S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. COLTON, PHEFFER, CASTRO -- Multi-Sponsored by -- M. of A. COOK, MAISEL, PERRY, THIELE, WEISENBERG -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing certain requirements for environmental safety permits for liquefied natural gas facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 23-1711 of the environmental conservation law, as amended by chapter 233 of the laws of 1979, is amended to read as follows:

S 23-1711. [Permit processing] ENVIRONMENTAL SAFETY PERMIT FOR CONSTRUCTION OR IMPROVEMENT OF LIQUEFIED NATURAL OR PETROLEUM GAS FACILITY.

1. Any person desiring to construct, reconstruct, enlarge the storage capacity or, if constructed but unused, put into actual use and operation a liquefied natural or petroleum gas facility, TERMINAL OR RELATED PIPELINE in the state shall obtain [a] AN ENVIRONMENTAL SAFETY permit pursuant to this section.

2. THE DEPARTMENT SHALL HOLD A PUBLIC HEARING IN THE DESIGNATED REGION WHERE A LIQUEFIED NATURAL OR PETROLEUM FACILITY, TERMINAL OR RELATED PIPELINE SHALL BE CONSTRUCTED. Notice of [any] SUCH public hearing conducted in connection with [any] SUCH environmental safety permit shall be published in at least two newspapers having a general circulation in the area in which the proposed activity is located, and in contiguous areas potentially affected by the proposed action.

3. The department shall INFORM THE NEW YORK RESEARCH AND DEVELOPMENT AUTHORITY, COUNTY EXECUTIVES AND MUNICIPAL OR LOCAL LEADERS THAT AN APPLICATION EXISTS FOR SUCH PERMIT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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4. THE DEPARTMENT SHALL render a decision based upon the record either granting the permit, denying it, or granting it upon such terms, conditions, limitations, or modifications thereof as the department may deem appropriate.

A. THE DEPARTMENT SHALL APPROVE THE APPLICATION FOR THE PERMIT OR AUTHORIZATION ONLY IF, IN CONSULTATION WITH THE NEW YORK RESEARCH AND DEVELOPMENT AUTHORITY, IT ISSUES A WRITTEN FINDING THAT:

(I) A SIGNIFICANT NEED EXISTS WITHIN NEW YORK STATE FOR NATURAL GAS THAT THE LIQUEFIED NATURAL GAS TERMINAL SHALL MEET;

(II) SOURCES OF NATURAL GAS IN NORTH AMERICA ARE INSUFFICIENT TO MEET THE SIGNIFICANT NEED SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH;

(III) THE PRICE OF NATURAL GAS DERIVED FROM LIQUEFIED NATURAL GAS SUPPLIED BY THE TERMINAL FACILITY SHALL NOT EXCEED THE PRICE OF NATURAL GAS AVAILABLE FROM OTHER SOURCES OF NATURAL GAS IN NORTH AMERICA; AND

(IV) THE OPERATION OF THE LIQUEFIED NATURAL GAS TERMINAL IS CONSISTENT WITH NEW YORK STATE STRATEGIES FOR ADDRESSING CLIMATE CHANGE.

B. The department shall deny a permit if residential areas and contiguous populations, will be endangered, or it otherwise does not conform to the siting criteria established for liquefied natural or petroleum gas facilities, or the department finds that the facility is not necessary, or is otherwise not in the public interest to be approved.

S 2. Section 23-1709 of the environmental conservation law, as amended by chapter 233 of the laws of 1979, is amended to read as follows:

S 23-1709. Criteria for siting.

1. The department shall, after investigation and opportunity for public comment, within one year from the effective date of this section, adopt, and file with the secretary of state, regulations establishing criteria for the siting of liquefied natural and petroleum gas facilities. Such siting criteria shall be designed to insure the maximum safety of the public from hazards associated with liquefied natural or petroleum gas storage, transportation and conversion. The department shall also within one year from such effective date adopt regulations prescribing the form and content of applications for environmental safety permits to construct a liquefied natural or petroleum gas facility.

2. The regulations issued pursuant to subdivision one of this section for the siting of liquefied natural or petroleum gas facilities shall take into account, among other factors:

(a) The density of population in areas neighboring the liquefied natural or petroleum gas facility;

(b) The density of population in areas neighboring delivery routes of liquefied natural or petroleum gas to a liquefied natural or petroleum gas facility, if delivery is by water-borne vessel, rail or motor vehicle;

(c) The risk of accident during the transportation of liquefied natural or petroleum gas to or from a liquefied natural or petroleum gas facility which could result in a release of liquefied natural or petroleum gas from containment and the safeguards necessary to reduce such risk;

(d) The physical properties of liquefied natural or petroleum gas, including: (i) the effect of cryogenic temperatures upon containers of liquefied natural or petroleum gas; (ii) the maximum distance that a liquefied natural or petroleum gas vapor cloud is projected to expand and pose a threat to the public; and, (iii) the flammability or explosiveness of such a cloud formed by vaporizing liquefied natural or petroleum gas.

3. The regulations issued by the department pursuant to subdivision one OF THIS SECTION prescribing the form of an application for an environmental safety permit to construct a liquefied natural or petroleum gas facility shall require the applicant to supply detailed information regarding:

(a) The location of the proposed facility;

(b) A description of the design and capacity of the facility;

(c) The expected sources of natural gas or liquefied natural or petroleum gas for the facility, the proposed methods of transporting natural gas or liquefied natural or petroleum gas to and from the facility, and the routes which deliveries will traverse;

(d) The need for the facility;

(e) The environmental impacts of the proposed facility;

(f) A description of reasonable alternative locations for the proposed facility;

(g) Such other information as the department shall prescribe to allow it to render a decision as to whether the proposed liquefied natural or petroleum gas facility is necessary and compatible with the surrounding environment and with the safety of neighboring populations.

4. A LIQUEFIED NATURAL GAS TERMINAL, AND ANY PIPELINE DIRECTLY RELATED TO THE TERMINAL, SHALL NOT ADVERSELY AFFECT THE BENEFICIAL USE, INCLUDING BUT NOT LIMITED TO, COMMERCIAL AND RECREATIONAL FISHING, RECREATION, AGRICULTURAL AND WILDLIFE, OF THE WATERS SURROUNDING THE TERMINAL AND ANY PIPELINE DIRECTLY RELATED TO THE TERMINAL.

5. THE DEPARTMENT SHALL NOT WAIVE ITS RIGHTS UNDER 33 U.S.C. 1341 REGARDING CERTIFICATION, OR ITS AUTHORITY TO ISSUE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS UNDER 33 U.S.C. 1342, REGARDING A LIQUEFIED NATURAL GAS TERMINAL.

6. THE DEPARTMENT SHALL REVIEW WATER QUALITY STANDARDS THAT ARE AFFECTED BY THE PROVISIONS OF THIS SECTION AND SECTION 23-1711 OF THIS TITLE IN ORDER TO ESTABLISH WATER QUALITY STANDARDS CONSISTENT WITH THIS SECTION AND SECTION 23-1711 OF THIS TITLE WITHIN ONE YEAR AFTER THIS ACT SHALL HAVE BECOME A LAW. THE DEPARTMENT SHALL SUBMIT THE WATER QUALITY STANDARDS AT THE NEXT REGULARLY SCHEDULED REVIEW OF NEW YORK STATE'S WATER QUALITY STANDARDS PURSUANT TO 33 U.S.C. 1313.

7. The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern environmental safety permit applications, renewals, modifications, suspensions and revocations under this title.

S 3. This act shall take effect immediately; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.