps and valves	for product flow

The following portion of this report will list the type of equipment and their locations at the facility for immediate extinguishment of a fire.

Listed below are numbered locations on Hand held Extinguishers.

20 Pound Hand Held Fire Extinguisher

(24) Dry Chemical	Rail Skid	Top Stairs D Skid
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Sea-3 Proposed Additional Storage

(25) Dry Chemical	Raid Skid	Top Stairs B Skid
(25) Dry Chemical	Raid Skid	Top Stairs C Skid
(37) Dry Chemical	Pickup	Rear Bed

30 Pound Hand Held Fire Extinguisher

(01) Dry Chemical	Waiting Room	Beside Front Door
(02) Dry Chemical	Boiler Room	By Transformer
(03) Dry Chemical	Compressor Room	By Personnel Door
(04) Dry Chemical	Maintenance Building	By Roll Door
(05) Dry Chemical	Not Used	
(06) Dry Chemical	Not Used	
(07) Dry Chemical	Maintenance Building	Front Personnel Door
(08) Dry Chemical	Truck Rack	Column Skid C
(09) Dry Chemical	Compressor Room	Front Personnel Door
(10) Dry Chemical	Main Yard	Entrance Truck Skid E
(11) Dry Chemical	Day Tank	Cement Column
(12) Dry Chemical	Boiler Room #2	Front Roll Door
(13) Dry Chemical	Boiler Room #2	Front Door
(14) Dry Chemical	Rail Skid	Riverside Tarstrip
(15) Dry Chemical	Raid Skid	Fence Dike Side

Listed below are numbered locations on Wheeled Fire Extinguishers.

Wheeled Fire Extinguishers

Dry Chemical	Dock	Downstream
Dry Chemical	Dock	Upstream
Dry Chemical	Boiler Room Rear	By Transformer
Dry Chemical	Rails	Tarstrip - Riverside
Dry Chemical	Storage Tank 01	Front of Cold Pumps

Listed below are numbered locations on stationary fixed extinguisher systems..

Stationary Units

Dry Chemical 2,000 Lb	Main Building Rear	Near Storage Shed
Dry Chemical 2,000 Lb	Main Yard Entrance	Gate Motor
Dry Chemical 2,000 Lb	Main Yard	Front of Day Tank
Dry Chemical 2,000 Lb	Rails	Front of Shack

Sea-3 Proposed Additional Storage

CO2(17)	Compress Room	Front Door
CO2(18)	Maintenance Room	Outside By Window
CO2(28)	Boiler Room	Outside Rear Door
ABC(06) Dry Chemical	Maintenance Room	Inside Front Door
ABC(29) Dry Chemical	Compressor Room	By Exhaust Fan
ABC(30) Dry Chemical	Boiler Room	Center Column
Halon(16)	Motor Control Center	Entrance
Halon(17)	Control Room	Rear Door

Fixed Halon Systems

Halon(35)	Motor Control Center	Rear Boiler Room
Halon(36)	Main Control Panel	Inside MCP
Halon(40)	Compressor Room	By Entrance

The following portion of this report will list the type of detectors and their locations at the facility for immediate detection of fire conditions.

Listed below are group locations of Ultra Violet (UV) Flame detectors and the assigned number of the detector. If one of these detectors activate, the alarm panel sounds in the main office and the person on duty has 12 seconds to observe the conditions by visual or remote TV monitors. At the 13 second of the alarm, automatic shutdown procedures occur and a 120 second delay notification to the Fire Department starts. If during the 120 second period the situation is controlled and minor, the person on duty can stop the scheduled notification to the fire department.

U.V. Detectors

Group #01	Day Tank	#01, #02
Group #02	Truck Loading Area	#07,#08,#09,#10,#11,#12,#13,#14,#15,#16,#17,#18
Group #03	Behind Main Bldg.	#19,#21,#22
Group #04	Storage Tank 01	#25,#26
Group #05	Rail Loading Area	#31,#32,#33,#34,#35,#36
Group #06	Water Loading Dock	#37

PREVENTATIVE MAINTENANCE SYSTEM

The chart format below, will summarize the PMS on various safety related items. During my inspections of the facility, it was apparent there is a supervised active PMS program in place.

Safety Equipment

Sea-3 Proposed Additional Storage

Monthly	Inspect Fire Extinguishers	Stationary & Wheeled
		Seal & Green Band
		Halon CO2 Weigh
		ABC Seal & Green Band
	Inventory	Available Hose
	Test & Calibrate	UV Detectors
		CV Detectors
		Halon System MCC)
Quarterly	Check & Inspect	Pull Stations
Semi-Annual	Test (Water Flow)	Deluge System
	Random Test /Setting	Dry Chemical Extinguishers
	Test Alarm	Halon System
Annual	Notification System	Fire Department
	Hydrostatically Test	Fire Hose (125 Lbs pressure)
	Flush With Water	Fire Hydrants
	Test & Calibrate	Shutdowns & Alarms.

Loading Area

Quarterly	Lubricate	Swivel Joints- Loading Skids
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Odorant System

Daily	Inspect	Odorant System
Weekly	Inspection	Leakage
Monthly	Refill Pump Oil	bottles

LEAKAGE MONITORING SYSTEMS

The facility leaking monitoring system consists of 43 combustible gas vapor (CV) detectors in groups, usually of 4 units. This system is designed to detect unignited gas. If a detector(s) activates, the main alarm panel indicates via light and horn a problem. The CV alarm system is not tied into automatic fire department notification.

C.V. Detectors 13 Groups/Total of 42 Detectors

Group #01-(4 units)	Day Tank	#01,#02,#03,#04
Group #02-(4 units)	Truck Loading Area 1	#05,#06,#07,#08
Group #03-(4 units)	Truck Loading Area 2	#09,#10,#11,#12
Group #04-(4 units)	Truck Loading Area 3	#13,#14,#15,#16

Sea-3 Proposed Additional Storage

Group #05-(4 units)	Compressor Room	#17,#18,#19,#20
Group #06-(4 units)	Boiler Room #1	#21,#22,#23,#24
Group #07-(4 units)	Boiler Room #2	#25,#26,#27,#28
Group #08-(4 units)	Storage Tank 01	#29,#30,#31,#32
Group #09-(4 units)	Rail Loading Area 1	#33,#34,#35,#36
Group #10-(3 units)	Rail Loading Area 2	#37,#38,#39
Group #11-(1 unit)	Flare Area	#41
Group #12-(1 unit)	Office Main Panel	#45
Group #13-(1 unit)	Fire Pump	#46

PLANT SECURITY, COMMUNICATIONS AND EMERGENCY NOTIFICATION SYSTEMS.

Sea-3 - Security / Unauthorized Entry / Trespass Features

The facility is located on a private road with little or no public traffic. Signs at the entrance indicate it is a private road. The facility perimeter is surrounded by a 6 foot chain link fence with 3 strands of bobwire pointing out. During darkness, most of the facility is illuminated by lights activated by photoelectric cells. All gates into the facility are normally locked except the truck entrance and exit gates in full view of the main office. During the evenings, weekends and slow traffic periods, the truck entrance and exit gates are also locked. Visitor parking is located outside the fence in full view of the main office.

Sea-3's Safety Standards and Procedures Manual states that entry is limited to authorized person having legitimate reasons for entering and terminal personnel on duty are responsible for enforcement of these restrictions. Furthermore, terminal personnel are instructed to be especially watchful for unauthorized entry during unloading of product from a ship. During offloading, several gates must be open for emergency response and a guard is posted for security during offloading. Procedures are in place for a security alert, potential security threat and imminent security breach at the facility which are coordinated with federal, state and local enforcement and public safety officials.

The facility is manned 24 hours a day by at least two persons on duty. During darkness, personnel on duty are required to perform several security checks and make a complete trip around the dike. There is an in plant hard wired 2 way intercom system and portable radios are also used in outside work areas.

Two TV monitors are in place to view the upper loading rack and lower rail loading and flare areas. These monitors are in continuous view of the employees on duty in the main office area. There is a quick dial number on phones in the office to contact the Newington fire/police emergency dispatch center during the day and the Rockingham Sheriff's office at night.

Communications

Sea-3 Proposed Additional Storage

There are two basic in-plant systems. One is a hardwire two way communication voice system with intercoms located at the main office, maintenance office, truck and rail loading racks. There is also several portable radios in use at all times by employees. In the event of an emergency involving the fire department, portable radio(s) are given to the Fire Chief or Office in Charge to monitor and maintain direct communications with plant employees.

Emergency Notification Systems.

In a fire, the alarm system for the facility will automatically activate with a light and audible alarm in the main office. After 12 second, if not shutoff, system shutdown turn off various pumps and close several valves automatically. After the initial 12 second, the Fire Department is notified 120 seconds later automatically. There is also six (6) manual fire pull boxes at various locations and audible outside alarms also. Basically each of the 6 locations have three different colored boxes - (1) Fire (2) Fixed Water Spray and (3) System Shutdown.

Fire Alarm Manual Pull Boxes

#1	Office Building	Back
#2	Exit Gate	By Maintenance Bldg.
#3	Entrance Gate	Truck Entrance
#4	Removed	
#5	Rail Area	By Bowl Dike
#6	Flare Area	

Recommendations to Enhance Safety

During meetings with Mr. Bogan and Chief Wahl three regulation/code compliance issues were discussed at length. I informed Mr. Bogan that in my opinion compliance with (1) OSHA Process Safety Management (PSM) Standard 1910.119, Fire Safety Analysis of existing conditions at Sea-3 as required by NFPA 58 section 3-10 and (3) availability of water (which is a subpart of section 3-10) and compliance with NFPA 15 Standard for Water Spray Fixed Systems for Fire Protection was necessary to adequately review and evaluate the safety of the facility with additional storage being added.

Mr. Bogan provided me with a copy of a Process Hazard Analysis (PHA) which meets one portions of the requirements of the OSHA PSM. The PHA identifies and evaluates potential accidents and makes recommendations for procedural and/or equipment changes. The PHA report provided excellent vital information about the accident potentials at the facility. A copy of this PHA has been furnished to the Planning Board.

I recommended to Mr. Bogan that Sea-3 consider a detailed review of the PSM Standard requirements and to include the additional storage in its review. Mr. Bogan agreed and contact LGA Engineering (the company that prepared the PHA). I also informed him that documentation of compliance with OSHA PSM was not necessary at this time. Sea-3 should be in full compliance with the standard at the time the new storage is place in operation.

Sea-3 Proposed Additional Storage

Since NFPA 58 Section 3-10 requires a Fire Safety Analysis (FSA) and coordinating the analysis with the Fire Chief, I recommended that one be prepared in writing. Mr. Bogan and the fire chief were furnished with a draft outline. I have reviewed the initial draft of this document which Mr. Bogan and the Fire Chief except to have completed this month.

Regarding the availability of water, the last testing of the water supply to the facility was done in 1990. Since that time there has been increased sizing in mains in Newington. At this time there is insufficient information available. Mr. Bogan agreed to contact a fire protection engineering firm and have the availability of water and nozzle sizes etc. evaluated in accordance with NFPA 15 which is adopted by reference in NFPA 58. since this has a direct effect on fire department operations, I recommended that the Fire Chief participate in the evaluation and that the results be forwarded to him.

Based on Mr. Bogan's response to these issues, I believe that Sea-3 will fully comply with any system requirements developed as a result of the work underway on the PSM, FSA and evaluation of compliance with NFPA 15. Furthermore, the Fire Chief is participating fully in the FSA and NFPA 15 issues and is the Authority Having Jurisdiction. If any conflicts arise, the New Hampshire State Fire Marshal can participate given his regulatory authority over these issues.

The follow portion of this report contains five items the Planning Board consider adding as conditions to permitting.

Since the State of New Hampshire is in the process of adopting newer editions of NFPA standards dealing with the installation of the refrigerated LPG storage tank, water spray protection system and emergency alarm systems, the Planning Board should require compliance with these newer standards addressing these important safety issues. The Fire Chief/Fire Marshal can only technically require and enforce the current state adopted editions.

- #1 Sea-3 shall comply with the applicable requirements/section of NFPA 58 1995 for the installation of the additional storage tank and associated piping.
- #2 Sea-3 shall comply with the requirements of NFPA 15 Standard for Water Spray Fixed Systems for Fire Protection Dated 1990 for any modifications to the existing fixed water spray systems.
- #3 Sea-3 shall upgrade the existing protective signal alarm system to comply with the requirements of NFPA 72 Standard for the Installation, Maintenance and Use of Protective Signaling Systems prior to operation of the proposed additional refrigerated LPG storage tank.

These recommendations were discussed with Mr. Bogan and the Newington Fire Chief. The cost of compliance with NFPA 15 and 72 can range from \$5,000 to \$8,000 dollars.

On July 9, 1996, at a meeting with Fire Chief Wahl and Sea-3 Manager Paul Bogan, during discussions concerning the availability of city water to the facility, Chief Wahl identified the following problems.

In April 1996 there was a break in the 10 inch main water line on the private road just above Sea-3's connection to the line. When Portsmouth Water Department personnel attempted to repair the line by isolating the line from the supply water line on Old Dover

Sea-3 Proposed Additional Storage

Road, it was discovered that the water curb box (to shut off and isolated the line on the private road was missing). The cause of the missing shut off curb box was apparently due to rebuilding of the private road a few years ago. Because the water curb box was missing, other downstream water curb boxes had to be used which resulted in several other businesses water supplies being shut off until the repair to the water line was completed. This missing curb box created an hazard (no water for sprinkler systems) at several businesses not on the private road.

Further examination of the existing main water line revealed that up stream of Sea-3's connection, there is no isolation valves on the main. With no isolation valves in place, water to Sea-3 has to be turned off. If these isolation valves were in place and shut after the April 96 break, Sea-3 and all the other facilities could of maintained water supply via the loop of the main line shared by ABB and Georgia Pacific.

Chief Wahl and I agreed that adding two isolation valves on the main would enhance safety and help to ensure the safety of Sea-3. Furthermore, Sea-3 and the other businesses serviced by the water main have a responsibility to replace the curb box.

- #4 Sea-3 assume responsibility to ensure that the missing water curb box isolating the water main on the private road from the main on Old Dover Road be replaced by October 31, 1966.

(All businesses using water on this main have a responsibility to ensure replacement or the parties responsible for paving the private road. Sea-3 will coordinate this effort and ensure replacement.)

- #5 Sea-3 arrange with the Portsmouth Water Department to have one isolation valves added upstream of the facilities connection and another down stream of the connection by the blue building of ABB Combustion Engineering.

These recommendations were discussed with Mr. Bogan and he estimated the cost of installation approximately \$10,000 to \$15,000 dollars.

EXHIBIT N

STANNARD & COMPANY

ENGINEERS

P.O. BOX 175, BASKING RIDGE, NJ 07920 (908) 766-7300, FAX (908) 766-7301

July 12, 1996

Mr. Thomas J. Morgan, Town Planner
The Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Dear Tom:

I have reviewed your FAX regarding the Proposed Conditions of Approval for Sea-3's new propane tank and I have the following comments:

With respect to item (6) dealing with the combustible gas detectors, I wish to apologize for leaving out an important phrase in my recommendations. On page 9, of my report, I mentioned the gland leaks in the transfer pumps with respect to the addition of the CCTV. However, I also had intended to make the application of my recommendation regarding the combustible gas detectors applicable to only the transfer pump location. I do not believe that additional detectors, other than those already specified by Sea-3 in their FSA are necessary as they are more of a process tool than a reliable emergency detection device. Furthermore, I do not believe that you should put the Fire Chief in the position of designing Sea-3's facility.

My intent of suggesting the possibility of utilizing the optical type detectors was the hope of achieving a broader area of surveillance than the present diffusion type heads provide. I also wanted to leave the decision as to the type of unit up to Sea-3 because the optical type may prove to be inappropriate for that particular service. I might add, that my only exposure to the optical type units has been through advertisements and none of my clients have tried them. Therefore, I would not feel comfortable in specifiying them.

With those thoughts in mind, I would recommend that item (6) be revised to incorporate my second requirement with the addition of the area of the transfer pumps. That provision would then read:

That Sea-3 provide some additional combustible gas detectors to monitor the three transfer pumps, possibly of the optical type if they prove acceptable to Sea-3 from a reliability standpoint and appropriate for the location.

With respect to Item (7), I believe that this requirement of the submission of an as-built plan should be limited to a site

plan, and possibly a P&ID if the Fire Chief and Mr. Bogan decide that such information could be valuable to the Fire Department. A complete set of plans for the facility could easily amount to several hundred drawings that would mean nothing to the Town.

I am not sure what was intended with Item(8), as there will be a myriad of reports generated by the owner, Fluor Daniels, the contractor, local, state and Federal agencies, *ad infinitum*, in the course of the project. I really believe that the provisions of Item (5) should prove adequate for the Board and the Fire Chief. Therefore, I would recommend that Item (8) be deleted.

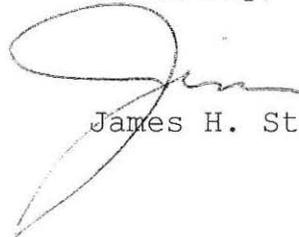
I would also suggest that the first sentence of Item (10) be changed to read:

In addition to the above conditions, Sea-3 shall comply with all of their stated commitments included under part 9.0 **PROPOSED OPERATING SYSTEMS SAFETY EQUIPMENT AND SAFEGUARDS** in the "Sea-3, Inc. Newington Marine Terminal Fire Safety Analysis" (FSA) draft report dated July 1996.

That addition would not only make the requirement more explicit, but would also prevent any future arguments regarding the intent of either Sea-3 or the Planning Board. I do believe that section 9.0 of the FSA adequately covers the items that Mr. Bogan addressed at the July 10 meeting.

It has certainly been a pleasure to work with the Planning Board and I would be more than happy to review any final language before it is adopted or to review any material submitted to the Board or the Fire Chief by either Sea-3 or Fluor Daniels.

Sincerely,



James H. Stannard, Jr.

EXHIBIT O

EXHIBIT P

HENRY RENFREW

Compliance and Response Management, Inc.
Phone (203) 276-1919 Fax (203) 620-0071

July 16, 1996

Mr. Marlon S. Frink, Chairman
Newington Planning Board
Town Hall
Newington, NH 03801

Re: Conditions of Approval - Sea-3's proposed LPG Tank

Dear Mr. Frink:

I have finished my review of the proposed conditions for approval of Sea-3's proposed new additional storage and have the following general comments.

- #1 Several of the conditions need a specific dates of complaince or implementation.
- #2 Some of the conditions are very board in nature and need further clarification.

Comments on each proposed condition:

- #1** Sea-3 shall comply with the applicable requirements of NFPA 58 (1995 edition) for the installation of the additional storage tank and associated piping.

Recommended Change:

- #1 Sea-3 shall comply with the applicable requirements of NFPA 58 (1995 edition) for the installation of the additional storage tank and associated piping. **Section 9-3.3 of NFPA 58 1995 requiring 100 feet of separation from the edge of the dike to the property line that can be built upon, a public way, or a navigable waterway is non applicable. The existing dike is acceptable under Section 1-1.5 Retroactivity and considered grandfathered.**

Comments: The grandfathering of the dike need to be added. NFPA 58 1995 Section 1-1.5 Retroactivity addresses this issue and is included below for your review.

1-1.5 Retroactivity.

The provisions of this standard are considered necessary to provide a reasonable level of protection from loss of life and property from fire and explosion. They reflect situations and the state of the art prevalent at the time the standard was issued. Unless otherwise noted, it is not intended that the provisions of this document be applied to facilities, equipment, appliances, structures, or installations that were in existence or approved for construction or installation prior to the effective date of the document, except in those cases where it is determined by the authority having jurisdiction that the existing situation involves a distinct hazard to life or adjacent property.

1842 Meriden-Waterbury Road PO Box 794 Milldale, CT 06467-0794

Newington Sea-3 Project

Equipment and appliances include stocks in manufacturers' storage, distribution warehouses, and dealers' storage and showrooms in compliance with the provisions of this standard in effect at the time of manufacture.

- #2** *Sea-3 shall comply with the requirements of NFPA 15 (1990 Edition) for any modifications to the existing fixed water spray systems;*

Recommended Change:

- #2** *Sea-3 shall comply with the requirements of NFPA 15 (1990 Edition) for any modifications to the existing fixed water spray systems and **NFPA 25 (1995 Edition) for the inspection, testing and maintenance of the fixed water spray system prior to the erection of the new tank.***

Comments: *The phrase prior to the erection of the new tank is a specific reference point in construction. It means the before the side wall of the proposed tank are added vertically to the foundation, the fixed water spray system must be in compliance with NFPA 15 and 25. It is important that the systems to protect the equipment is up to date because of the potential hazards of construction activities.*

The reason to add NFPA 25. NFPA 15 is entitled Standard for Water Spray Fixed Systems for Fire Protection and dated 1990. The NFPA recently developed the first edition of a new standard NFPA 25 1995 entitled Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems which addresses maintaining the Water Spray Fixed Systems at the Sea-3 facility. NFPA 25 provides instruction on how to conduct inspection, test, and maintenance activities. It also stipulates how often such activities are required to be completed. Requirements are provided for impairment procedures, notification processes, and system restoration. This type of information, where incorporated into a building maintenance program, enhances the demonstrated favorable experience of all water-based fire protection systems. Chapter 7 of NFPA 25 1995 in section 7-1.1 states This chapter provides the minimum requirements for the routine inspection, testing, and maintenance of water spray protection from fixed nozzle systems only.... Furthermore section 7-1.2 states NFPA 15, Standard for Water Spray Fixed Systems for Fire Protection, shall be consulted to determine the requirements for design and installation, including acceptance testing.

- #3** *Sea-3 shall upgrade the existing protective signal alarm system to comply with the requirements of NFPA 72 prior to operation of the proposed additional refrigerated LPG storage tank*

Recommended Change:

- #3** *Sea-3 shall upgrade the existing protective signal alarm system to comply with the requirements of NFPA 72 **acceptable to the Newington Fire Chief** prior to operation of the proposed additional refrigerated LPG storage tank*

Newington Sea-3 Project

Comments: My original proposal did not include the phrase acceptable to the Newington Fire Chief. That is because within the standard the fire chief works with Sea-3 to ensure compliance. Adding the phrase makes sure that the alarm system is not just built and completed but clearly acceptable to fire chief prior to operation of the storage tank. It must be finished and public emergency response satisfied of the alarm system operations.

- #4** Sea-3 shall arrange with Portsmouth Water Works to have one isolation valve added upstream of the facility's connection and another downstream of the connection by Combustion Engineering's blue building.

Recommended Change:

- #4** Sea-3 shall arrange with Portsmouth Water Works to have one isolation valve added upstream of the facility's connection and another downstream of the connection by Combustion Engineering's blue building **prior to the erection of the new tank.**

Comments: The phrase prior to the erection of the new tank is a specific reference point in construction. It means the before the side wall of the proposed tank are added vertically to the foundation, the isolation valves must be in place. It is important that the water supply system is protected by these isolation valves because of the potential hazards of construction activities on scene during erection of the new tank.

- #5** Recommend proposed language.

- #6** Sea-3 shall install additional combustible gas detectors at locations acceptable to the Newington Fire Chief.

Recommended Change:

- ~~**#6** Sea-3 shall install additional combustible gas detectors at locations acceptable to the Newington Fire Chief.~~

Comments: I would recommend deletion of this condition. Sea-3 has clearly indicated that additional detectors will be located between the new and old tank in plans and several other references including condition #10. As far as locating the detectors, that is based on the manufacturers recommendation.

- #7** Agree with Mr. Stannard's comments. How broad this is needs to be clarified.

Newington Sea-3 Project

- #8** *It is not clear to me what the Planning Board has in mind. Reports? That could be hundreds.*
- #9** *Agree with proposed condition. Of concerns to me is if the board desires to add a time period here as to when the retrofit needs to be done. I do not think one should be imposed. If asked my opinion as to the earliest they could retrofit and maintain operations and safety, I would say 7-10 year from now.*
- #10** *I agree with Mr. Stannard's recommendation to limit compliance to Part 9.0 Proposed Operating System Safety Equipment and Safeguards of the draft Fire Safety Analysis dated July 1996.*

I believe these conditions will improve and maintain the effectiveness of plant fire protection and safety monitoring systems; plant and public emergency planning, operations and response; and provide an additional margin of safety to firefighters, emergency response personnel, and the general public.

In closing, I wish to add that Sea-3 has operated safely for over 20 years and these conditions will help ensure another 20 years of safe operation of the facility.

Yours truly,



Henry Renfrew

EXHIBIT Q

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, February 10, 2014

City Councilor Jack Thorsen asked what action they might take to pursue the use of freighters as an alternate to rails. Chairman Hebert said that would involve changing the Jones Act. Vice-Chair Hebert said that would also require a presidential signature. Mr. Bogan said they had looked into that alternative and were told they could get a short-term waiver, but they would also have to build a vessel in that time period, and they were not in that business. Mr. Thorsen said that was all the more reason to insist that the rails be safe.

Chairman Hebert said the Board could not deny Pan Am's operations, but they could say they needed more safety information from the FRA before they approved Sea-3's proposal for expansion. He said the FRA agreed to meet informally, but they said they wouldn't meet in public. He said the FRA was a servant of this country and they needed the FRA to meet in public for transparency so there would be no perception of behind door deals being made. Vice-Chair Marconi agreed with what Ms. Lamson said that a letter should be written to the congressional delegates to put pressure on the FRA to respond. Mr. Morgan said he had been working with Carol Shea-Porter's staff and Senator Shaheen to gain cooperation and they were preparing a letter to the FRA.

Chairman Hebert informed Sea-3 that they could voluntarily request an extension in writing until more information became available, or the Board of Selectmen or the Planning Board could vote for an extension. Mr. Bogan said he understood the concerns and they weren't avoiding the safety issue of a report from the FRA. Chairman Hebert said Mr. Bogan had been very cooperative with the Board.

Chairman Hebert continued the public hearing to March 10, 2014.

Justin Richardson asked if they would get comments on the project from the Fire Chief and Chairman Hebert said he would meet with the new Fire Chief himself. Mr. Stern said they might also need to review the standards with a qualified consultant.

3) Curb Cut Application: Request by **Victoria & Ben Auger** for a driveway off of **Swan Island Lane**, Tax Map 53, Lot 16.

This item was postponed to March 10, 2014 at the applicant's request.

4) Request for Comments pursuant to RSA 674:41 regarding a proposal by **Great Bay Marine, Inc.** to obtain a building permit to construct a residence off a private road, Tax Map 6, Lot 5.

No one appeared for this discussion so the Board moved on to the next item on the agenda.

5) Old Business: Request by **KWA, LLC** for an extension of site plan approval for office building development off **Shattuck Way**, Tax Map 7, Lot 2A.

John Chagnon, P.E., Ambit Engineering appeared before the Board requesting a two year extension for their application that was first approved in January 2010 and received an extension on December 2011.