

**Assessment of Public Comment
6 NYCRR Part 570 - Liquefied Natural Gas**

For Revised Proposed Rule Making

Introduction

On September 11, 2013, the New York State Department of Environmental Conservation (DEC) proposed the adoption of a new regulation (Part 570, “Liquefied Natural Gas,” in Title 6 of the New York Codes, Rules and Regulations (NYCRR)) to establish a permitting program for the safe siting, construction, and operation of liquefied natural gas (LNG) facilities and transportation of LNG in New York State (State). On November 12, 2014, DEC issued a revised proposed Part 570, and responses to comments received on the initial proposal. This assessment of public comments addresses comments received regarding the revisions made to the proposed regulation. Comments were also received on other general issues similar to comments received regarding the first proposal. These are not included in this assessment since they were addressed previously. Approximately 60 comment submittals were received by DEC on the revised proposal. Similar comments were combined and are addressed below. The promulgation of this regulation by DEC is authorized and required by Article 23, Title 17 of the Environmental Conservation Law (herein referred to as the “LNG law”).

Background

One of the most frequent comments received during the initial public comment period was that an upper limit should be set on the volume of LNG that can be stored at facilities. After careful consideration of the issue, DEC revised the proposed regulation to include an upper limit of 70,000 gallons as an allowable total facility capacity. As DEC gains experience with the permitting of LNG facilities, DEC may reconsider the capacity limit in subsequent revisions to Part 570.

Comments and Responses on Revisions to the Proposed Regulation

1. Multiple commenters offered support for DEC’s revised proposed regulations, which now includes a limit on total facility storage capacity of 70,000 gallons. Commenters stated their opinion that the revised regulation would put in place appropriate health and environmental safety criteria for LNG, and would enable those entities looking to build and operate LNG dispensing facilities in New York State to do so.

Response: Comment noted.

2. Multiple commenters stated their opinion that a facility storage capacity limit of 70,000 gallons is a reasonable limit for refueling stations.

Response: Comment noted.

3. Some commenters stated their opinion that there is no justification for limiting the size of the facilities and urged DEC to fulfill its obligations under Article 23, Title 17 of the Environmental Conservation Law by initiating a new rulemaking applicable to all LNG facilities including those designed to store more than 70,000 gallons.

Response: While DEC believes LNG facilities of any size can be operated safely, the revised regulation imposes a 70,000 gallon limit to recognize this volume as the point at which different requirements for large tanks/facilities are set forth in the national standard. DEC will consider modification to the facility capacity limit in a future rule making.

4. Commenters stated that the 70,000 gallon regulatory limit would be an exceedingly conservative approach representing, for example, just one day's worth of storage to meet the energy needs of a large paper mill or a cogeneration facility. One commenter pointed out that NFPA 59A provides for a 280,000 gallon maximum aggregate storage capacity for American Society of Mechanical Engineers (ASME) containers. DEC was urged to reconsider the limit so as not to hinder the development of a level playing field for diverse energy options, through which LNG can provide yet another powerful tool to help New York businesses thrive.

Response: Based on currently available information, the facilities likely to be proposed in the first five years will generally be LNG storage facilities used for vehicle fueling. Capacities of up to 70,000 gallons would be sufficient for this type of application. DEC will consider modification of the facility capacity limit in a future rule making.

5. Commenters stated that the revised proposed regulation fails to comply with the LNG statute because the 70,000 gallon facility capacity cap does not establish criteria to meet the maximum safety standard.

Response: To comply with the statutory requirement to develop a regulation for the storage of LNG, DEC has taken into account the various hazards presented by LNG, reasonable worst case scenarios, the need to establish clear and feasible permitting and operational requirements for those seeking permits, and the various options for balancing each of these sometimes competing factors. DEC believes that the NFPA standards in conjunction DEC's permitting program and the facility capacity limit allows for facilities to safely store LNG and meet the maximum safety standard.

6. A commenter stated that the exemption in §570.1(d)(5) should be clarified to eliminate confusing references. The commenter recommends that the exemption in §570.1(d)(5) be rewritten as follows:

(5) A pre-existing facility may continue to operate, without the need to obtain a permit, provided that:

- i. there are no design changes or operational modifications that lead to an increase in the on-site LNG facility capacity within the boundaries of the facility;*
- ii. a corporate officer of the owner with overall responsibility for the operation of the facility signs and submits part two of a statement of compliance (as defined in §570.1(c)(21)) to the Department within one year of the effective date of this Part, and every five years thereafter; and*
- iii. the Department receives copies of any reports filed by the owner under the provisions of 16 NYCRR 259.5.*

Response: DEC agrees generally with these concerns and has made appropriate modifications in the final regulation.

7. A commenter stated that the revised §570.2(b)(13) requires applicants to submit information pertaining to property boundaries, land use, flood and population data, and current zoning classification to ensure consistency with local land-use laws. The commenter suggested that the amount, quality, and relevance of land-use data vary by municipality, county, and region. Many municipalities do not have zoning regulations, lack baseline land-use data, and/or lack the technical expertise associated with conducting the adequate level of review that the siting of a new LNG facility would entail. Therefore, the commenter recommended that DEC establish accompanying technical resources and siting criteria to allow municipalities to perform a thorough, rigorous review of proposed LNG facilities.

Response: DEC's evaluation of whether a proposed location would be suitable for a specific LNG facility will not be dependent upon the quality or quantity of land-use data available from a municipality. DEC will determine if the siting of a proposed LNG facility would be consistent with any existing land-use requirements established by the municipality and will review any input from the municipality.

8. A commenter noted that although the revised wording of revised §570.1(c)(4) seems to clarify that a tank trailer used for the dispensing of LNG at a refueling station would in fact constitute an LNG facility, it is not clear from DEC's response that this applies to tank trailers that are temporarily immobile. For example, in Response 3.5.2 of the DEC's assessment of public comment from the initial proposal, DEC seems to suggest that LNG operations that liquefy and then immediately transport LNG would not require a Part 570 permit. This ambiguity should be resolved and this potential loophole closed.

Response: Consistent with the LNG law, Part 570 distinguishes between "storage" and "LNG transportation activities." The LNG law makes it clear that the transportation of LNG does not require a Part 570 permit but the storage of LNG or conversion back to a gas does. The revision makes it clear that a tank trailer normally used for transportation cannot be used as a de facto storage tank without a permit. This would occur if a trailer were parked ("temporarily immobile") but used to periodically dispense LNG, rather than to continuously load or unload. If natural gas is liquefied and continuously loaded onto a trailer which is subsequently transported, an LNG facility permit is not needed, even if the loading process takes a relatively long time (e.g., more than a day). If, however, LNG was intermittently dispensed from the trailer to vehicles, a permit would be required because the trailer is being used for storage.

9. A commenter stated that the use of the words "permit" and "permittee" in §570.3 creates confusion for owners of pre-existing facilities. To avoid this confusion, the commenter recommends a new sentence numbered as 570.3(f): "The provisions outlined in 570.3(a) through 570.3(e) do not apply to facilities that meet the definition of "pre-existing facilities" in 570.1(d)(5)."

Response: Pre-existing facilities are not permitted facilities and hence the requirements in §§570.3(a) through 570.3(e) do not directly apply. However, several of the substantive requirements of these provisions do currently apply to the pre-existing facilities. DEC will continue to work with pre-existing facilities to ensure that there is no duplication or conflicts between regulatory requirements and those in current or subsequent orders.

10. A commenter stated that §570.5 ("pre-existing facilities") should be consistent with the permitting exemption in §570.1(d)(5) for pre-existing facilities or deleted as redundant. It appears that the provisions of 570.5 may be duplicative of the language in 570.1(d)(5); however, if DEC is intending to convey the message that DEC will consider an expansion of a pre-existing facility as long as that facility applies for a permit in advance, the commenter recommends the following modifications to the text:

§ 570.5 Pre-existing Facilities.

All pre-existing LNG facilities may continue to operate without a permit so long as the facility remains in compliance with the three provisions of §570.1(d)(5). Any proposed design changes or operational modifications that could lead to an increase in the on-site LNG facility capacity must be authorized in advance by a permit applied for and issued pursuant to this Part.

Response: DEC has made an appropriate change in the final regulation.

11. A commenter stated that the revised draft definition of “LNG facility” should be strengthened to prevent industry attempts to avoid the 70,000 gallon storage volume limit by modifying the proposed regulation in the following manner:

“Liquefied natural gas facility” or “LNG facility” means any structure or facility group [sic] of structures that are located on one or more contiguous or adjacent properties under common control that is used to store LNG in a tank system, or other storage device or group of storage devices or to convert LNG into natural gas.”

Response: DEC has clarified the definition of LNG facility to address this concern in the final regulations.

12. A commenter recommended that §570.1(d)(1) and §570.1(d)(4) be further revised to state that only on-board LNG fuel tanks “used solely to power” or “used exclusively to power” an LNG-fueled vehicle or vessel are exempt. The concern was raised that DEC states in Response 4.1.2 in the initial response to comments that the exemptions provided by §570.1(d)(1) cover the special case of vehicles or vessels that use boiled-off gas or LNG for propulsion from tanks that are otherwise intended for storage. Using boil-off gas to fuel a vessel or vehicle to transport LNG should require a permit.

Response: DEC has not made this suggested change, because the activity described would be, if ever developed and used, a transportation activity, which is excluded from permitting under the law.

13. A commenter stated that without a sufficient and reliable funding source to administer a new LNG program, and in light of findings by Comptroller DiNapoli that the DEC is already seriously underfunded, it is apparent that DEC will not be equipped to regulate the expanded development of LNG facilities in New York State. Until significant additional staff and funding is provided through fees imposed on the industry or through the State, the LNG regulatory program is illusory. In the absence of funding for enforcement, the public cannot be protected.

Response: In accordance with §570.2(k), DEC will be able to recover all costs associated with the administration and enforcement of this Part.

14. A commenter recommends that DEC revise the current proposal’s reference to the NFPA 59A standards. While the NFPA 52 standards apply to LNG vehicle fueling systems, the NFPA 59A standards do not. As currently drafted, the proposed regulations state that all LNG facilities would be subject to applicable provisions of both the NFPA 52 and the NFPA 59A standards. This may create confusion as to which standards apply to LNG vehicle fueling systems, including potential rail and maritime fueling infrastructure.

Response: In order to eliminate any confusion, DEC has clarified the requirements of this provision in the final regulation.

15. A commenter suggests that confusion is caused for pre-existing facilities by DEC's reference to the 2013 edition NFPA 59A. The revised proposed §570.2(d)(1) states that "All LNG facilities must comply with all applicable provisions of the August 29, 2012 (2013 edition) of NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas." This statement appears within revised proposed §570.2 which is entitled "Permit Requirements and Application Procedures" - if DEC does not intend to include pre-existing facilities in this statement then the sentence should be rewritten, "All LNG facilities (except pre-existing facilities) must comply with ... " to eliminate any confusion. If DEC intends that all facilities, including pre-existing facilities, must comply with the 2013 edition of the NFPA 59A standard, it must resolve the conflicts that the revised proposed rule sets up with Federal regulations. In fact, 49 CFR 1932 - the standard which the commenter’s facility is audited against by the annual Department of Public Service inspection,

requires operators to comply with portions of two specific editions of NFPA 59A: 2001 and 2006. If DEC fails to include a mechanism for resolving any differences that may arise in these various versions of NFPA standards, it may be almost impossible for an owner to file an accurate "statement of compliance" attesting that the facility will be operated in accordance with all applicable law, regulations, standards, and requirements.

Response: DEC has clarified in the final rule that the requirement to comply with the 2013 edition of the NFPA standard does not apply to pre-existing facilities. DEC will evaluate the differences between the NFPA editions to determine if there are any substantive changes that should be applied to the pre-existing facilities. If so, these changes will be addressed in modifications of the existing orders that authorize these facilities to operate.

16. A commenter stated that with respect to emergency preparedness, DEC has added a requirement that records of training be maintained. However no clarity has been provided as to the scope of training, whether it is mandatory, or what measures must be in place to ensure that local responders actually have the training, equipment, and staff needed to effectively respond to emergencies. The commenter goes on to state that in Response 4.3.2 from the initial response to comments, DEC elaborates on various measures that it claims would be employed by OFPC and DEC, but none of those measures are actually identified in the Regulations. As such there is no assurance that they would in fact be carried out. These necessary details should be included in any final regulations.

Response: It would be inappropriate to provide this level of detail in the regulation. DEC will be issuing guidance to address these issues. DEC is consulting with NYS Office of Fire Prevention and Control (OFPC) to define the personnel, training, and equipment necessary for each LNG facility.

17. A commenter stated that only limited improvements have been made with respect to record keeping. No requirements for maintaining records relating to equipment monitoring and replacement, safety inspections, accident reports or other aspects of operations are identified. Improvements have been made to ensure that LNG spills in excess of one gallon are reported. However the requirement for submitting a written report has been inappropriately extended from 48 hours to ten days, and the exempting phrase "or as otherwise directed by the Department" has been inserted which suggests this requirement could in fact be waived.

Response: Records relating to the issues identified in the comment are required by the NFPA standards and the revised proposed regulation requires that these records be kept. DEC modified the requirement for the written report to allow up to 10 days to ensure that the report is thorough and complete which is not always possible within 48 hours. In addition, the phrase "or otherwise as directed by the Department" allows the DEC to require submission of the report in less time, if appropriate.

18. A commenter noted that DEC should retain authority to perform unannounced inspections.

Response: The final regulation includes a clear statement that DEC may conduct inspections at LNG facilities without prior notice to the operator.