

State of New Hampshire
Site Evaluation Committee

Martin P. Honigberg, Esquire
Chairman

Thomas S. Burack, Esquire
Vice-Chair

Pamela G. Monroe
SEC Administrator

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July 6, 2016

Scott F. Eaton, Director
Office of Legislative Services
Division of Administrative Rules
State House Annex, Room 219
25 Capitol Street
Concord, NH 03301

RE: Notice No. 2016-78 – Final Proposal
Site 301, Requirements for Applications for Certificates
Site 302, Enforcement of Terms and Conditions
SEC Docket No. 2016-01

Dear Mr. Eaton:

On May 18, 2016, the Site Evaluation Committee (Committee) filed a rulemaking notice with your office that was published in the Rulemaking Register on May 26, 2016. A public hearing on the Initial Proposal was held on June 17, 2016, and written comments were accepted through June 22, 2016.

On June 30, 2016, the Committee considered the public comments received, and voted to adopt and establish the Final Proposal. The Committee requests that the Joint Legislative Committee on Administrative Rules consider this Final Proposal for approval. As required by the Rulemaking Manual, enclosed please find one copy of each of the following:

- A completed Appendix II-G, Cover Sheet for Final Proposal;
- The established text of the Final Proposed rule as the “Final Proposal – Fixed Text,” including the cross-reference table required by RSA 541-A:3-a, II, as Appendix A, and the incorporation by reference information table as Appendix B;
- The established text of the Final Proposed rule as the “Final Proposal – Annotated;” and
- Completed Appendix II-H, Incorporation by Reference Statements.

Thank you for your assistance with this matter. If you have any questions regarding this filing, please contact Pamela Monroe, Administrator, as the contact person for the Committee. She can be reached at 271-2435, or via e-mail at pamela.monroe@sec.nh.gov.

Sincerely,



Martin P. Honigberg
Chair
Site Evaluation Committee

Attachments

Ec: Service List-

COVER SHEET FOR FINAL PROPOSAL

Notice Number **2016-78** Rule Number **Site 301.03(e); 301.08 intro.,
(c) & (d); 301.14(f); 302.01(f);
302.02(d); 302.03(d) & (e)**

<p>1. Agency Name & Address:</p> <p>Site Evaluation Committee Pamela G. Monroe, Administrator 21 South Fruit Street, Suite 10 Concord, NH 03301-2429</p>	<p>2. RSA Authority: RSA 162-H:10,VI; RSA 162-H:10-b,II</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adopt</p> <p><input checked="" type="checkbox"/> Amendment</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Enforcement and High Pressure Natural Gas Pipeline Amendments**

6. Contact person for copies and questions:

Name:	Pamela G. Monroe	Title:	Administrator
Address:	21 South Fruit Street, Suite 10 Concord, NH 03301-2429	Phone #:	603-271-2435

7. Yes No Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on **May 26, 2016**

9. Yes N/A Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

10. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

13. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

The agency shall then indicate, by checking the appropriate box on Item 7, whether it is requesting that it receive and respond to comments of the Committee legal staff prior to the Committee meeting that is at least 28 days, but not more than 60 days, after the proposal is filed. In effect, this would be a request for postponement of Committee action. See RSA 541-A:12, I-a and Section 2.14 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules (Manual).

In Item 8 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

In Item 9 the agency shall indicate, by checking either the “Yes” box or the “N/A” (not applicable) box, whether it had notified the House and Senate policy committees, or the House Speaker and Senate President, pursuant to RSA 541-A:10, I because the Initial Proposal was the first time the rule or its amendments had been proposed to implement newly-enacted state authority.

Items 10 through 13 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Item 10 is required in every filing, and therefore is listed without a check-box. Items 11 through 13 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 10. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 11. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

Amend Site 301.01(e), effective 12-16-15 (Document #10994), cited and to read as follows:

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.03 Contents of Application.

(e) If the application is for an energy facility, including an energy transmission pipeline, that is not an electric generating facility or an electric transmission line, the application shall include:

- (1) The type of facility being proposed;
- (2) A description of the process to extract, produce, manufacture, transport or refine the source of energy;
- (3) The facility's size and configuration;
- (4) The ability to increase the capacity of the facility in the future;
- (5) Raw materials used or transported, as follows:
 - a. An inventory, including amounts and specifications;
 - b. A plan for procurement, describing sources and availability; and
 - c. A description of the means of transportation;
- (6) Production information, as follows:
 - a. An inventory of products and waste streams, including blowdown emissions from a high pressure gas pipeline;
 - b. The quantities and specifications of hazardous materials; and
 - c. Waste management plans;
- (7) A map showing the entire energy facility, including, in the case of an energy transmission pipeline, the location of each compressor station, pumping station, storage facility, and other ancillary facilities associated with the energy facility, and the corridor width and length in the case of a proposed new route or widening along an existing route; and
- (8) For a high pressure gas pipeline, the following information:
 - a. Construction information, including a description of the pipe to be used, depth of pipeline placement, type of fuel to be used to power any associated compressor station, and a description of any compressor station emergency shutdown system;
 - b. Proposed construction schedule, including start date and scheduled completion date;
 - c. Operation and maintenance information, including a description of measures to be taken to notify adjacent landowners and minimize sound during blowdown events;

- d. Copy of any proposed plan application or other documentation required to be submitted to the Federal Energy Regulatory Commission in connection with construction and operation of the proposed facility; and
- e. Copy of any environmental report, assessment or impact statement prepared by or on behalf of the Federal Energy Regulatory Commission when it becomes available.

Amend Site 301.08, effective 12-16-15 (Document #10994), by inserting (c), renumbering the existing (c) as (d), so that Site 301.08 intro., (c) and (d) are cited and read as follows:

Site 301.08 Effects on Public Health and Safety. Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed energy facility on public health and safety:

(c) For high pressure gas pipelines:

- (1) A comprehensive health impact assessment prepared by an independent health and safety expert in accordance with nationally recognized standards, and specifically designed to identify and evaluate potential short-term and long-term human health impacts by identifying potential pathways for facility-related contaminants to harm human health, quantifying the cumulative risks posed by any contaminants, and recommending necessary avoidance, minimization, or mitigation;
- (2) A sound and vibration impact assessment prepared by an independent expert in the field, in accordance with ANSI/ASA S12.9-2013 Part 3 for short-term monitoring and with ANSI S12.9-1992 2013 Part 2 for long-term monitoring, including the reports of a preconstruction sound and vibration background study and a sound and vibration modeling study;
- (3) A description of planned setbacks that indicate the distance between:
 - a. The proposed high pressure gas pipeline and existing buildings on, and the boundaries of, abutting properties;
 - b. Any associated compressor station and schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms within a one mile radius; and
 - c. The proposed high pressure gas pipeline and any overhead or underground electric transmission line within 1/2 mile;
- (4) An explanation of why the setbacks described by the applicant in response to (3), above, are adequate to protect the public from risks associated with the operation of the high pressure gas pipeline; and
- (5) A description of all permanently installed exterior lighting at compressor stations and how it complies with Site 301.14(f)(5)c.

(d) For all energy facilities:

(1) Except as otherwise provided in (a)(1) above, an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 decibel A-weighted (dBA) or more over background levels, measured at the L-90 sound level, at the property boundary of the proposed facility site or, in the case of an electric transmission line or an energy transmission pipeline, at the edge of the right-of-way or the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;

(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:

a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;

b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;

c. All transformers shall be transported off-site; and

d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place;

(3) A plan for fire safety prepared by or in consultation with a fire safety expert;

(4) A plan for emergency response to the proposed facility site; and

(5) A description of any additional measures taken or planned to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility, and the alternative measures considered but rejected by the applicant.

Amend Site 301.14(f), effective 12-16-15 (Document #10994), cited and to read as follows:

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

(f) In determining whether a proposed energy facility will have an unreasonable adverse effect on public health and safety, the committee shall:

(1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24, the potential adverse effects of construction and operation of the proposed facility on public health and safety, the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

(2) For wind energy systems, apply the following standards:

a. With respect to sound standards, the A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA

above background levels, measured at the L-90 sound level, between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above background levels, measured at the L-90 sound level, at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property that is used in whole or in part for permanent or temporary residential purposes, at a location between the nearest building on the property used for such purposes and the closest wind turbine; and

b. With respect to shadow flicker, the shadow flicker created by the applicant's energy facility during operations shall not occur more than 8 hours per year at or within any residence, learning space, workplace, health care setting, outdoor or indoor public gathering area, or other occupied building;

(3) For wind energy systems, consider the proximity and use of buildings, property lines, public roads, and overhead and underground energy infrastructure and energy transmission pipelines, the risks of ice throw, blade shear, tower collapse, and other potential adverse effects of facility operation, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

(4) For electric transmission lines, consider the proximity and use of buildings, property lines, and public roads, the risks of collapse of towers, poles, or other supporting structures, the potential impacts on public health and safety of electric and magnetic fields generated by the proposed facility, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

(5) For high pressure gas pipelines, apply the following standards:

a. With respect to sound standards for interstate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed a day-night sound level (Ldn) of 55 dBA at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k), available as noted in Appendix B;

b. With respect to sound standards for intrastate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed the standards set forth in (2)a., above, regarding wind energy systems;

c. With respect to vibration, compressor stations or modifications of existing compressor stations shall not result in a perceptible increase in vibration at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k), available as noted in Appendix B, or a level of 2.0 peak particle velocity, whichever is less;

d. With respect to exterior lighting at compressor stations, no light shall be projected above the horizontal plane or projected beyond the property lines;

e. With respect to pipeline construction and safety, the requirements in Puc 506 and Puc 508 for a class 4 location in a high consequence area, as those terms are defined in 49 CFR §192.5(b)(4) and 49 CFR §192.903, available as noted in Appendix B, respectively; and

- (6) For high pressure gas pipelines, consider:
- a. The results of the comprehensive health impact assessment;
 - b. The proximity of electric transmission lines to the high pressure gas pipeline;
 - c. The proximity of any compressor station to schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms;
 - d. The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects; and
 - e. The extent to which the measures in d. represent best practical measures.

Amend Site 302.01(f) and Site 302.02(d), effective 12-16-15 (Document #10994), cited and to read as follows:

PART Site 302 ENFORCEMENT OF TERMS AND CONDITIONS

Site 302.01 Determination of Certificate Violation.

(f) If the committee determines following the adjudicative proceeding that a certificate violation has occurred and is continuing, the committee shall issue an order that suspends the holder's certificate until such time as the violation has been corrected if the committee determines, after due consideration of any mitigating circumstances and a determination of whether suspension is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that the following criteria have been met:

- (1) The violation will not be terminated within 30 days from the date of the committee's decision; and
- (2) The violation will have an unreasonable adverse effect pursuant to Site 301.14 on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.

Site 302.02 Determination of Misrepresentation or Non-Compliance.

(d) If the committee determines following the adjudicative proceeding that a material misrepresentation or violation of RSA 162-H or its rules has occurred, the committee shall issue an order that suspends the holder's certificate until such time as the holder has corrected and mitigated the consequences of such misrepresentation or violation if the committee determines, after due consideration of any mitigating circumstances and a determination of whether suspension is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that the following criteria have been met:

- (1) The violation will not be terminated within 30 days from the date of the committee's decision; and
- (2) The violation will have an unreasonable adverse effect pursuant to Site 301.14 on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.

Amend Site 302.03, effective 12-16-15 (Document #10994), by inserting (d) and renumbering the existing (d) as (e), so that Site 302.03(d) and (e) are cited and read as follows:

Site 302.03 Revocation of Certificate.

(d) Following the adjudicative proceeding, the committee shall revoke the holder's certificate if the committee determines, after due consideration of any mitigating circumstances and a determination of whether revocation is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that one or more of the following criteria have been met:

- (1) The certificate holder obtained the certificate through fraud, deceit, or falsification;

(2) The certificate holder knowingly violated the rules of the committee, the conditions of the holder's certificate, or the rules or permits of any agency that participated in the holder's certificate proceeding;

(3) The certificate holder failed to comply with an order of the committee or an order imposed as a result of a judicial action taken to enforce any statute or rule implemented by the committee, unless the certificate holder is complying in accordance with a compliance schedule and is current with all items; or

(4) The certificate holder is a chronic non-complier.

(e) If the holder's certificate is revoked by order of the committee, then the holder shall permanently cease construction or operation of the energy facility subject to the certificate as of the time specified in the order and shall commence and complete decommissioning of the facility within the time period specified in the order.

APPENDIX A

Proposed Rule	Statute
Site 301.03(e)	RSA 162-H:7,IV and V
Site 301.08 intro., (c) and (d)	RSA 162-H:7,IV and V; 10-b,II
Site 301.14(f)	RSA 162-H:10-b,II
Site 302.01(f)	RSA 162-H:10,VI and VII, 12
Site 302.02(d)	RSA 162-H:10,VI and VII, 12
Site 302.03(d) and (e)	RSA 162-H:10,VI and VII, 12

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

RULE	TITLE/CITATION (DATE)	SOURCE
Site 301.08(c)(2)	ANSI/ASA S12.9-2013 Part 3 Quantities and Procedures for Description and Measurement of Environmental Sound – Part 3: Short-term Measurements with an Observer Present	Published by American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for \$115.00 at: http://webstore.ansi.org
Site 301.08(c)(2)	ANSI/ASA S12.9-1992 2013 Part 2, Quantities and Procedures for Description and Measurement of Environmental Sound. Part 2: Measurement of long-term, wide- area sound	Published by American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for \$100.00 at: http://webstore.ansi.org
Site 301.14(f)(5)a. & c.	18 C.F.R. §380.12(k) (2016)	Available from U.S. Government Publishing Office, http://www.gpo.gov
Site 301.14(f)(5)e.	49 C.F.R. §192.5(b)(4) (2016)	Available from U.S. Government Publishing Office, http://www.gpo.gov
Site 301.14(f)(5)e.	49 C.F.R. §192.903 (2016)	Available from U.S. Government Publishing Office, http://www.gpo.gov

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **Site Evaluation Committee**

2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	Pamela G. Monroe	Title:	Administrator
Address:	21 South Fruit Street, Suite 10 Concord, NH 03301-2429	Phone #:	603-271-2435

3. Specific rule number where the material is incorporated: **Site 301.08(c)(2)**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) or, if the material is undated Internet content, the date the material was accessed and printed, and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.

6. How the material incorporated can be obtained by the public (include cost and the address of the unrelated third party which published the material, and the Internet source URL if it appears in the rule, for example if the material is Internet content only available online).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: July 6, 2016

Signature: 

Name: MARTIN HONIGBERG

Title: CHAIR, SITE EVALUATION Comm

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

INCORPORATION BY REFERENCE STATEMENT

Rulemaking Notice No. 2016-78

Site 301.08(c)(2)

4. ANSI/ASA S12.9-2013 Part 3 Quantities and Procedures for Description and Measurement of Environmental Sound – Part 3: Short-term Measurements with an Observer Present, is prepared and published by the American National Standards Institute (ANSI) and the Acoustical Society of America (ASA).
5. The agency did not modify the text.
6. A copy of ANSI/ASA S12.9-2013 Part 3 can be obtained in hard copy or in electronic form from the American National Standards Institute for \$115.00. A copy can be purchased online at <http://webstore.ansi.org/> or by mailing a request to American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036, telephone no. 212-642-4980.
7. The agency chose not to reproduce the incorporated materials because the document is protected by copyright.

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **Site Evaluation Committee**
2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	Pamela G. Monroe	Title:	Administrator
Address:	21 South Fruit Street, Suite 10 Concord, NH 03301-2429	Phone #:	603-271-2435

3. Specific rule number where the material is incorporated: **Site 301.14(f)(5)a. & c.**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) or, if the material is undated Internet content, the date the material was accessed and printed, and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.

6. How the material incorporated can be obtained by the public (include cost and the address of the unrelated third party which published the material, and the Internet source URL if it appears in the rule, for example if the material is Internet content only available online).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: July 6, 2016

Signature: 

Name: MARTIN NONISBERG

Title: CHAIR, SITE EVALUATION COMM.

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

INCORPORATION BY REFERENCE STATEMENT

Rulemaking Notice No. 2016-78

Site 301.14(f)(5)a. & c.

4. Title 18, Code of Federal Regulations, section 380.12(k), was promulgated by the U.S. Environmental Protection Agency.
5. The agency did not modify the text.
6. A copy of 18 C.F.R. §380.12(k) can be obtained in electronic form from the U.S. Government Publishing Office for free. A copy can be downloaded at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.
7. The agency chose not to reproduce the incorporated materials to reduce the length of the rule and to insure that the state rule would not differ from the federal regulation.

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **Site Evaluation Committee**
2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	Pamela G. Monroe	Title:	Administrator
Address:	21 South Fruit Street, Suite 10 Concord, NH 03301-2429	Phone #:	603-271-2435

3. Specific rule number where the material is incorporated: **Site 301.14(f)(5)e.**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) or, if the material is undated Internet content, the date the material was accessed and printed, and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.

6. How the material incorporated can be obtained by the public (include cost and the address of the unrelated third party which published the material, and the Internet source URL if it appears in the rule, for example if the material is Internet content only available online).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: July 6, 2016

Signature: 

Name: MARTIN HOWIS BERGS

Title: CHAIR, SITE EVALUATION COMM

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

INCORPORATION BY REFERENCE STATEMENT

Rulemaking Notice No. 2016-78

Site 301.14(f)(5)e.

4. Title 49, Code of Federal Regulations, sections 192.5(b)(4) and 192.903, were promulgated by the U.S. Environmental Protection Agency.
5. The agency did not modify the text.
6. Copies of 49 C.F.R. §192.5(b)(4) and 192.903 can be obtained in electronic form from the U.S. Government Publishing Office for free. A copy can be downloaded at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.
7. The agency chose not to reproduce the incorporated materials to reduce the length of the rule and to insure that the state rule would not differ from the federal regulations.

Amend Site 301.01(e), effective 12-16-15 (Document #10994), cited and to read as follows:

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.03 Contents of Application.

(e) If the application is for an energy facility, including an energy transmission pipeline, that is not an electric generating facility or an electric transmission line, the application shall include:

- (1) The type of facility being proposed;
- (2) A description of the process to extract, produce, manufacture, transport or refine the source of energy;
- (3) The facility's size and configuration, ~~including, for a high pressure gas pipeline, any associated compressor station(s);~~
- (4) The ability to increase the capacity of the facility in the future;
- (5) Raw materials used or transported, as follows:
 - a. An inventory, including amounts and specifications;
 - b. A plan for procurement, describing sources and availability; and
 - c. A description of the means of transportation;
- (6) Production information, as follows:
 - a. An inventory of products and waste streams, including blowdown emissions from a high pressure gas pipeline ~~and any associated compressor station(s);~~
 - b. The quantities and specifications of hazardous materials; and
 - c. Waste management plans;
- (7) A map showing the entire energy facility, including, in the case of an energy transmission pipeline, the location of each compressor station, pumping station, storage facility, and other ancillary facilities associated with the energy facility, and the corridor width and length in the case of a proposed new route or widening along an existing route; and
- (8) For a high pressure gas pipeline, the following information:
 - a. Construction information, including a description of the pipe to be used, depth of pipeline placement, type of fuel to be used to power any associated compressor station, and a description of any compressor station emergency shutdown system;
 - b. Proposed construction schedule, including start date and scheduled completion date;
 - c. Operation and maintenance information, including a description of measures to be taken to notify adjacent landowners and minimize sound during blowdown events ~~at pipelines and compressor stations;~~

d. Copy of any proposed plan application or other documentation required to be submitted to the Federal Energy Regulatory Commission in connection with construction and operation of the proposed facility; and

e. Copy of any environmental report, assessment or impact statement prepared by or on behalf of the Federal Energy Regulatory Commission when it becomes available.

Amend Site 301.08, effective 12-16-15 (Document #10994), by inserting (c), renumbering the existing (c) as (d), so that Site 301.08 intro., (c) and (d) are cited and read as follows:

Site 301.08 Effects on Public Health and Safety. Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed energy facility on public health and safety:

(c) For high pressure gas pipelines:

(1) A comprehensive health impact assessment ***prepared by an independent health and safety expert in accordance with nationally recognized standards, and*** specifically designed to identify and evaluate potential ***short-term and long-term*** human health impacts by identifying potential pathways for facility-related contaminants to harm human health, quantifying the cumulative risks posed by any contaminants, and recommending necessary avoidance, minimization, or mitigation;

(2) A sound and vibration impact assessment prepared by an ***independent*** expert in the field, in accordance with ANSI/ASA S12.9-2013 Part 3 for short-term monitoring and with ANSI S12.9-1992 2013 Part 2 for long-term monitoring, ~~which assessment shall include~~ ***including*** the reports of a preconstruction sound and vibration background study and a sound and vibration modeling study;

(3) A description of planned setbacks that indicate the distance between:

a. The proposed ***high pressure gas*** pipeline and existing buildings on, and the boundaries of, abutting properties;

b. Any associated compressor station and schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms within a one mile radius; and

c. The proposed ***high pressure gas*** pipeline and any overhead or underground electric transmission line within 1/2 mile ~~of the pipeline~~;

(4) An explanation of why the setbacks described by the applicant in response to (3), above, are adequate to protect the public from risks associated with the operation of the ***high pressure gas*** pipeline ~~and any associated compressor station~~; and

(5) A description of all permanently installed exterior lighting at compressor stations and how it complies with Site 301.14(f)(5)c.

(d) For all energy facilities:

(1) Except as otherwise provided in (a)(1) above, an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 decibel A-weighted (dBA) or more over background levels, measured at the L-90 sound level, at the property boundary of the proposed facility site or, in the case of an electric transmission line or an energy transmission pipeline, at the edge of the right-of-way or the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;

(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:

a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;

b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;

c. All transformers shall be transported off-site; and

d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place;

(3) A plan for fire safety prepared by or in consultation with a fire safety expert;

(4) A plan for emergency response to the proposed facility site; and

(5) A description of any additional measures taken or planned to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility, and the alternative measures considered but rejected by the applicant.

Amend Site 301.14(f), effective 12-16-15 (Document #10994), cited and to read as follows:

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

(f) In determining whether a proposed energy facility will have an unreasonable adverse effect on public health and safety, the committee shall:

(1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24, the potential adverse effects of construction and operation of the proposed facility on public health and safety, the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

(2) For wind energy systems, apply the following standards:

a. With respect to sound standards, the A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA

above background levels, measured at the L-90 sound level, between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above background levels, measured at the L-90 sound level, at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property that is used in whole or in part for permanent or temporary residential purposes, at a location between the nearest building on the property used for such purposes and the closest wind turbine; and

b. With respect to shadow flicker, the shadow flicker created by the applicant's energy facility during operations shall not occur more than 8 hours per year at or within any residence, learning space, workplace, health care setting, outdoor or indoor public gathering area, or other occupied building;

(3) For wind energy systems, consider the proximity and use of buildings, property lines, public roads, and overhead and underground energy infrastructure and energy transmission pipelines, the risks of ice throw, blade shear, tower collapse, and other potential adverse effects of facility operation, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

(4) For electric transmission lines, consider the proximity and use of buildings, property lines, and public roads, the risks of collapse of towers, poles, or other supporting structures, the potential impacts on public health and safety of electric and magnetic fields generated by the proposed facility, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

(5) For high pressure gas pipelines, apply the following standards:

a. With respect to sound standards for interstate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed a day-night sound level (Ldn) of 55 dBA at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k), ***available as noted in Appendix B***;

b. With respect to sound standards for intrastate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed the standards set forth in (2)a., above, regarding wind energy systems;

c. With respect to vibration, compressor stations or modifications of existing compressor stations shall not result in a perceptible increase in vibration at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k), ***available as noted in Appendix B***, or a level of 2.0 peak particle velocity, whichever is less;

d. With respect to exterior lighting at compressor stations, no light shall be projected above the horizontal plane or projected beyond the property lines;

e. With respect to pipeline construction and safety, the requirements in Puc 506 and Puc 508 for a class 4 location in a high consequence area, as those terms are defined in 49 CFR §192.5(b)(4) and 49 CFR §192.903, ***available as noted in Appendix B***, respectively; and

(6) For high pressure gas pipelines, consider:

- a.* ~~T~~***he*** results of the comprehensive health impact assessment~~;~~;
- b.* ~~T~~***he*** proximity of electric transmission lines to the ***high pressure gas*** pipeline~~;~~~~;~~~~and~~
- c.* ~~T~~***he*** proximity of any compressor station to schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms~~;~~~~;~~~~and~~
- d.* ~~T~~***he*** effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects~~;~~ and
- e.* ~~T~~***he*** extent to which ~~such~~ ***the*** measures ***in d.*** represent best practical measures.

Amend Site 302.01(f) and Site 302.02(d), effective 12-16-15 (Document #10994), cited and to read as follows:

PART Site 302 ENFORCEMENT OF TERMS AND CONDITIONS

Site 302.01 Determination of Certificate Violation.

(f) If the committee determines following the adjudicative proceeding that a certificate violation has occurred and is continuing, the committee shall issue an order that suspends the holder's certificate until such time as the violation has been corrected if the committee determines, *after due consideration of any mitigating circumstances and a determination of whether suspension is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles*, that the following criteria have been met:

- (1) The violation will not be terminated within 30 days from the date of the committee's decision;
and
- (2) The violation will have an unreasonable adverse effect *pursuant to Site 301.14* on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.

Site 302.02 Determination of Misrepresentation or Non-Compliance.

(d) If the committee determines following the adjudicative proceeding that a material misrepresentation or violation of RSA 162-H or its rules has occurred, the committee shall issue an order that suspends the holder's certificate until such time as the holder has corrected and mitigated the consequences of such misrepresentation or violation if the committee determines, *after due consideration of any mitigating circumstances and a determination of whether suspension is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles*, that the following criteria have been met:

- (1) The violation will not be terminated within 30 days from the date of the committee's decision;
and
- (2) The violation will have an unreasonable adverse effect *pursuant to Site 301.14* on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.

Amend Site 302.03, effective 12-16-15 (Document #10994), by inserting (d) and renumbering the existing (d) as (e), so that Site 302.03(d) and (e) are cited and read as follows:

Site 302.03 Revocation of Certificate.

(d) Following the adjudicative proceeding, the committee shall revoke the holder's certificate if the committee determines, after due consideration of any mitigating circumstances and a determination of whether revocation is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that one or more of the following criteria have been met:

- (1) The certificate holder obtained the certificate through fraud, deceit, or falsification;

(2) The certificate holder knowingly violated the rules of the committee, the conditions of the holder's certificate, or the rules or permits of any agency that participated in the holder's certificate proceeding;

(3) The certificate holder failed to comply with an order of the committee or an order imposed as a result of a judicial action taken to enforce any statute or rule implemented by the committee, unless the certificate holder is complying in accordance with a compliance schedule and is current with all items; or

(4) The certificate holder is a chronic non-complier.

(e) If the holder's certificate is revoked by order of the committee, then the holder shall permanently cease construction or operation of the energy facility subject to the certificate as of the time specified in the order and shall commence and complete decommissioning of the facility within the time period specified in the order.