

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-01

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

ORDER ON LATE-FILED MOTIONS TO INTERVENE

June 3, 2015

I. BACKGROUND

On January 8, 2015, SEA-3, Inc. (SEA-3) 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 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 the construction of five additional rail unloading berths and three 90,000 gallon above ground storage tanks. The proposed improvements appear to be a sizable change or addition to the existing facility at the Site. The purpose of the proposed improvements is to facilitate the off-loading, processing and distribution of liquid propane gas delivered to the facility by rail-car. The proposed improvements will allow SEA-3 to offload additional quantities of propane from the rail berths. The propane will then be processed and stored at the Site prior to distribution.

A public hearing was held in Newington regarding this matter on May 7, 2015. At the public hearing, the Subcommittee heard arguments from certain parties seeking to intervene in

the proceeding. (The Subcommittee orally ruled on the motions to intervene at the public hearing, and subsequently issued an Order on same on May 19, 2015).

On May 7, 2015, after the public meeting in Newington, counsel to the Committee was advised by an intervenor, Laura Byergo, that a group known as Great Bay Stewards had filed a late motion to intervene on May 4, 2015. Ms. Byergo is a member of the Board of Trustees of the Great Bay Stewards. Ms. Byergo provided counsel for the Committee with a return receipt demonstrating the filing of the document with the Chairman of the Committee on May 4, 2015. The Committee does not have a record of the filing of a motion to intervene on that date. A copy of the motion to intervene has now been provided to the Committee. Great Bay Stewards seeks a ruling on their motion.

On May 8, 2015, the Town of Newington – the host community for SEA-3 – filed a motion to intervene. Newington asserts that it originally anticipated that the issuance of an exemption would be resolved at the public hearing held on May 7, 2015, and did not anticipate an adjudicative proceeding militating in favor of its formal intervention. Newington asserts that its intervention must be permitted pursuant to RSA 541-A: 32 and NH Code of Administrative Rules Site 202.11.

II. THE MOTIONS

A. Great Bay Stewards

Great Bay Stewards identifies itself as a “non-profit membership organization whose mission is to preserve and protect the Great Bay for future generations.” The organization has a headquarters in Greenland, New Hampshire. Great Bay Stewards asserts in the motion that it conducts educational activities at the Great Bay Discovery Center which is located along the

railroad line in Greenland, over which propane supply trains to the Site are expected to travel. On the basis of its mission and its support of the Great Bay National Estuarine Research Reserve, Great Bay Stewards asserts that it possesses an interest that is directly affected by the proposed exemption for SEA-3. Great Bay Stewards argues that the extent of the proposed improvements on the Site have a regional impact and will affect the environment, health and safety of the region as well as the Great Bay estuary. Great Bay Stewards also incorporated, by reference, a letter to the Committee dated March 13, 2015. The letter was received by the Committee on April 29, 2015, and is included in the public comment file in this docket.

SEA-3 objects to the motion, in a filing made on May 19, 2015. SEA-3 first asserts that the Great Bay Stewards' motion is untimely. The procedural order of March 26, 2015, established a deadline of April 22, 2015, for the filing of motions to intervene in this docket. The motion was delivered to the Public Utilities Commission on May 4, 2015. SEA-3 argues that the motion to intervene was untimely and filed at the wrong office¹.

SEA-3 also asserts that Great Bay Stewards does not have a substantial interest in the outcome of the proceedings that can be considered by the Subcommittee. SEA-3 asserts that Great Bay Stewards only expressed interests arising out of the operation of the railroad – a matter that, SEA-3 asserts, is solely within the jurisdiction of federal government under the auspices of the federal Surface Transportation Board. SEA-3 also argues that Great Bay Stewards has not expressed a substantial interest in the outcome of the proceedings that is different than the interest of the general public. SEA-3 further claims that the interest expressed

¹ New Hampshire Code of Administrative Rules Site 202.23 requires that all filings be made to the Site Evaluation Committee at the Department of Environmental Services, 29 Hazen Drive, Concord NH 03302-0095.

by Great Bay Stewards in the environmental protection of the Great Bay estuary is a concern that is adequately addressed by the participation of Counsel for the Public.

B. Town of Newington

The Town of Newington appeared at the public hearing on May 7, 2015, and filed its formal motion to intervene on May 8, 2015. The Town of Newington argues that it filed a late motion to intervene because it did not anticipate the necessity of an adjudicative proceeding. In support of its request to intervene, Newington relies on RSA 541-A:32 which, in pertinent part, states: “The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” See RSA 541-A: 32, II. Newington also relies on N.H. Code of Administrative Rules Site 202.11(c), which provides the authority to grant late-filed interventions to the presiding officer.

No objections were filed to the Town of Newington’s motion to intervene.

III. ANALYSIS

A. Great Bay Stewards

Great Bay Stewards does not have an ownership interest in the Site or in the Great Bay. It does not own directly abutting property that may be affected by the proposed exemption and the expansion of the facility. In this respect, Great Bay Stewards does not claim a right, title, privilege or interest that arises from ownership or possession of property. Likewise, it does not have a right, claim, title or interest in the Great Bay that is any different from the public at large. However, we recognize that the Great Bay Stewards is a non-profit organization with a mission to preserve and protect the Great Bay estuary. In carrying out this mission, the Great Bay

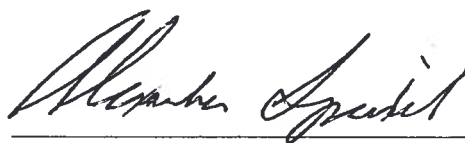
Stewards has engaged in environmental preservation and education efforts concerning the Great Bay estuary. Great Bay Stewards asserts that the proposed improvements at the Site will affect the Great Bay estuary in a variety of ways. On the basis of these facts, we find, pursuant to the standards of RSA 541-A:32, II that it is in the interests of justice to permit intervention by Great Bay Stewards. Great Bay Stewards possesses significant information about the estuary and its ecology, which, together with the Piscataqua River and Little Bay, are in the vicinity of the Site. The Subcommittee may benefit and be better informed as a result of that information and the views to be expressed by the Great Bay Stewards.

B. Town of Newington

SEA-3's facility and all of the proposed site improvements are located entirely within the Town of Newington. Pursuant to RSA 541-A:39 and RSA 162-H:16, IV(b), municipalities affected by a proposed project are provided preferential statutory treatment and must be provided with a reasonable opportunity to submit views, information, data and comments with regard to administrative actions that will affect the Town. Therefore, the Motion to intervene filed by the Town of Newington is granted, pursuant to the standards of RSA 541-A:32, II.

Accordingly, the Motions to Intervene filed by Great Bay Stewards and the Town of Newington are hereby granted.

By Order of the Site Evaluation Committee, this 3rd day of June, 2015.



Alexander Speidel, Presiding Officer
NH Site Evaluation Committee