



THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

_____))
))
IN RE: SEA-3, INC.) Docket No.: 2015-01
))
Request for Exemption))
_____)

Settlement Agreement

I. Introduction

This Agreement is entered into this 6th day of November, 2015, by and between the undersigned parties to this matter with the intent of resolving all of the issues in the above-captioned proceeding, so that Sea-3, Inc. may be granted its requested exemption by the Site Evaluation Committee (the “Committee”) subject to the conditions set forth in section II.

II. Terms of Agreement

1. Sea-3, Inc. (“Sea-3”) shall arrange for a Comprehensive Fire Safety Analysis, pursuant to National Fire Protection Association (NFPA) 58, for the entire Newington facility (existing plus planned upgrades) for submittal to and approval by the Town of Newington (the “Town”) and shall provide a copy to the New Hampshire Fire Marshal (“NHFMO”) for review and comment.

2. Sea-3 shall facilitate, at its expense, a virtual facility tour/presentation for all shifts at Portsmouth and Dover Fire Departments when crews are on duty (multiple shifts), in form and substance satisfactory to the Chiefs of the Portsmouth and Dover Fire Departments, with visuals/PowerPoint and facility maps, to include fire protection systems, access, and facility operations. This facility

presentation shall occur in 2016 and once every 5 years thereafter, or sooner if substantial facility changes are implemented or such is requested by the Portsmouth or Dover Chiefs.

3. Sea-3 shall provide rail car training and tanker truck training in Portsmouth and Dover for all Portsmouth and Dover Fire Department shifts (and for Seacoast Technical Assistance Response Team “START”) at Sea 3’s expense in form and substance satisfactory to the Chiefs of the Portsmouth and Dover Fire Departments. Sea-3’s expenses shall be limited to the cost of providing the training and shall not extend to reimbursement of wages to the participating Departments. Fire Departments from all communities along the rail line from Rockingham Junction to the Sea-3 facility in Newington shall be invited to attend the trainings in either Portsmouth or Dover. The rail car training and tanker truck training shall occur in 2016 and once every 5 years thereafter.

4. The Newington Fire Department shall convene, and Sea-3 shall participate in, a Mutual Aid command district table top (e.g. a facilitator-led discussion centered on a simulated real world emergency) for the scenarios of: 1) a leak and/or fire on site, including but not limited to the dock area located on the property of Sprague, or another facility related scenario requested by the Chief of the Newington, Portsmouth, or Dover Fire Departments; and 2) a rail car fire just outside of the facility and still in Newington. The table top shall be facilitated by NH Homeland Security Emergency Management (“HSEM”). This exercise should include all emergency response partners such as Coast Guard, United State Environmental Protection Agency (“EPA”)/NH Department of Environmental Services (“DES”), HSEM, State Police, and including the activation of the HSEM Emergency Operations Center (“EOC”). This process shall include the creation of an After-Action Report by HSEM, which includes, but is not limited to a gap analysis of the Seacoast Region’s emergency response capabilities for LPG related incidents. Sea-3 shall pay for the table top and for

all out of pocket costs and expenses of the exercise, with participating agencies paying their own personnel costs. The table top shall occur within one year of completion of Sea-3's upgrade and at least once every 5 years thereafter, or more frequently if requested by the Chiefs of the Newington, Portsmouth, or Dover Fire Departments.

5. Sea-3 shall not receive more than 16 propane rail cars (no more than 33,000 gallons per car) to the facility per day consistent with the May 19, 2014 Newington Planning Board approval (letter of decision May 21, 2014). In the event Sea-3 wishes to increase the daily amount/volume of rail transported propane to the facility Sea-3 shall petition the Committee, with notice to the Cities of Portsmouth and Dover, the Town, and the Attorney General, and must obtain an order from the Committee approving such increase.

6. The NHFMO, Newington Fire Department, and Newington building inspector shall conduct a full facility inspection upon completion of the facility upgrade. Sea-3 shall promptly address any issues noted in such inspection in accordance with any orders or directives made by the NHFMO, the Newington Fire Department, or the Newington Building Inspector.

7. The Chief of the Newington Fire Department shall develop an Area Emergency Response Plan, including appropriate evacuation procedures to be determined by the Chief, and to be reviewed by the NHFMO, and to also include a plan regarding emergency notification systems to alert the surrounding communities of an emergency. Each surrounding community shall determine the need to activate their "reverse 911" or any other emergency notification system used by the community in an emergency. The Town shall seek a grant for this plan and Sea-3 shall provide any additional financial support not covered by the grant to ensure the completion of the plan in a timely manner.

8. Sea-3 shall provide the Chief of the Newington Fire Department a copy of its contingency plan and the Chief shall make it available to area fire departments upon request.

9. Upon entry of an order approving this Agreement and granting the exemption, Counsel for the Public and Interveners shall withdraw their Objections to Sea-3's Request for Exemption subject to the negotiated conditions and shall take no appeal from any decision of the Committee granting Sea-3's Request for Exemption with the negotiated conditions.

10. When the order approving this Agreement and granting Sea-3's exemption become final, the City of Portsmouth shall dismiss (voluntarily non-suit with prejudice) its appeal docketed in the Rockingham County Superior Court as 218-2014-CV-654 (City of Portsmouth v. Newington Planning Board, et. al.).


11. Sea-3's failure to comply with its obligations, commitments, and undertakings pursuant to this Agreement, or any condition that may be imposed by the Committee, shall constitute a default, provided, however, that the non-occurrence of any event required under this Agreement that is outside of Sea-3's control shall not constitute a default. By way of explanation, but not limitation, events that are the responsibility of the municipalities or other agencies under this Agreement, including but not limited to their participation in trainings, are outside of Sea-3's control. In the event of a default by Sea-3, any party hereto may notify the Committee of such default, and the Committee shall open a docket and may revoke the exemption or take such other action within its discretion to address the default. Nothing herein is intended, nor shall it be deemed, to alter or settle

Sea-3's obligation to pay the fees of Sebago Technics pursuant to the Committee's order dated August 10, 2015.

III. Conclusion


In witness whereof on the date set forth above, the parties, by and through their duly authorized representatives and/or legal counsel, have caused this Agreement to be duly executed in their respective names and/or by their fully authorized agents.

SEA-3, Inc.




Paul N. Bogan
Its Duly Authorized Vice President

Town of Newington



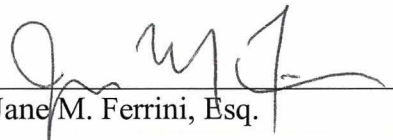
John J. Ratigan, Esq.

Counsel for the Public



Peter C.L. Roth, Esq.

City of Portsmouth



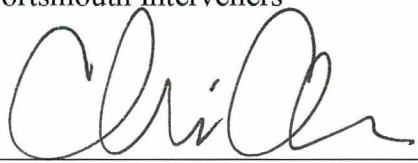
Jane M. Ferrini, Esq.

City of Dover



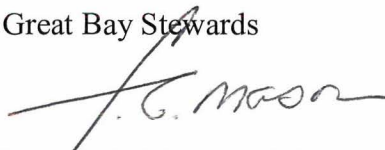
Anthony I. Blenkinsop, Esq.

Portsmouth Interveners



Christopher Cole, Esq.

Great Bay Stewards



Fred C. Mason (non-attorney representative)