

State of New Hampshire
Site Evaluation Committee
Docket No. 2015-01

In re:

SEA-3, INC.,
Request for Exemption

GREAT BAY STEWARDS MEMORANDUM IN SUPPORT OF COUNSEL FOR THE PUBLIC'S
REQUEST TO RETAIN EXPERTS

July 28, 2015

Now comes the Great Bay Stewards by their undersigned representative, and respectfully submit this Memorandum in Support of Counsel for the Public's Motion for Leave to Retain Sebago Technics.

Sea-3 wishes to reconfigure and expand its Newington facility located along the Piscataqua River "to provide bulk volume available for shipping by sea to accommodate domestic and foreign product price fluctuations".¹ On January 8, 2015, Sea-3 filed a request with the Site Evaluation Committee for exemption from the certification process of RSA 162-H. Counsel for the Public, Peter C. L. Roth, objected to Sea-3's request and finds that it is necessary to demonstrate that there are aspects of Sea-3's plans that will not be adequately covered by existing regulatory programs or oversight and, further, that the Committee and public can assess those aspects more effectively in a certification proceeding. On July 6, 2015, Counsel for the Public moved for leave to retain consultant Sebago Technics to conduct a study of safety and related impacts arising from the Sea-3 expansion project. In support for Counsel for the Public's Motion for Leave to retain Sebago Technics, the Great Bay Stewards respectfully offer the following considerations:

1. The purpose of the Great Bay Stewards is to help protect the Great Bay Estuary, its tidal

¹ Stephen J. Haight, Conceptual Site Plan Review: "Sea-3 Inc. Facility Expansion", August 23, 2013 letter to Thomas Morgan, Planner, Newington. The purpose for the expansion was described in the minutes of the Newington Planning Board meeting of November 18, 2014 as "Mr. Paul Bogan, VP of Operations for Sea-3 said they were no longer able to make a profit from importing foreign propane ... Mr. Bogan said they were proposing to convert the majority of their operation from importing foreign propane to exporting domestic propane, with a small percentage to the local market in New England".

rivers and watersheds and to support the Great Bay National Estuarine Research Reserve, one of only 28 designated by the U.S. Congress for inclusion in the National Estuarine Research Reserve System. The mission of the GBNERR is to promote the health and vitality of the Great Bay Estuary through education, training, stewardship, monitoring and research. Just as public health and welfare could be impacted by the Sea-3 expansion, so too is the health and welfare of the Estuary and its ecosystem. Potential impacts to the Estuary include, without limitation, (1) the potential accretive damage from the day-to-day operation of the facility; and (2) heightened exposure to hazardous materials in the Estuary along the rail line – even if operating properly in accordance with all applicable regulations. For example, increased rail traffic brings an increased risk of trestle failure or derailment leading to equipment falling into wetlands, streams, or rivers. Increased rail traffic – even if operating properly – can also lead to additional leakage of lubricants and fluids into the wetlands and Estuary. The use of herbicides and defoliants along rights of way in ecologically sensitive areas will also increase. Polycyclic aromatic hydrocarbons (PAH's) leach from the creosote in railroad ties and have been shown to be carcinogenic and have mutagenic effects on living organisms.² Infrastructure upgrades due to the Sea-3 expansion will surely lead to an increase in PAH to the wetlands and other negative effects. Such health and safety impacts have nothing to do with rail regulation. They are, instead, the natural result of Sea-3's expansion and should be studied and opined upon by experts such as Sebago Technics. The Motion should therefore be allowed.

2. Each year the Great Bay Discovery Center (GBDC) hosts thousands of children. Some are as young as age three; most are school students in the first through fourth grades. Many are transported in the approximately 80 to 100 buses that come to the GBDC during a typical school year. The GBDC facilities are located at distances of approximately 80, 130 and 170 feet from the rail line. Currently, rail traffic is limited to several trains per week. Under the Sea-3 proposed project, rail traffic is projected to increase to a daily train of 12 to 16 cars, running to and from the Sea-3 facility, six days per week. If an accident were to occur while a train is at the crossing, access by emergency vehicles would be impossible. Safety of the supply line as it traverses the area of the Discovery Center is thus a key concern.³ Again, such safety impacts have nothing to do with rail regulation. They are, instead, the

² Agency for Toxic Substances and Disease Registry (ATSDR), Case Studies in Environmental Medicine, Toxicity of Polycyclic Aromatic Hydrocarbons (PAHs), July 1, 2009. See also "Railway transportation as a serious source of organic and inorganic pollution", B.Wilkomirski et. al, Water Air Soil Pollut. 2011 June; 218(1-4): 333–345. Published online 2010 October 8.

³ During the period July 1, 2014 to June 30, 2015, 13,628 instructional hours were provided at the GBDC. These hours do not include visits by children and adults that were not under an instructional program. Source: GBDC records.

natural result of Sea-3's expansion and should be studied and opined upon by experts such as Sebago Technics.

3. In creating the GBNERR, \$61.6 million in federal funds was invested to acquire land around the Bay. The investment was augmented by an additional \$16.4 million from the State, municipalities, foundations, NGO's, and individuals. Beyond investments in the GBNERR, municipalities surrounding the Bay have invested or are anticipated to invest some \$100 million in wastewater treatment facilities and stormwater management. The value of these investments will be diminished if the Estuary is damaged by a significant accident or day-to-day operation of the Sea-3 facility and its supply line. Important elements of the regional economy are also dependent on that actual and perceived safety, including industries such as fishing and oystering that rely on the water quality of the estuary, restaurants and hotels that depend on the attractiveness of the location, real estate values for residences in proximity to the railway, and numerous other businesses whose success is at least partially dependent on the perceived quality of the region as a location to visit or in which to live.

4. If the upgrade of the railway occasioned by the Sea-3 reconfiguration and expansion were supported with federal funds, compliance with the National Environmental Policy Act (NEPA) would require an Environmental Assessment unless, under Federal Railway Administration regulations, a Categorical Exclusion were granted. However, a Categorical Exclusion would not apply for this railway due to features including, for example, its location directly adjacent to a wildlife and waterfowl refuge, its handling of hazardous materials, its potential to affect historic structures and its potential impact on wetlands.⁴ Although no public funds are involved in maintenance and upgrade of the rail line and thus NEPA requirements are not at issue, tens of millions of dollars of public funds have already been invested in the GBNERR and in protecting the Great Bay estuary. Consistent with the purpose of RSA 162-H, the Committee and the public should have access to sufficient information to assess the potential safety and environmental impacts of the Sea-3 project. The Sebago Technic's study as requested by the Counsel for the Public will be instrumental in providing some of that information.

5. In the opinion of the Great Bay Stewards, the Committee should grant the Counsel for the Public's Motion for Leave to Retain Sebago Technics so as to enable the Committee and the public to better understand the implications of the proposed Sea-3 expansion for the ecosystem of the Great Bay estuary, the safety of children and other visitors to the Great Bay Discovery Center, the potential impacts on the regional economy and the quality of life in the area. Such safety impacts have nothing to

⁴ Federal Railway Administration (FRA) CATEGORICAL EXCLUSION WORKSHEET

do with rail regulation. They are, instead, the natural result of Sea-3's expansion and should be studied and opined upon by experts such as Sebago Technics.

Respectfully submitted,
Great Bay Stewards,

By its non-attorney representative,

A handwritten signature in black ink that reads "f.c. mason". The signature is written in a cursive, lowercase style.

Fred C. Mason
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I hereby certify that on this 28th day of July 2015, I sent a copy of the foregoing Great Bay Stewards Memorandum in Support of Counsel for the Public's Motion for Leave to Retain Experts via email to the persons on the Service List of this Docket.

A handwritten signature in black ink that reads "f.c. mason". The signature is written in a cursive, lowercase style.

Fred C. Mason
Non-attorney representative,
Great Bay Stewards