

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

October 7, 2015

Docket No. 2015-01

**Request of SEA-3, Inc. for Exemption from
the Approval and Certificate Provisions of RSA Chapter 162-H**

**ORDER ON GREAT BAY STEWARDS' CONTESTED
MOTION FOR SITE INSPECTION**

In this docket, SEA-3, Inc. (SEA-3) has filed a Request for Exemption from the Approval and Certificate Provisions of RSA Chapter 162-H (Petition) with the New Hampshire Site Evaluation Committee (Committee). SEA-3 owns and operates a propane storage and distribution facility (Facility) located at 190 Shattuck Way in Newington, New Hampshire (Site). The existing Facility and associated equipment at the Site was exempted from the requirements of RSA 162-H in 1995. SEA-3 now seeks to make improvements to the Site and Facility including, among other things, the construction of five additional rail unloading berths and additional aboveground storage tanks and associated equipment.

On June 3, 2015, the Subcommittee granted the Great Bay Stewards to intervene in this proceeding. On September 9, 2015, Great Bay Stewards filed a Motion for Site Inspection requesting a site inspection at the Great Bay Discovery Center and surrounding estuary. Great Bay Stewards assert that such a site inspection is warranted and necessary because the Facility's expansion will affect the Great Bay National Estuarine Research Reserve and the Discovery Center.

SEA-3 objected to the Great Bay Stewards' request on September 18, 2015. SEA-3 asserts that New Hampshire Code of Administrative Rules, Site 202.13, only authorizes the Committee

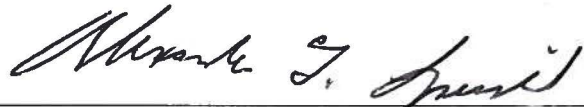
to conduct site inspections of the sites that are the “subject of a hearing.” According to SEA-3, the Discovery Center is not the “subject of a hearing” in this docket and cannot be inspected by the Subcommittee. SEA-3 further asserts that Great Bay Stewards’ request is preempted by the Interstate Commerce Commission Termination Act (ICCTA). SEA-3, Inc. claims that Great Bay Stewards request is an attempt to demonstrate the effect that railroad traffic may have on the Discovery Center. According to SEA-3, however, the Committee is preempted from regulating the railroad and cannot regulate or consider the affect that rail transportation may have on the Discovery Center. Finally, SEA-3 asserts that site inspection of the Discovery Center will be futile because Counsel for the Public’s expert has already determined that railroads are operated in safe manner.

New Hampshire Code of Administrative Rules, Site 202.13, provides that the “Subcommittee, as applicable, and public counsel shall conduct a site visit of any property which is the subject of a hearing if requested by a party, or on its own motion, if the committee or subcommittee determines that the site visit will assist the committee or subcommittee in reaching a determination in the hearing”.

In this docket the Discovery Center is not a subject of the hearing. In addition Great Bay Stewards did not allege sufficient facts to demonstrate that the site visit is necessary for the Subcommittee to better understand the impact that the expansion of the Facility may have on the Discovery Center. In other words, there is nothing in the Great Bay Stewards’ Motion that would indicate to the Subcommittee that some specific characteristics of the Discovery Center warrant in-person review by the Subcommittee. The Discovery Center has no more specific relationship to the SEA-3 Facility than any other residential, commercial or non-profit property in the general

vicinity of the Facility. Great Bay Stewards may present evidence and testimony during the adjudicative hearing that may describe the importance of the Discovery Center and its geographical location as it relates to the Site. A site visit will not assist the Subcommittee in reaching a determination in the hearing. Therefore, the Great Bay Stewards' request for a site inspection is denied.

SO ORDERED this seventh day of October, 2015.



Alexander Speidel, Presiding Officer
NH Site Evaluation Committee