

NYSDEC Comments on TGE Preliminary Scoping Statement and TransGas Energy Responses, Case 01-F-1276

**1.0 Summary and Introduction**

For DEC, the section is adequate for continued preparation of the Application.

**2.0 Project Description**

**2.2.1**

Based on information gathered during the October 11, 2001 TGE Open House meeting, it is staff's belief that characterization of the residential use and distribution in close proximity to the project site should be re-examined using available local land use planning resources.

**TGE Response:**

**TGE will conduct consultation with local planning resources. This does not change TGE's assertion that primarily residential areas are relatively distant from the Project site, but all residential land uses will be analyzed.**

**3.0 Energy Planning**

For DEC, the section is adequate for continued preparation of the Application.

**4.0 Public Involvement Program**

**4.1.4**

The application should provide clarification on how individuals seeking to obtain party status need to comply with both Department of Public Service (DPS) and Department of Environmental Conservation (DEC) filing requirements for participation in public hearings. Refer to DEC publication *Guide to Permit Hearings* and 6 NYCRR Part 624, available on-line at [www.dec.state.ny.us/website/regs/624.htm](http://www.dec.state.ny.us/website/regs/624.htm).

**TGE Response:**

**This will be clearly stated in the Application.**

**5.0 Fuel Supply and Delivery**

If this facility proposes to store more than 400,000 gallons of fuel oil, a Major Petroleum Facility License will be required pursuant to Article 12 of the Navigation Law, Section 174 (Licenses), 17NYCRR Part 30 (Oil Spill Prevention and Control—Licensing of Major Facilities), 6 NYCRR Part 610 (Certification of Onshore Major Facilities), and 6 NYCRR Parts 612 through 614 (Petroleum Bulk Storage Regulations).

**TGE Response:**

**This provision was included in Stipulation 4, Clause 2(d). The status of present oil storage permits will be documented, and applications for transfer or new licenses/approvals, as applicable, will be made as part of the Article X application or in separate applications to DEC. TGE will contact DEC to discuss this area further.**

**6.0 Electric Transmission and Steam Sendout**

For DEC, the Section is adequate for continued preparation of the Application.

## 7.0 Air Quality and Meteorology

The application must identify all the meteorological data including the upper air data to be used in the modeling.

### **TGE Response:**

**Upper air data will be specified in the air modeling protocol.**

The application should address the Brigantine Class I area in the assessment of impacts done on Class I areas in the PSD application.

### **TGE Response:**

**This Class I area will be specified and will be analyzed.**

Staff recommends that the proposed stack be designed according to formula GEP height. If the applicant is not able to accomplish this, then valid reasons should be provided as listed in DEC's Air Guide 26.

### **TGE Response:**

**TGE notes that it has received comments both for lower than GEP and higher than GEP stack heights. All analyses will be consistent with Air Guide 26 and will be conducted in consultation with DEC Staff.**

The applicant should address the possible exceedance of emissions limitations during start-up and shut-down of equipment, cooling tower emissions and emissions from accidental releases.

### **TGE Response:**

**Startup and shutdown conditions will be addressed. Ancillary emission sources and accidental release scenarios will be included and specified in the air modeling protocol.**

## 8.0 Archaeological and Architectural Resources

### 8.3.2

Staff recommends that consultation with the appropriate state and local agencies, including DEC, on the scope of work for the architectural / visual survey be done *prior* to the commencement of the survey.

### **TGE Response:**

**TGE will consult with DEC and other state and local agencies, as well as non-government groups prior to this survey.**

## 9.0 Land Use

Review of this section of the PSS was requested of the NYS Department of State (DOS), Division of Coastal Resources. Comments received from DOS have been summarize and are incorporated herein:

State agency actions (including Article X decisions and ECL permit-issuance decisions) are required to be consistent with New York State Coastal policies found at 19 NYCRR Part 600.5 or, when a local waterfront revitalization program (LWRP) has been adopted locally and approved by the Secretary of State, with the policies of an approved LWRP. New York City's local program was originally approved by the Secretary of State in 1982. New York City has locally adopted an amended Waterfront Revitalization Program by resolution of the City Council,

but the new program has yet to be approved by the Secretary of State. Therefore, the Article X decision by the Department of Public Service and the Siting Board, and all other State agency permit, license, or direct agency decisions pertaining to the Brooklyn TransGas Facility are required by Article 42 of the NYS Executive Law to be consistent, to the maximum extent practicable, with the policies of the approved NYC Local Waterfront Revitalization Program and the policies found at 19 NYCRR Part 600.5. Applicant's Stipulation #5 (Land Uses and Local Laws) should also include the existing Secretary of State approved NYC Local Waterfront Revitalization Program (September 30, 1982).

**TGE Response:**

**The NYC Local Waterfront Revitalization Program will be specified. Its policies will be presented in the Application, in addition to the state policies.**

The applicant should provide an analysis of the relevant, applicable policies of the approved NYC WRP in the Article X application in order to provide a means by which the NYS DPS, the Siting Board (and other involved State agencies undertaking an action or making a decision under existing NYS authorities) can interpret the applicant's proposal prior to making its administrative decision in terms of NYS Coastal Management policies and assure that their decisions are consistent with the applicable policies of the NYC WRP. The analysis would also demonstrate to the DPS (and other State agency programs) that the activity proposed (i.e. the construction and operation of the Brooklyn TransGas facility) would be conducted in a manner consistent, to the maximum extent practicable, with the NYS Coastal Management Program, as expressed in the City's Waterfront Revitalization Program. A municipality's zoning is an important component of the local waterfront revitalization program and, because an approved LWRP constitutes a municipal "comprehensive plan" for the waterfront, any activity proposed in the area covered by an approved LWRP must be compatible with the municipality's zoning characterization for that area.

**TGE Response:**

**Waterfront zoning is indeed a critical component of the compatibility assessment, as mentioned in Section 9.2.5 of the PSS.**

Demonstrating the project's consistency with the NYC WRP, to the maximum extent practicable, assures that federal, State and local actions relating to the project development will be taken in a manner which advances the policies and purposes of New York City's LWRP, and which comply with the legislative intent and national goals of the Coastal Zone Management Act of 1972 as amended and as expressed in the NYS Coastal Management Program. Part of this demonstration will require that, in the context of local land use controls (zoning, etc.) and existing and anticipated future land and water uses in the project vicinity (particularly with regard to apparently incompatible uses), the project would be appropriate and approvable under each State agency's regulatory guidance and decision-making criteria for this location. State agencies are encouraged to consult the coastal policy explanations and guidelines contained in the federally approved NYS Coastal Management Program document. NYS Coastal Management Program Policy #27 states:

"Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shore front location." Development of the TransGas site, must be demonstrated as necessary and appropriate for this location in order to be consistent with NYS coastal management policies and the NYC Waterfront Revitalization Program.

**TGE Response:**

**TGE will demonstrate both the necessity of siting at this location and its appropriateness. As part of that analysis, TGE will review how M3 zoning came to be associated so heavily with the waterfront in New York City.**

**10.0 Urban Design and Visual Resources**

For DEC, the Section is adequate for continued preparation of the Application.

**11.0 Noise**

For DEC, the Section is adequate for continued preparation of the Application.

**12.0 Socioeconomics**

For DEC, the Section is adequate for continued preparation of the Application, if completed as described.

**13.0 Traffic and Transportation**

For DEC, the Section is adequate for continued preparation of the Application, if completed as described.

**14.0 Soils, Geology and Seismology**

**14.3.3**

If blasting and pile driving become necessary, please indicate if any pre-bast or pre-construction surveys on residential or other structures within the anticipated impact area will be conducted. If so, an inspection protocol should be included in the Article X application.

**TGE Response:**

**This comment will be followed in the Application.**

**15.0 Water Resources**

**15.4.2**

The current operation at the site, Bayside Fuel Oil Depot Corp., has an existing SPDES permit (NY 000 6301) which authorizes the discharge of treated storm water and hydrostatic test water to the East River. Based on the historical use of the site as an oil storage and distribution terminal, a general permit is not considered appropriate. A modification to the existing permit will be required. Such modification request must be submitted by the legal owner at the time of submission. TransGas Energy Systems LLC must describe how and when ownership transfer will occur. Information is needed on who will be responsible for compliance with the SPDES permit during the transition from existing to proposed operations.

**TGE Response:**

**The present site owner and TGE will coordinate a SPDES transfer filing, which will specify the responsibility for compliance during the transition period.**

**15.5.3**

This section of the application should be supplemented with additional description of all proposed in-water construction activity, as indicated in section 2.3.10. This would include shore line excavation and fills, dredge spoil sampling, if needed, and impacts from potential dredging, including volumes of material, dredging methods and dredge spoil disposal.

**TGE Response:**

**The requested supplemental information will be provided.**

**16.0 Cumulative Impacts**

For DEC, the Section is adequate for continued preparation of the Application, if completed as described.

**Appendix B**

The Department has reviewed the draft stipulations included as part of the PSS. Staff have no specific comments regarding this section at this time, but anticipates participating in future negotiations to finalize the stipulations.