



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
Governor

Shari T. Wilson
Secretary

August 2, 2007

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, DC 20426

RE: AES Sparrows Point LNG, LLC and
Mid-Atlantic Express, LLC
FERC Docket Nos. CP07-62 and CP07-63

Dear Ms. Bose:

The Maryland Department of the Environment, a Department of the State of Maryland, which is represented in this proceeding by the Power Plant Research Program of the Maryland Department of Natural Resources, hereby submits the State's Federal Consistency Determination(s), pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended, for the referenced project.

Pursuant to 18 C.F.R. § 385.2014, please find enclosed (1) a copy of the decision/action and (2) an indexed list of all documents and materials upon which this decision was based. Please note that copies of the AES application for a Maryland State Coastal Facilities Review Act permit pursuant to the Annotated Code of Maryland, Title 14, Subtitle 5, Coastal Facilities Review Act, and the application/filing for a Federal Energy Regulatory Commission (FERC) license are not included due to the volume of materials associated with these applications. However, I believe these applications are already a part of FERC's "consolidated record".

The State of Maryland requests that the enclosed decision and the index of supporting documents/exhibits be made a part of FERC's "consolidated record" of this proceeding.

Sincerely,

Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: Judah Prero, MDE, OAG
Adam Snyder, MDE, OAG
Rich McLean, DNR, PPRP

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 Deputy Secretary

July 9, 2007

Christopher H. Diez
 Vice President
 AES Sparrows Point LNG, LLC
 Mid-Atlantic Express, LLC
 140 Professional Parkway, Suite A
 Lockport, New York 14094

RE: Federal Consistency Review and Determination
 Proposed AES Sparrows Point LNG Facility

Dear Mr. Diez:

I am writing with regard to the State of Maryland's Federal Consistency review, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA), of the AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC (collectively "AES") certification that the federally regulated activities associated with the proposed AES Sparrows Point LNG Facility ("Project") are consistent with the Maryland Coastal Zone Management Program (CZMP). This letter has three parts: (1) a discussion of the review period applicable to Maryland's consistency determination; (2) the State's denial of consistency pursuant to 15 CFR § 930.63(b); and (3) the State's denial of consistency under 15 CFR § 930.63(c) on the grounds that AES has not provided sufficient information necessary for the State to make a federal consistency determination.

The Review Period Applicable to Maryland's Consistency Determinations

As you are aware from prior correspondence (attached), the Project requires two separate federal actions that are subject to § 307 of the CZMA: (1) the U.S. Army Corps of Engineers (Corps) authorization pursuant to Section 10 of the River and Harbors Act and Section 404 of the Clean Water Act, and (2) the Federal Energy Regulatory Commission (FERC) license. With regard to each federal license and permit, § 307 of the CZMA requires the applicant to "certify" in the application for federal authorization that "the proposed activities comply with, and will be conducted in a manner consistent with, the State's Coastal Zone Management Program." See also 15 CFR Part 930, § 930.57(a). Section 930.57(b) of the federal consistency regulations

Christopher H. Diez

July 9, 2007

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specifies that the applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program." Once the appropriate certification is made, the State has six months in which to render its consistency determination.

With respect to the Corps' permit, MDE received the AES consistency certification and supporting data and information on January 9, 2007, in the form of AES's application for Maryland's Coastal Facilities Review Act (CFRA) permit. Pursuant to the federal consistency regulations, MDE is required to render its consistency determination within six months from that date. With respect to the FERC license, however, MDE notified AES that it had not included the required consistency certification, pursuant to 15 CFR Part 930, § 930.57(b), in its application for the FERC license and that, therefore, the six-month review period had not yet begun. See May 9, 2007, letter from Elder Ghigiarelli to Kent J. Morton. In a letter to FERC dated June 29, 2007, AES noted its disagreement with MDE and asserted that it believed the review period began in January, when it submitted its CFRA application. In the same letter, however, AES included the certification that MDE believes had been missing.

Given AES's position that the review period began as early as January 9, 2007, and, therefore, expires as early as today, July 9, 2007, MDE is rendering a consistency determination on both the Corps permit and the FERC license in this letter. However, because MDE continues to believe that the six-month review period did not begin for the FERC license until June 29, 2007, when AES made the appropriate certification, MDE will continue to review AES's certification of the FERC license and will render a determination prior to the close of the review period on or about December 29, 2007.

Denial of Consistency Pursuant to 15 CFR § 930.63(b)

Because Maryland's CZMP is a networked program, consistency with the CZMP is established by obtaining the State permits and authorizations required under the networked State laws. For the AES Sparrows Point LNG Facility ("Project"), the applicable networked laws include the following:

- Tidal Wetlands Act, Md. Code Ann., Envir. § 16-501 *et seq.*,
- Nontidal Wetlands Protection Act, Md. Code Ann., Envir. § 5-901 *et seq.*,
- Waterway Construction Act, Md. Code Ann., Envir. § 5-501 *et seq.*,
- Air Quality Control Act, Md. Code Ann., Envir. § 2-101 *et seq.*,
- Water Appropriation Act, Md. Code Ann., Envir. § 5-501 *et seq.*,
- Water Pollution Control Act, Md. Code Ann., Envir. § 9-301, *et seq.*,

Christopher H. Diez
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While AES has submitted applications for authorizations under each of these laws, it has not yet obtained the permits necessary for the State to concur with AES's consistency certification. Accordingly, the State objects to the AES certification that the proposed activities are consistent with the Maryland CZMP. Please note, however, that the State's objection will become a concurrence if all applicable networked State permits are issued.¹

Denial of Consistency Pursuant to 15 CFR § 930.63(c)

As you know, this is a complex project, involving impacts to a variety of different resources and raising a number of regulatory issues ranging from the protection of wetlands to community safety to the disposal of material dredged from Baltimore Harbor. Much of the information MDE needs to complete its review of the project is still being developed by AES and others. The reviews being carried out by both the Corps and FERC are themselves in their infancy. See, e.g., July 3, 2007, letter from Vance Hobbs, Chief, Maryland Section Northern, U.S. Army Corps of Engineers, to Christopher Diez, AES (requesting additional information on 38 separate items). In fact, the FERC has not yet released even a schedule for the preparation of its Environmental Impact Statement.

Based on its review of the AES application for a CFRA permit and the supporting Resource Documents, MDE requested additional information with regard to the impacts to wetlands and waterways resulting from the proposed dredging and dredged material disposal, and the proposed pipeline. MDE received the AES response to its request on May 31, 2007. As I stated in my letter to you dated July 5, 2007 (attached), MDE's review of this response is ongoing, and based on our review to date, additional information/clarification is still required, particularly with regard to the proposed recycling facility/disposal of the dredged material. MDE received AES's response to that letter on July 6, 2007, and is currently preparing a comprehensive response to the AES May 31, 2007, submittal, which will soon be provided to AES.

The Department simply cannot render a complete substantive consistency determination based on incomplete information; doing so would not serve the interests of the environment, the people of Maryland, and, in the long run, AES. Accordingly, MDE asked AES to stay the federal consistency review period to give MDE the time to receive and consider the information necessary to carry out a comprehensive review of the project and its consistency with Maryland's networked CZMP. AES's refusal to agree to a stay leaves MDE with no choice but to object to

¹ The Department notes that, on June 22, 2007, the United States District Court for the District of Maryland upheld a recent amendment to the Baltimore County Zoning Regulations adding LNG terminals to the list of prohibited uses in Chesapeake Bay Critical Areas. *AES Sparrows Point LNG, LLC et al. v. James T. Smith, et al.*, Memorandum Opinion, Civ. No. RDB-07-325, 2007 WL 1826889 (D.Md. June 22, 2007). The Court specifically held that the adoption of the amendment (commonly referred to as "Bill 9-07") into the County's Critical Area protection program was not preempted by the Natural Gas Act. Unless overturned on appeal, the U.S. District Court's decision would constitute an independent grounds for objection to AES's federal consistency certification(s) under 15 CFR § 930.63(b).

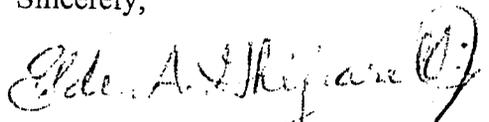
Christopher H. Diez
July 9, 2007
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the AES certification. Accordingly, MDE provides as an alternative basis for its objection that AES has not provided sufficient information necessary for the State to make a federal consistency determination. Please note, however, that MDE continues to review the project under CFRA and on the assumption that the 6-month review period for the FERC license did not begin to run until June 29, 2007, and, if appropriate, will provide notice of the insufficiency of the information AES has provided at a later date. *See* 15 CFR § 930.60(a)(1).

Pursuant to 15 CFR Part 930, subpart H, and within 30 days from receipt of this letter, AES may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. A copy of the request and supporting information must be provided to MDE, the Corps, and FERC. The Secretary of Commerce may collect fees for administering and processing your request.

If you have any questions, please contact me at (410) 537-3763, or by e-mail eghigiarelli@mde.state.md.us.

Sincerely,



Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: David Kennedy, NOAA
Joanne Wachholder, FERC
Joseph DaVia, Corps
Kent J. Morton, AES
Shari T. Wilson, Secretary, MDE
Judah Prero, AAG, MDE
Adam Snyder, AAG, MDE

List of Exhibits
(Attached)

Exhibit	Item	Date
1	Correspondence from Kent J. Morton, AES to Elder A. Ghigiarelli, Jr., MDE	July 6, 2007
2	Correspondence from Elder A. Ghigiarelli, Jr., MDE to Christopher H. Diez, AES	July 5, 2007
3	Correspondence from Vance G. Hobbs, Department of the Army to Christopher Diez, AES	July 3, 2007
4	Correspondence from Kent J. Morton, AES to Elder A. Ghigiarelli, Jr., MDE	June 29, 2007
5	Correspondence Kent J. Morton, AES to Kimberly D. Bose, Federal Energy Regulatory Commission	June 29, 2007
6	Correspondence from Elder A. Ghigiarelli, Jr., MDE to Kent J. Morton, AES	June 25, 2007
7	Correspondence from Christopher H. Diez, AES to Elder A. Ghigiarelli, Jr., MDE	May 30, 2007
8	Correspondence from Elder A. Ghigiarelli, Jr., MDE to Kent J. Morton, AES	May 9, 2007
9	Correspondence from Elder A. Ghigiarelli, Jr., MDE to Christopher Diez, AES	May 7, 2007

List of Exhibits
(Available on Request)

10	AES Application/Filing for a FERC License	January 8, 2007
11	AES Application for a Maryland Coastal Facilities Review Act Permit	January 8, 2007



AES Sparrows Point LNG, LLC
4300 Wilson Boulevard
Arlington, VA 22203

July 6, 2007

Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: AES Sparrows Point LNG Proposal

Dear Mr. Ghigiarelli:

I am in receipt of your letter to Christopher H. Diez dated July 5, 2007 in which you state that MDE continues to review the data response submitted by AES to MDE on May 31, 2007, which submittal was made in response to MDE's request for additional information dated May 7, 2007 ("Data Request"). This letter responds to your stated needs for additional information/clarification as set forth in your July 5 letter.

Dredge Recycling

The question previously posed by MDE regarding bulking factors and additives (Question No. 14 in the Data Request) asked only whether a bulking factor "[h]as . . . been included as a consideration in the proposed processing times and storage abilities?" The question described what a bulking factor is and that "[f]or mechanical dredging, a bulking factor of 1.4 should be considered." AES responded to the question as posed by saying that it had considered the bulking factor. Additional information on bulking factors is set forth below.

For silty sediments, some bulking does occur during excavation from the waterway. However, upon processing by the addition of 8 to 12 percent Portland Cement by weight, a "densification" or increase in unit weight by hydration occurs, thereby reducing the volume of material to very near its original measured volume, particularly after compaction at the storage or upland disposal site(s).

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Elder A. Ghiarelli, Jr.
July 6, 2007
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Experience has shown that alternate admixtures used at up to 30 percent by weight will result in a 10 to 15 percent increase in volume upon placement at an upland disposal site, when compared to in-place waterway volume measurements.

For hard packed sand or till material a bulking factor of 1.2 or 1.35 is likely when recovered from the waterway. This factor is again negligible after material is placed and compacted at an upland beneficial use site.

Pipeline Minimization Efforts at Wetlands and Waterways

MDE has requested additional information with regard to avoidance and minimization measures at wetlands and waterways. AES has developed crossing procedures for each wetland and waterbody. That information was included in Tables 2.5-1 and 2.4-1, respectively, of Resource Report 2, *Water Use and Quality*. These tables delineate each of the crossings by milepost, including estimated impact areas and linear crossing distances. These tables were subsequently updated and re-filed with MDE as Items 34 and 36 in AES's response to the Data Request. Additionally, AES originally filed the Best Management Practice ("BMP") figures included as Appendix 2B to Resource Report 2, *Water Use and Quality*. These BMP figures provide typical crossing methods that will be utilized at wetland and waterbody crossings, as described in Tables 2.5-1 and 2.4-1, respectively.

AES also provided MDE with additional information regarding wetland buffers, impact assessments, and site specific crossing methods in its response to Items 27, 30, 31, 32, and 33 of the Data Request. Each of the crossings is shown on the Alignment Sheets included as Appendix 1A of Resource Report 1, *General Project Description*. The precise locations of the wetland boundaries are shown on the alignment sheets, and the detailed wetland delineation report was included as Appendix 2D to Resource Report 2, *Water Use and Quality*. In its May 31 response to Item 28 of the Data Request, AES acknowledged MDE's desire to field verify wetlands. As stated in that response, AES will continue to work with the U.S. Army Corps of Engineers ("ACOE") and MDE to plan an acceptable level of field verification, and would welcome a meeting with appropriate MDE staff and ACOE to develop a plan and schedule prospective field dates. If MDE can provide tentative dates that would be amenable to their staff's schedules, AES will coordinate the field verification exercises. Additionally, if MDE has further questions regarding where information may have been presented in the Resource Reports and permit application documents, AES is willing to send a representative to review the materials and sections with MDE at their offices to help facilitate the overall review process.

Conclusion

I hope the information provided above, along with information previously provided to MDE, satisfies the inquiries in your July 5 letter to Mr. Diez. We look forward to continuing our relationship with MDE, and will do everything we can to assist MDE in its processing of our Coastal Facilities Review Act application.

Regarding MDE's comment about the impossibility of concurring with AES's certification of consistency with the Maryland Coastal Management Program, we continue to respectfully disagree. As noted in my letter to you dated June 29, 2007, MDE's ongoing review seems to be taking much longer than is typical for consistency determinations issued by the State of Maryland. Further, the types of questions posed in your July 5 letter to Mr. Diez certainly cannot be examples of the types of issues that are holding up MDE's decision on the project's consistency with the Maryland Coastal Management Program as they seem to be either picayune in nature or pertain to issues for which information was previously provided. Accordingly, I feel compelled to ask that MDE abide by the statutory six-month timeframe that is allowed for consistency determinations.

Very truly yours,



Kent J. Morton
Project Director

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Deputy Secretary

July 5, 2007

Christopher H. Diez
Vice President
AES Sparrows Point LNG, LLC
Mid-Atlantic Express, LLC
140 Professional Parkway, Suite A
Lockport, New York 14094

RE: AES Sparrows Point LNG and Mid-Atlantic Express, LLC/
Proposed Dredging and Pipeline

Dear Mr. Diez:

The purpose of this letter is to inform you of the status of the Maryland Department of the Environment's (MDE) review of the response provided by AES, dated May 31, 2007, to MDE's request for additional information on the proposed impacts to tidal wetlands, and nontidal wetlands and waterways, resulting from the proposed dredging and pipeline construction. Although MDE's review of the AES response is ongoing, based on our review to date additional information/clarification will be required, particularly with regard to the proposed recycling facility/disposal of the dredged material.

For example, MDE continues to have serious concerns with the end-use of the recycled dredged material, the fact that the treatment does not remove contaminants, and the likely use of the material will be for landfill capping, Brownfield site, and quarry and mine reclamation. MDE asked whether AES had considered how the addition of a bulking factor and additives will increase the amount of material to be disposed. AES responded with a one-sentence reply that it had considered that, but provided no data that would enable MDE to determine what portion of the treated material would consist of additive and what portion would consist of dredged material. Given the elevated contamination levels in the dredged material, a clarification or elaboration on AES's response is important to the Department's review of this project.

Similarly, with regard to the proposed pipeline, MDE will require additional information with regard to avoidance and minimization measures at wetlands and waterway crossings. In its application, AES simply stated that crossing designs would be

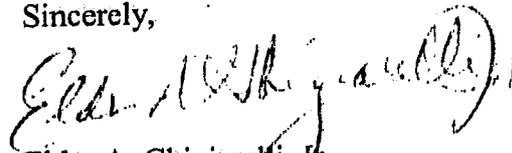


Christopher H. Diez
July 5, 2007
Page 2

developed by its construction contractor. After MDE indicated that that was not acceptable, AES submitted additional design information, but further information will be required as the precise location of wetlands and waterways within the pipeline corridor is verified in the field.

Accordingly, MDE has determined that the information submitted to date is insufficient with regard to proposed impacts to wetlands and waterways. A detailed letter in response to your submittal will be forthcoming. As we have discussed, the inadequacy of the information provided by AES makes it impossible for MDE to concur with AES's consistency certifications with respect to this project. If AES reconsiders its recent refusal to stay the 6-month coastal zone consistency timeclock, please contact me at (410) 537-3763, or by e-mail eghigiarelli@mde.state.md.us. Thank you for your attention to this important matter.

Sincerely,



Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: Joe DaVia, Corps
Joanne Wachholder, FERC
Tressa Ellis, MDE



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

REPLY TO
ATTENTION OF

JUL 03 2007

Operations Division

Mr. Christopher Diez
AES Sparrows Point LNG, LLC
140 Professional Way, Suite A
Lockport, New York 14094

Dear Mr. Diez:

This is in response to your application, CENAB-OP-RMN(AES SPARROWS POINT LNG & MID-ATLANTIC EXPRESS, LLC/DREDGING & PIPELINE) 2007-1644 [Federal Energy Regulatory Commission Docket CP07-62-000 and CP07-63-000], which requests Department of the Army authorization to conduct dredging in waters of the U.S., and to discharge dredged or fill material into waters of the U.S., associated with construction of a liquefied natural gas (LNG) terminal at Sparrows Point, Maryland and associated 88-mile natural gas pipeline terminating in Eagle, Pennsylvania. The revised application was received by the US Army Corps of Engineers, Baltimore District (Corps) on April 16, 2007.

The permit application for this project remains incomplete because important information necessary to continue our evaluation is required. The information listed below must be incorporated into the application and/or plans and returned to this office.

1. Please submit a current bathymetric survey (full size drawings) of the proposed 117 acre dredge area at an appropriate scale in order for the Corps to assess the existing depths, including shoaling.
2. Based on the current bathymetric survey, please estimate the volume of material to be dredged.
3. Provide a legible plan showing the currently existing shoreline configuration at the proposed terminal site as well as any other nearby pier facilities and/or remnants, pilings or other structures, shoreline erosion control structures, tidal wetlands, and property lines with adjacent property owners' names and addresses. Label all areas that are proposed for removal or proposed excavation.
4. The revised application describes that approximately 3.7 million cubic yards of material will be dredged. However, this does not include the volume increase as a result of processing of the dredge material (i.e., bulking by additives). Please estimate the volume increase as a result of bulking by additives through the proposed dredge material recycling facility.
5. The applicant collected and analyzed 16 samples in the proposed dredge area. For an approximate four million cubic yard dredging project, this equates to one sample for every 250,000 cubic yards of dredge material. Although there is no national guidance available to address the number of samples to collect for a dredging project, this is less

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than is typical for dredging contaminated sediment. In addition, the proposed dredging area has shifted to the north where no sediment samples were taken and analyzed. The application states that the applicant will perform additional sampling and characterization of the sediment in the proposed dredge area, as required, in accordance with the Corps permit application requirements, to further characterize the levels of contamination. In this regard, the permit application clearly recognizes that additional sampling may be required as the application is reviewed by the regulatory agencies.

After careful consideration and review, the Corps, in coordination with the US Environmental Protection Agency, has determined that additional sediment sampling in the proposed dredge area is required to adequately characterize the level of contamination present in the sediments. The additional required sampling should be comprised of four segments: outer approach channel, turning basin, north side of Pier 1, south side of Pier 1. For each segment, there should be a minimum of three separate sampling locations all selected using a random design. At each selected location for sampling, the core boring must be a minimum of one meter deeper than the proposed dredge project depth (to account for any over dredging). Analysis of surface, mid-depth, and bottom of the core should be made for bulk chemistry (as was performed for the previous 16 samples). Separate analysis of the chloride concentrations (no sample pooling or compositing) for surface and mid-depth of each core is required. Cores or borings should be done (at least one per segment) for physical characterization down to the dredge project depth plus one meter. Emphasis should be placed on characterizing any strata anomalies. If strata anomalies exist, additional testing should be done in the anomaly area. The Corps and EPA are available to discuss/meet with the applicant regarding these additional sampling locations and requirements, if necessary.

6. Figure 1.3-2 (Sheet 1) shows several yellow lines depicting the proposed dredge area. Please confirm that the extent of the proposed dredging is the outermost yellow line and provide linear foot dimensions to the proposed dredge area (e.g., entrance channel length, width, turning basin radius, etc.)
7. For the proposed dredging, provide a cross section drawing of the dredge area, including side slopes relative to the bottom substrate; mean lower low water, and mean high water.
8. The application describes that the dredged material will be processed at a dredge material recycling facility to be located at the terminal site. However, Resource Report 2 (page 40) describes that ocean placement at an authorized ocean dredge material disposal site could be a viable placement location for some dredge materials. If ocean disposal (or other disposal methods) of the dredged material is proposed, this must be evaluated in the Corps permit application, and the associated impacts from ocean disposal must be quantified and assessed, in accordance with Section 103 of the Marine Protection Research and Sanctuaries Act of 1972.
9. The application must include any impacts and structures associated with the construction and operation of the dredge material recycling facility. Please submit detailed site plan construction drawings and schematic drawings of the dredge material recycling facility. If applicable, submit construction drawings for all impact areas (including any structures in waters of the U.S.) and quantify impacts to all waters of the U.S.
10. The Corps notes that Figure 1C-3, Dredge Material Recycling Facility Plan does not show an area for storm water management. Please provide an additional description and

drawings of the proposed processed dredge material (PDM) containment facility, including storm water management plans and drawings.

11. The application describes that an additional 20 acres are available for processed dredged materials (PDM) storage, in addition to the 10 acres located adjacent to the processing facility. However, as shown on Figure 1.3-2 (Sheet 2), this 20 acre area is not within the property boundary and is described as "temporary equipment laydown and storage yard during construction..." Therefore, it appears that the entire 20 acre parcel would not be exclusively dedicated for PDM storage. Please further describe the leasing or acquisition arrangements for this 20 acre parcel. In addition, please quantify the area actually available for PDM storage.
12. The proposed area for PDM storage appears to be inadequate. The application describes that approximately 10,000 cubic yards of sediment per day is expected to be dredged and processed. Further, approximately 5,000 cubic yards/day of PDM will be transported to the final disposal location off-site. Assuming a dredging season of 243 days, we calculated a storage requirement for approximately 1.24 million cubic yards of PDM at the end of the second season of dredging, not including bulking by additives. This equates to approximately 769 acre-feet of material that over the 30 acres available for storage, would yield a pile approximately 26 feet high (i.e., vertical walls), not accounting for side slopes. Storm water management would also require a large area and is not shown on the drawing. Please further describe and submit appropriate calculations showing that the proposed PDM storage area is adequate to store and contain the proposed dredge material volumes, and will provide for appropriate storm water management.
13. Page 7 of the dredge management plan describes that decant water will be pumped from the scow to a dedicated dewatering barge. Please submit a drawing showing the location of the dewatering barge and specifications/drawings for the dewatering barge. Describe and provide appropriate drawings showing any navigation aids/mooring structures for the dewatering barge. As an alternative, the plan describes that land based tanks may be used for the decant water. Please submit specifications/drawings for these tanks, their proposed location(s), and the volumes of decant water expected to be generated, treated, and disposed/discharged per day.
14. Management and testing of the decant water from the barges has only been marginally addressed. Pump-out from a barge to a holding tank, followed by filtration is a reasonable approach to protecting water quality. However, testing is needed to confirm the expectation that no further treatment is necessary. The information provided suggested that testing in real time will determine the level of treatment that is required. This is not a practical approach (e.g., treatment cannot be set up overnight) unless all tests show no or low and acceptable contamination in the decant water. Please further address how testing will be accomplished. Discharge of any decant water must all appropriate Federal and State water quality standards. Further, return of the decant water to the harbor will likely be viewed as a Section 404 discharge (i.e., return water) and testing and/or modeling will be required to ensure that water quality standards are being met.
15. The dredge material management plan lays out the general approach to managing the dredge material. However, many specifics remain to be determined. For example, please address the following: contingency plans for equipment breakdowns (e.g., pugmill), debris handling and disposal, oversize debris management, water treatment system, storm

water management, process additives, dredge material reuses, and separation of clean material from contaminated material (i.e., methods, timing, criteria).

16. Please address if and how any waste water from the dredge material recycling facility will be handled and disposed. It is reasonable to expect that equipment such as conveyors, hoppers, screens, and the pugmill will periodically require cleaning (i.e., washing with water or other liquid cleansers), and waste liquid will be generated and require proper disposal.
17. The dredge material management plan describes that no storage of the dredged material will be necessary. However, the Corps has determined that storage of unprocessed dredge material may be required in circumstances such as equipment breakdowns, etc. Please describe how unprocessed dredged material will be handled, stored, and appropriately contained.
18. Page 65 of the application describes that for PDM disposal, "...final determinations of the application(s) will be made prior to initiation of dredging activities." Further, the application describes that the processed dredge material (PDM) could be transported and placed at the Bark Mine Complex in Pennsylvania. In Resource Report 2, Appendix 1C describes that the PDM will be marketed for off-site commercial use by third parties. Page 39 of Resource Report 2 describes that the PDM could be used as fill and lists several disposal options.

The specific uses and ultimate disposal locations of the processed material must be specified and the aquatic impacts quantified, if applicable, in the permit application. The dredge material disposal locations must be reviewed as part of the single and complete project under the Corps permit application. Please submit documentation confirming that the PDM will be accepted by the Bark Mine Complex facility or another disposal facility.

19. Describe if future maintenance dredging will be required for the terminal facility and the proposed frequency, if necessary.
20. Figure 1C-1 is missing from the submitted information. Please submit another copy.
21. As part of the Corps permit application, the Corps requires submission of full size (blue line) drawings and 8.5" x 11" reduced copies (to facilitate the Corps public notice process) for all waters of the U.S. impact areas resulting from the dredging, terminal construction, structures (e.g., bulkheads, piers, navigational aids, piles, etc.) pipeline construction, and dredge material disposal locations.
22. The application describes that 2,175 linear feet of sheet pile bulkhead is proposed for installation. Please provide construction drawings (or typical construction drawings) and indicate the maximum channelward extent of the proposed bulkhead. For installation of the proposed sheet pile bulkhead, silt curtains will be installed as required. Please submit a description and drawings of the proposed silt curtain.
23. The application describes that the existing pier will be modified. Please submit appropriate construction drawings which show the proposed work at the existing pier, and indicate the revised channelward extent.

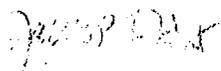
24. The application describes that the applicant may construct a natural gas power plant at the site. Please quantify all impacts to waters of the U.S. from construction and operation (e.g., water intake structure, etc.) of this facility and submit appropriate drawings showing the impacts areas.
25. The total impact to all waters of the U.S. (permanent and temporary) resulting from the proposed project is a key element of the Corps' review of the permit application. The waters of the U.S. impacts information will also be disseminated for public comment through the Corps public notice process. Page 176 of the application states that 16.57 miles of pipeline have not been field surveyed. Please describe the plan and schedule for (a) surveying these areas, and, (b) quantifying the aquatic impacts. Please be advised that all impacts to waters of the U.S. must be quantified (or appropriately estimated) and described prior to the Corps issuing a public notice for the project.
26. The Corps will provide specific recommendations and requirements for avoidance and minimization of impacts to waters of the U.S. (e.g., alignment shifts, use of horizontal directional drilling at specified stream or wetland crossings, etc.) when field investigations of the impact areas are completed. In addition, the wetland jurisdictional determination and impacts to waters of the U.S., including jurisdictional wetlands, will be verified when the Corps/Maryland Department of the Environment field investigations are completed.
27. The alignment sheets submitted with the application are not adequate to field verify the jurisdictional determination. Please submit larger scale drawings which show the wetland and stream boundaries as delineated in the field.
28. As currently listed in Table 2.4-1 and Table 2.5-1, certain wetland and stream impacts and crossing methods remain "to be determined" (TBD). Therefore, the total aquatic impact areas will increase. These impacts and crossing methods must be specified and quantified in the Corps permit application and the impacts revised appropriately.
29. Please quantify the permanent impacts to wetlands and streams. All permanent wetland and stream impacts must be mitigated. Please submit a wetland and stream mitigation plan for all permanent project impacts.
30. The impacts to waters of the U.S., including jurisdictional wetlands, should be characterized as permanent or temporary throughout the Corps permit application.
31. Please submit a description and location drawing of all proposed navigational aids (e.g., buoys, lights, pilings, mooring structures, etc.) for the project, and associated construction drawings.
32. The application describes that a potential floating security barrier may be employed around a moored LNG vessel. Further describe this barrier and submit appropriate construction drawings.
33. The following practices must be incorporated into the construction of the natural gas pipeline: (a) when the pipeline is installed in stream and wetlands, bedding material must not promote drainage of streams and wetlands. Clay plugs, impervious membranes, or other materials must be placed in the trench to ensure that the trench does not drain the waters of the U.S. through which the utility line is installed; (b) the top of the pipeline

must be located a minimum of three feet below the existing bottom elevation of the stream bed and the Corps will generally not approve any riprap protection in-stream; (c) in wetlands, the top 6 to 12 inches of the trench must be backfilled with the top 6 to 12 inches of topsoil removed from the trench; and (d) immediately after construction of a pipeline section is completed, excess excavated material must be disposed of in an upland location and the construction area returned to pre-construction contours. The alignment sheets and construction drawings for the pipeline must reflect these conditions and requirements.

34. Resource Report 1 describes that AES is working with Baltimore Gas and Electric, Columbia Gas, and the Maryland State Highway Administration to secure approvals, as needed, to locate the pipeline within these respective right-of-ways (ROWs). Please include written documentation in the Corps application that co-location of the natural gas pipeline within the respective ROWs have been granted or denied by the appropriate owners and provide an update concerning the applicant's coordination with these agencies.
35. Please provide an update concerning your coordination with the National Marine Fisheries Service, the Maryland Historical Trust, and the Pennsylvania Historic and Museum Commission.
36. The application describes (page 283) that formal bog turtle surveys are required during the 2007 season. Please submit the results of the formal bog turtle surveys.
37. We understand that Appendix 1B contains a list of affected landowners. However, the Corps requests a list of name and address of each adjacent property owner along the entire project (likely a subset of the list provided in Appendix 1B). The list of adjacent property owners should be provided in electronic format for printing mailing labels for the Corps public notice.
38. Please provide the number of residential and/or business displacements resulting from proposed construction of the pipeline and terminal facility.

Should you have any questions concerning this letter or the Corps permit application review process, please contact Mr. Joseph P. DaVia of my staff at (410) 962-4527.

Sincerely,



Vance G. Hobbs
Chief, Maryland Section Northern

Copy Furnished:

Mr. William C. Muir, EPA Region 3
Ms. Kimberly D. Bose, FERC
Ms. Alisa Lykens, FERC, OEP- Gas Branch 2, PJ-11.2
Mr. Elder A. Ghigliarelli, Jr., MDE
Mr. Kent Morton, AES



AES Sparrows Point LNG, LLC
4300 Wilson Boulevard
Arlington, VA 22203

June 29, 2007

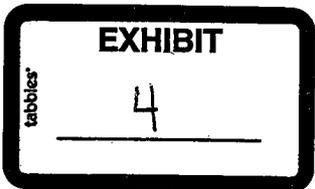
Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: AES Sparrows Point LNG Proposal

Dear Mr. Ghigiarelli:

I am in receipt of your letters to me dated May 9, 2007 and June 25, 2007 dealing with the issue of Maryland's federal consistency determination for the AES Sparrows Point LNG proposal. In both letters you request that AES Sparrows Point LNG, LLC (together with Mid-Atlantic Express LLC, "AES") agree to stay the federal consistency timeclock until such time as the Secretary of MDE is prepared to render a decision on the AES application for a Coastal Facilities Review Act ("CFRA") permit. In your May 9 letter you state the reason for your request to be MDE's belief that the consistency decision "cannot be made until [MDE] has completed its review of all State permits/approvals required for the project."

Responding to the suggestion of State and federal regulatory personnel, and recognizing that our project might be viewed by some as more controversial than some of the more routine projects for which consistency determinations have been made in recent years, AES voluntarily participated in the Joint Evaluation Committee meetings beginning in February 2006. Our intent in participating in these meetings was to establish a rapport with state and federal agencies involved in the regulatory review of our project, provide relevant, factual information in a timely manner, and solicit input and/or comment on that information. We participated in those meetings until the time we were verbally informed by the State of Maryland that further participation would not be productive due to expected intercessions of members of a small group of local citizens that expressed opposition to the project proposed by AES. We continued our interaction with the Maryland regulatory agencies via the FERC pre-filing process (requested by AES on March 24, 2006 and initiated by FERC on April 3, 2006), and through other informal communications. All pre-filing submittals were delivered to the Power Plant Research Program ("PPRP") of the Department of Natural Resources ("DNR"), which is the entity



Elder A. Ghigiarelli, Jr.
June 29, 2007
Page 2 of 3

designated as the Maryland contact agency pursuant to a letter from DNR to FERC dated May 1, 2006. We were informed that all submittals to PPRP would be forwarded to other Maryland agencies, including MDE, as appropriate for the subject matter. We also provided a full copy of the formal FERC application, including all required environmental Resource Reports in support of the application.

Given the extensive interaction between AES and all relevant Maryland agencies through the prescribed process, sufficient information has been presented in a timely manner so as to allow a consistency determination to be made within in the period set forth in 16 U.S.C. § 1456 (Section 307(c)(3)(A) of the Coastal Zone Management Act ("CZMA")). Further, we note that Maryland's Coastal Zone Management Program ("CZMP"), while it may be a "networked" program as described in your letter, cannot require issuance of any or all State or local permits/approvals as a precondition to a determination of consistency. Finally, because the project we have proposed – a natural gas import and storage facility – is located within an existing heavy industrial port area in a State that has two existing LNG facilities in the State's coastal zone, as well as numerous other maritime-related industries, the consistency determination should be straightforward and can be made within the established period. In that regard, we believe that all entities involved in this process should continue to act in the spirit of their obligations to adhere to the timing requirements of the FERC process. The open-endedness of your request regarding the federal consistency timeclock does not appear to be consistent with those timing requirements.

Accordingly, AES declines to grant your request for a stay of the consistency timeclock. We hope that this denial does not otherwise affect the ongoing CFRA process, and AES remains committed to working closely with the State of Maryland to complete that process in a timely manner.

Regarding the consistency certification timeclock vis-à-vis FERC that you have raised in your letters, I responded to you in an email dated May 11, 2007 that AES reviewed this issue with counsel and are comfortable that we have met the requirement in our filings with FERC and the State. On January 8, 2007, AES filed its application with the FERC and notified FERC that it would file the consistency certification with MDE. The following day, AES submitted its CFRA application to MDE, including a certification of the project's consistency with the Maryland CZMP. A copy of the certification was filed in the AES Sparrows Point docket at FERC the following week. FERC's ongoing processing of our application as complete provides appropriate confirmation of our conclusion in this regard, as our application would not have been complete without all required certifications. Moreover, if MDE believed this certification to be in any way deficient or "incomplete," MDE was required to notify AES of any such deficiency within 30 days of MDE's receipt of an "incomplete" certification. 15 C.F.R. § 930.60(a)(1). MDE did not provide any such notice to AES. MDE's apparent change in its position is therefore not supported by the facts or the regulation you cite.

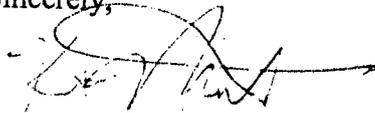
Your June 25 letter states that MDE will process an objection to the federal consistency if AES does not respond to the request for a stay of the consistency timeclock by July 2,

Elder A. Ghigiarelli, Jr.
June 29, 2007
Page 3 of 3

2007. I hope this timely response provides the reasons to process a concurrence to the federal consistency certification. Should no action be taken, MDE's concurrence with our certification of compliance with Maryland's CZMP would be "conclusively presumed" under the provisions of Section 307 of the CZMA as a matter of law. While MDE's concurrence with or inaction on the certification would be welcomed by AES, I feel compelled to note that either action might be seen by some persons to be at odds with the position recently asserted by the State in federal court, that Baltimore County's Ordinance 9-07 banning LNG facilities is now part of Maryland's CZMP. See Affidavit of John R. Griffin in Civil Action No. RDB-07-325.

Regardless of what action MDE takes at this time on the question of coastal zone consistency, and whatever action AES may then take in response, we trust that MDE will continue its review of our CFRA application and remain open to discussions with AES about the importance of this infrastructure project for Maryland. When all is said and done, this project will result in a healthier environment for the State and the Chesapeake Bay, as well as lower energy costs, additional taxes, more union jobs, and increased income to the residents of the local communities.

Sincerely,



Kent J. Morton
Project Director



AES Sparrows Point LNG, LLC
4300 Wilson Boulevard
Arlington, VA 22203

June 29, 2007

RECEIVED

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 1st Street N.E.
Washington, D.C. 20426

Division of Environmental Protection
Washington, D.C. 20426

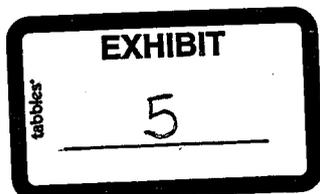
Re: AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C., Docket Nos.
CP07-62-000, CP07-63-000, CP07-64-000, CP07-65-000

Dear Ms. Bose:

On January 8, 2007, AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. (collectively "AES") filed applications with the Federal Energy Regulatory Commission ("FERC") to site, construct and operate an LNG Terminal and an approximately 88-mile pipeline, respectively. In those applications, AES notified FERC that it would file with Maryland a certification of the project's consistency with the Maryland Coastal Management Program pursuant to the Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1451, *et seq.* See Ex. J of Mid-Atlantic Express, L.L.C. application and Ex. H of AES Sparrows Point LNG, LLC application. The following day, AES submitted its Coastal Facilities Review Act ("CFRA") application to the Maryland Department of the Environment ("MDE"), including a certification of the project's consistency with the Maryland Coastal Management Program. A copy of the CFRA application, including the certification, was filed in the AES docket at FERC the following week. In accordance with 15 C.F.R. § 930.57(b), that certification reads as follows: "I also certify that the proposed works are consistent with Maryland's Coastal Zone Management Plan."

In a May 9, 2007 letter - four months after AES's submittal of the consistency certification - MDE claimed that "AES's application/filing for the FERC License did not contain the required consistency certification" and that the six-month statutory period for MDE's consistency review had not yet begun to run (copy enclosed). MDE reiterated this position in a June 25, 2007 letter (also enclosed) and continues to maintain that it will not process AES's certification until a certification is filed with the FERC.¹ AES does

¹ We note that if MDE believed the certification to be in any way deficient or "incomplete," MDE was required by federal regulation to notify AES of any such deficiency within 30 days of MDE's receipt of an "incomplete" certification. 15 C.F.R. § 930.60(a)(1). MDE did not provide any such notice to AES.



Kimberly D. Bose
June 29, 2007
Page 2 of 2

not believe that MDE has any legal basis for refusing to review AES's consistency certification and that the facts show there is also no basis for MDE (belatedly) to assert that the statutory six-month timeclock has not yet begun to run.

Nevertheless, to address what may be the elevation of form over substance, and thereby to avoid an objection to the consistency of the project at the end of the six-month review period on the grounds that MDE is not "satisfied" with the certification that has been provided to the FERC, AES hereby repeats in connection with its FERC applications and with respect to the proposed LNG terminal and pipeline facilities located within the state's coastal zone:

The proposed activity complies with the enforceable policies of Maryland's approved management program and will be conducted in a manner consistent with such program.

If you have any questions concerning this submission, please do not hesitate to contact me at (703) 682-6754.

Very truly yours,

Kent Morton by JAF

Kent J. Morton
Project Director

Enclosures

cc: Medha Kochhar, FERC
Richard Yuill, AMEC
Elder A. Ghigiarelli, Jr., MDE
John King, NOAA
Joe DaVia, USACE

MARYLAND DEPARTMENT OF THE ENVIRONMENT

MDE

1800 Washington Boulevard • Baltimore MD 21230
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Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

June 25, 2007

Kent J. Morton
Project Director
AES Corporation
4300 Wilson Boulevard
Arlington, VA 22203

RE: Proposed AES Sparrows Point LNG Facility

Dear Mr. Morton:

I am writing with regard to the State's Federal Consistency review, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA), of the AES Sparrows Point LNG, LLC (AES) application/filing for the Federal Energy Regulatory Commission (FERC) license for the referenced project. As you are aware, the FERC license is subject to the provisions of Section 307 (c)(3) of the CZMA.

By letter dated May 9, 2007, the Maryland Department of the Environment (MDE) informed AES that the following federal actions are subject to the requirements of Section 307 of the CZMA: (1) the U.S. Army Corps of Engineers (Corps) permit; and (2) the FERC license. Further, because AES's filing for the FERC license does not contain the consistency certification required by the Federal Consistency regulations (15 CFR Part 930, § 930.57) and such certification has not been received by the State, the Federal Consistency timeclock has not started running on the FERC license.

The Federal Consistency regulations at 15 CFR Part 930, § 930.57 (a) state "... all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information." Section 930.57(b) requires that the applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program."



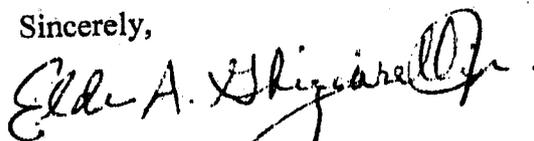
Kent J. Morton
June 25, 2007
Page 2

Based on the requirements, MDE requests that AES submit the required consistency certification to FERC and provide a copy of the certification to the State of Maryland in order to commence the consistency timeclock on the State's review of the FERC license. MDE has discussed the lack of the consistency certification with the National Oceanic and Atmospheric Administration (NOAA) and FERC. NOAA agrees that the timeclock does not start until the consistency certification is submitted, and FERC has confirmed that the filing does not contain a certification statement.

Finally, MDE still awaits AES's response to the State's request that AES agree to stay the Federal Consistency timeclock on both federal actions until such time as the Secretary of MDE is prepared to render a decision on the AES application for a Coastal Facilities Review Act permit. If a response is not received by July 2, 2007, MDE will proceed to process an objection to the federal consistency certification for the proposed impacts to wetlands and waterways regulated by the Corps.

If you have any questions, please contact me at (410) 537-3763.

Sincerely,



Elder A. Ghigiarelli Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: Shari T. Wilson, Secretary
Judah Prero, AAG
Joanne Wachholder, FERC
Joe DaVia, Corps
John King, NOAA



RECEIVED



May 30, 2007

Mr. Elder A. Ghigiarelli, Jr.
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230

COPY

Re: Application Tracking Number: 200761377/07-NT-0125/07-WL-1301
AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C.

Dear Mr. Ghigiarelli:

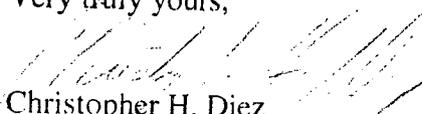
Enclosed for filing in the referenced proceedings are an original and five (5) hard copies, as well as two electronic copies, of the Response of AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. (collectively "AES") to the Maryland Department of the Environment's ("MDE") Wetland and Waterways Program ("WWP") Information Request issued on May 7, 2007.

In addition, a copy of the entire filing is being provided directly to Army Corp of Engineers, Mr. Joseph DaVia, FERC Staff and Mr. Richard Yuill, Project Manager for AMEC Paragon, Inc., the Commission's third-party environmental services contractor for the Sparrows Point Project. Courtesy copies will also be sent to the Maryland Department of Natural Resources, Mr. Richard McLean.

The public version of this transmittal letter will be served on all parties on FERC's official service list for the referenced proceedings.

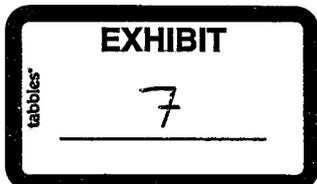
If you have any questions concerning the enclosed materials, please do not hesitate to contact me at (716) 439-1273, ext. 211.

Very truly yours,


Christopher H. Diez
Vice President
AES Sparrows Point LNG, LLC
Mid-Atlantic Express, L.L.C.

cc: Joanne Wachholder, FERC
Richard Yuill, AMEC
Joseph DaVia, U.S. Army Corps of Engineers
Richard McLean, MDNR

AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC
140 Professional Parkway, Suite A, Lockport, New York, 14094
Tel: 716-439-1273 • Fax: 716-434-7514



MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
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Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

May 9, 2007

Kent J. Morton
Project Director
AES Corporation
4300 Wilson Boulevard
Arlington, VA 22203

RE: Proposed AES Sparrows Point LNG Facility

Dear Mr. Morton:

I am writing with regard to the State's Federal Consistency review, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA), for the referenced project. Section 307 of the CZMA requires that proposed federal activities, including direct federal actions, federal licenses and permits, and federal assistance to State and local governments, be consistent to the maximum extent practicable with a State's federally-approved Coastal Zone Management Program (CZMP).

Maryland's CZMP is referred to as a "networked" program that is based on existing State laws and regulations. Accordingly, the State's Federal Consistency decision is a determination that the proposed federal activity complies with all applicable State authorities and permit requirements.

As we discussed at our meeting on April 18, 2007, there are two federal actions that are subject to Section 307 of the CZMA: (1) the U.S. Army Corps of Engineers (Corps) Section 10 (River and Harbors Act) and Section 404 (Clean Water Act) permit; and (2) the Federal Energy Regulatory Commission (FERC) license. With regard to federal licenses and permits, Section 307 of the CZMA requires the applicant to "certify" in the application for federal authorization that "the proposed activities comply with, and will be conducted in a manner consistent with, the State's Coastal Zone Management Program".

AES's application for the Coastal Facilities Review Act (CFRA) permit contained the Joint State/Federal application for proposed work in jurisdictional wetlands and waters. The application form for this authorization contains the required consistency certification. Thus, the 6-month timeframe for the State's decision on the Corps' permit

EXHIBIT

8

www.mde.state.md.us

TTY Users 1-800-735-2258
Via Maryland Relay Service

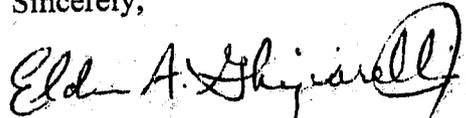
Kent J. Morton
May 9, 2007
Page 2

began on January 9, 2007. However, AES's application/filing for the FERC License did not contain the required consistency certification. Thus, the consistency clock has not started running on the FERC License.

The Federal Consistency regulations [15CFR Part 930, §930.60(a)(3)] allow State agencies and applicants to mutually agree to "stay" the consistency timeclock or extend the six-month review period. Since the State's CZMP is based on existing State authorities, the Section 307 Federal Consistency decision cannot be made until the Maryland Department of the Environment (MDE) has completed its review of all State permits/approvals required for the project. Accordingly, MDE requests that AES, in accordance with 15 CFR, Part 930, §930.60 (a)(c), agree to stay the Federal Consistency timeclock until such time as the Secretary of MDE is prepared to render a decision on the AES application for a CFRA permit.

I look forward to your response to this request. If you have any questions, please contact me at (410) 537-3763.

Sincerely,



Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: Shari T. Wilson, Secretary
Joanne Wachholder, FERC
Joseph DaVia, Corps
John King, NOAA
Thomas Deming, Esq.

MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230
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Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

May 7, 2007

Mr. Christopher Diez
AES Sparrows Point LNG, LLC
140 Professional Way, Suite A
Lockport, NY 14094

RE: Application Tracking Number: 200761377/07-NT-0125/07-WL-1301
AES Sparrows Point LNG & Mid-Atlantic Express LLC/Dredging and Pipeline

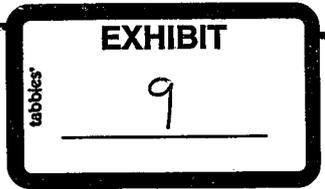
Dear Mr. Diez:

The Wetlands and Waterways Program (WWP) of the Water Management Administration has completed its initial review of the *Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland* for the above referenced project. The application is being reviewed as a component of the AES Sparrows Point LNG, LLC (hereafter AES) application for authorization under the State's Coastal Facilities Review Act.

The State's wetlands and waterways review was conducted in accordance with COMAR 26.17.04 (Waterway Construction), 26.23.04 (Nontidal Wetlands), 26.24.02 (Tidal Wetlands) and 26.08.02.10 (Water Quality Certification) (1996 Replacement Volume). WWP has determined that your joint Federal/State application is incomplete. The following information is necessary for WWP to continue processing the application.

In general, the activities/project descriptions contained within the Resource Reports are numerous vague and not site-specific. Please note that in order to review the proposed activities properly, specific descriptions of proposed actions will be required. At this time, the following comments/information requirements need to be addressed:

1. It appears that the Resource Reports submitted with the application are not complete. Specifically:
 - a. Appendices A-V for resource report 13 (Vol V-A, Vol V-B, Vol B-C) and Appendix U1 were not included and yet were referenced in the reports.
 - b. MDE received 5 additional copies of the resource reports in late April, of which, one set of the resource reports was missing binder IV-A (non-internet public).
 - c. Please clarify: Is there a binder for Vol I?
2. Please provide figures on 8.5" x 11" paper that can be easily copied and shared with various agencies or interested persons. Aerial photos with colorful lines depicting various aspects of the project are not easily copied. Black and white line drawings are preferred.
3. Please submit full-size project plans for the complete project.



4. Pipeline alignment sheets should be numbered for easy reference.
5. Page 7 of Resource Report 1 states, "AES has an option to lease the Terminal Site with the current owner of the Sparrows Point Shipyard". Please provide documentation of the option. The documentation should adequately show that AES has permission from the property owner to construct the proposed project.
6. Figure 1C-2 shows a typical dredged material recycling facility (DMRF) but not the proposed layout. Provide a similar figure representing what is proposed at Sparrows Point and where it is located.
7. Indicate dredging rates in relation to the capacity of the DMRF and storage facility and how much can be taken offsite. The resource reports state that up to 10,000 cubic yards of material could be dredged per day, and last approximately 18-24 months, and that processed dredged material (PDM) can be transported off-site at approximately 5,000 cubic yards/day. This latter figure is only half of what is removed each day. How much dredged material can be stored at one time in the concrete pad storage area (10-acre area) after it goes through the pugmill system? How much processed material can be stored at the additional storage area (20-acre site)? Who owns the 20-acres site? If AES is not the owner, provide documentation that states this area will be accessible to AES.
8. After the dredged material goes into the receiving hopper and scalping screen, where does the excess water go?
9. The application mentions that after the PDM has been tested and determined to be structurally suitable, the material will be used for other projects. What does structurally suitable mean? What standards will be used to determine that the material is structurally suitable and acceptable for other uses?
10. Who will make the determination on what to add to remove the contaminants during the pugmill process? Will the material be analyzed after going through the process to make sure it's clean? Are all of the contaminants found in the soil samples able to be decontaminated through the DMRF? What is the alternate plan for the material that is unsuitable for reuse (the material that is not successfully decontaminated)? Please provide an estimate of the amount of material that will be unsuitable for reuse.
11. The application states PDM will be shipped offsite once sold. Is the PDM dry when it is finished going through the pugmill system? If not, the PDM will have to be transported in watertight/sealed trucks to eliminate spills on roadways.
12. The figure showing the process and treatment equipment profile from CleanEarth does not show the dewatering process for the dredged material. The application mentions that there will be a possible onshore treatment facility to remove contaminants from the water before returning it to the waterway. Provide a similar figure showing the dewatering process on the barge and the onshore treatment facility. Also, please indicate where the treatment facility will be located. If either of these two methods are not feasible, agreements with one of the offsite disposal facilities would be required by MDE.

13. In Appendix 1C, page 6 states "anticipated location alternatives for the DMRF relative to the dredge area and the Terminal are shown." Where are they shown? MDE does not have a copy of a figure that depicts this.
14. There is no mention of a bulking factor for the dredge material. A bulking factor is how much the material will increase in volume during dredging and disposal operations based on material composition, material water holding capacity, and dredging method (see COMAR 26.24.03.04). For mechanical dredging, a bulking factor of 1.4 should be considered. Has this been included as a consideration in the proposed processing times and storage abilities?
15. Appendix 1C, page 3 states that the dredging plan will be updated with current information on dredge layout (width, length, location of dredging, etc.). A copy of the final dredging plan must be submitted to WPP before a final decision can be made as to whether or not to approve this part of the project. BWI Sparrows Point recently dredged and completed a depth survey near the proposed dredging area. In the application and resource reports, AES estimates dredging anywhere from 3-4.5 million cubic yards of material. Using the BWI depth survey or your own survey, provide a revised depth survey figure and update the amount of material that will be dredged by AES.
16. The resource reports discuss the removal of aquatic vegetation; please expand on this discussion. What do you mean when you talk about removing aquatic vegetation? Is there any in the area? Indicate where any submerged aquatic vegetation is located in relation to the dredge area and the adjacent areas that might be affected by the dredging operations. Provide the date of the survey and the method of sampling.
17. Over-depth of dredging will not be approved. Dredging would only be allowed at the required depth needed for safe passage of the LNG ships. Is 45 feet the depth needed to allow for safe passage of the ships?
18. Provide a description for predicted short-term and long-term impacts of dredging activities on water circulation, water quality, tidal wetland values, and aquatic biota.
19. Provide a cross section of the dredged area showing the side slopes, existing water depths, proposed water depths, etc.
20. The plans mention ocean dumping is being investigated further. Please provide additional information on this investigation.
21. The text states that the approach channel is 440 ft wide but does not specify the length. Please provide the length of the approach channel in feet.
22. Indicate the area near shore that you are proposing to excavate by backhoe dredge.
23. Provide a figure to clarify where the existing bulkhead is in relation to the proposed new bulkhead. What is the maximum channelward encroachment from the mean high water line? Indicating the different types of bulkheading being proposed on this figure. Also, provide a cross section of the new bulkhead.
24. Provide a figure showing which piers will be removed.

25. Describe how pier pilings would be repaired.
26. Indicate how many aids to navigation will be used and the location of each.
27. The joint Federal/State application submitted for this project does not include all state regulated resources. While the application discusses impacts to waters and wetlands, it does not adequately address impacts to the 100-year nontidal floodplain and nontidal wetland buffers. The 100-year floodplain and 25-foot buffer (an expanded 100-foot buffer for Nontidal Wetlands of Special State Concern) are both regulated as described in COMAR 26.17.04 and COMAR 26.23.02.
 - a. The alignment sheets should be modified to include floodplain and buffer lines;
 - b. Additional tables should be provided that list the location and extent of impacts to nontidal wetland buffer and the 100-year floodplain. Alternatively, Table 2.5-1 may be revised to include these impacts.
28. The location of all wetlands, wetland buffers, waters and floodplain impacts must be field verified by MDE staff. MDE field work will be coordinated with the U.S. Army Corps of Engineers (Corps).
29. The project application does not sufficiently address avoidance and minimization efforts in regard to State regulated resources. Further documentation and discussions will be necessary on this matter.
30. Resource Report 2, page 11, states "*AES has evaluated selected critical waterbodies for crossing using the HDD method, consistent with the request by National Marine Fisheries Service (NMFS)...The Gunpowder Falls, Deer Creek and Octoraro River crossings can be preformed utilizing other techniques, as described in Section 2.4.1, while still ensuring that protective environmental impacts have been avoided or minimized*". Please provide documentation on how this evaluation was completed and whether NMFS has concurred with AES's determination.
31. In locations where streams and wetlands are adjacent, estimated impacts need to be separated and quantified. For example, on the pipeline alignment sheet covering milepost 0.0 to 1.2, Humphrey Creek is shown to have wetlands on both sides of the stream; however, the entire area is called NWI wetland. For review purposes, the diagrams should show the width of the waterway at the crossing and separately the width of the wetland. This is necessary so that the impact is counted twice. Please review and if necessary revise Table 2.5-1.
32. Resource Report 2, page 45, states "*the proposed Pipeline Route only crosses one NTWSSC, which occurs at mile post 22.22 to 22.23 on Wild Cat Branch, a stream located within Gunpowder Falls State Park*". Impacts to Nontidal Wetlands of Special State Concern should be avoided if at all possible. WWP will require that wetland impacts at this location be avoided by utilization of horizontal directional drilling.
33. Resource Report 2, page 45, states "*The construction technique used to cross wetlands with stable, unsaturated soils at the time of construction will be similar to those used in*

dry upland area. Soils may be dry and stable enough to support equipment without additional timber mat riprap support.... Please note that if the proposed impacts are authorized, wetland mats will be required for all wetland crossings, regardless of the saturation state of the soils.

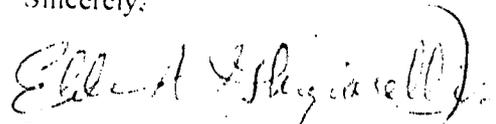
34. Table 2.5-1 includes a column specifying "Proposed Crossing Method" for wetland crossings by the project that states "BMP 23 or 34" will be utilized. Upon examination of Appendix 2B, there is no BMP 34 included (although BMP 24 is a wetland crossing diagram). Please revise Table 2.5-1 to reflect the correct BMP or provide the missing BMP 34.
35. The diagrams for BMP 23 and BMP 24 should be revised to show the 25-foot nontidal wetlands buffer.
36. Tables 2.4-1, 2.5-1 and 2.5.2-1 should be revised to include subtotals for resource impacts within Maryland and within Pennsylvania.
37. Resource Report 2, page 8, states "*If the water being discharged from the filter bag appears "milky" or excessively cloudy, then corrals will be positioned at least 25 feet from any waterbody and closely monitored to ensure proper function*". This qualitative standard is open to subjective interpretation and is not specific enough to protect natural resources. A quantitative standard should be utilized and supporting materials should be revised to reflect that standard. Any discharge must meet the State's water quality standards.
38. WPP has developed a set of "Best Management Practices for Working in Nontidal Wetlands". These BMPs are a required component on final plans that include wetland, buffer, floodplain and/or waters impacts. A copy of the WPP BMPs is attached.
39. Please provide additional information on the proposed use of trench breakers which demonstrates that the use of such components will protect regulated resources.
40. Please note that stockpiling of material and staging of construction activities is not permitted in nontidal wetlands, nontidal wetland buffers, waterways or the 100-year floodplain. Within the confines of these State regulated resources, only the length of surface that can be completed on a single day should be opened.
41. Resource Report 2, page 11, states "*Under conditions of stream flow, dry non-specified methods would be implemented at the contractor's discretion, and with the approval of AES's environmental inspector*". As stated in comment 28 above, MDE staff will be inspecting every crossing that includes proposed impacts. Based upon field observations, WPP staff will make a case-by-case decision as to what specific crossing is to be utilized at each site. Following the field visit, AES will be notified as to whether any of the crossings may be left to contractor's discretion.
42. Resource Report 2, page 46, states "*AES will attempt to use no more than two layers of timber rip-rap or prefabricated timber mats within the work area to stabilize the ROW*". WPP does not recognize timber rip-rap as a standardized method of stabilizing a work area. Please provide more details on this method so that the effectiveness may be evaluated or remove it from the project documentation.

43. A Phase-I Mitigation Plan is required for an application to be deemed complete. It is recommended that AES contact the WWP's Mitigation and Technical Assistance Section to explore mitigation options.
44. In accordance with Title 5, Subtitle 5, §5-204, Environment Article, Annotated Code of Maryland, you are required to serve notice of your application to owners of property contiguous to the pipeline corridor upon which the proposed project will occur, and located in or bordering on the 100-year floodplain. In addition, you must notify the appropriate local officials of any affected city or the appropriate county. *The notice must be served personally or by certified mail, and must include the location and a description of the project.* Attached are a sample letter for your use, and a Certification of Notification, which must be submitted in order to complete your application.
45. Processing of the application for authorization by the State of Maryland includes the advertisement of a public notice to allow for public comment and the opportunity to request a public hearing. It will be the applicant's responsibility to pay for advertisement in the Baltimore Sun and the Washington Post. Please complete and return the enclosed Public Notice Billing Approval Form. Also, please include a MS Excel file with the adjacent property owner list (each field should be a separate column).
46. A preliminary screening of the application showed the proposed route of the pipeline to be in close proximity to known sensitive and endangered species, Nontidal Wetlands of Special State Concern, and historically significant resources. Accordingly, the Maryland Department of Natural Resources (DNR) and the Maryland Historical Trust (MHT) are also reviewing the application. Any additional comments from them will be sent under separate cover. *(Please note, in situations where proposed projects are in close proximity to known significant historical and ecological resources, WWP standard procedure requires DNR and MHT to provide a letter of concurrence prior to a decision on the application).*

Please provide the requested information and reference the application tracking number on all correspondence pertaining to this project. A copy of any information furnished to WWP should also be sent to the Corps. As soon as this information is provided, the review of your application will be promptly continued. If we do not hear from you within 120 days of the date of this letter, it will be assumed that you are no longer pursuing authorization for your project. Processing of your application will be suspended, and the application will be returned to you and considered to be withdrawn. If you then wish to pursue authorization for your project, it will be necessary to submit a new joint State/Federal application to the Regulatory Services Coordination Office. The application will receive a new tracking number, and will be evaluated based on the regulations and policies in effect on the new receipt date.

If you have any questions, you may contact me at (410) 537-3763, Ms. Tressa Ellis at (410) 537-4023 concerning the proposed dredging and dredged material disposal, or Ms. Elisha Wakefield at (410) 537-3782 concerning the proposed pipeline impacts to nontidal wetlands and waterways.

Sincerely,



Elder A. Ghigiarelli, Jr.
Deputy Administrator
Wetlands and Waterways Program

Enclosures

cc: Joseph DaVia, U.S. Army Corps of Engineers
Joanne Wachholder, Project Manager, Federal Energy Regulatory Commission
Tressa Ellis, Tidal Wetlands Division, WWP
Elisha Wakefield, Nontidal Wetlands and Waterways Division, WWP

**BEST MANAGEMENT PRACTICES FOR WORKING IN
NONTIDAL WETLANDS, WETLAND BUFFERS,
WATERWAYS, AND 100-YEAR FLOODPLAINS**

- 1) No excess fill, construction material, or debris shall be stockpiled or stored in nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
- 2) Place materials in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
- 3) Do not use the excavated material as backfill if it contains waste metal products, unsightly debris, toxic material, or any other deleterious substance. If additional backfill is required, use clean material free of waste metal products, unsightly debris, toxic material, or any other deleterious substance.
- 4) Place heavy equipment on mats or suitably operate the equipment to prevent damage to nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
- 5) Repair and maintain any serviceable structure or fill so there is no permanent loss of nontidal wetlands, nontidal wetland buffers, or waterways, or permanent modification of the 100-year floodplain in excess of that lost under the originally authorized structure or fill.
- 6) Rectify any nontidal wetlands, wetland buffers, waterways, or 100-year floodplain temporarily impacted by any construction.
- 7) All stabilization in the nontidal wetland and nontidal wetland buffer shall consist of the following species: Annual Ryegrass (*Lolium multiflorum*), Millet (*Setaria italica*), Barley (*Hordeum sp.*), Oats (*Uniola sp.*), and/or Rye (*Secale cereale*). These species will allow for the stabilization of the site while also allowing for the voluntary revegetation of natural wetland species. Other non-persistent vegetation may be acceptable, but must be approved by the Nontidal Wetlands and Waterways Division. **Kentucky 31 fescue shall not be utilized in wetland or buffer areas.** The area should be seeded and mulched to reduce erosion after construction activities have been completed.
- 8) After installation has been completed, make post-construction grades and elevations the same as the original grades and elevations in temporarily impacted areas.
- 9) To protect aquatic species, in-stream work is prohibited during the periods indicated in the Nontidal Wetlands and Waterways Permit and the Water Quality Certification for the project.
- 10) Stormwater runoff from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
- 11) Culverts shall be constructed and any riprap placed so as not to obstruct the movement of aquatic species, unless the purpose of the activity is to impound water.

**Sample Letter For Notifying Contiguous Property Owners
for Projects in Tidal and Nontidal Wetlands, Waterways, and the 100-year Nontidal Floodplain**

*(Your Street Address)
(City, State, Zip Code)
(Phone Number)*

*(Date)
(Contiguous Property Owner's Name)
(Address)
(City, State, Zip Code)*

Dear _____:
(Contiguous Property Owner's Name)

I have submitted an application to the Maryland Department of the Environment to obtain authorization to perform work in tidal and nontidal wetlands, waterways, and the 100-year nontidal floodplain at my property contiguous to yours. I propose to perform the following work:

(Describe project)

Please review the enclosed material and call me if you have any questions. If you would like to provide comments to the Maryland Department of the Environment, please send a letter to them at the following address within 14 days of receipt of this letter.

Maryland Department of the Environment
Wetlands and Waterways Program
1800 Washington Blvd., Ste. 430
Baltimore, MD 21230
410-537-3837

Sincerely,

(Your Signature)

(Your Printed Name)

**Contiguous Property Owner and Appropriate Local Official Notification
Certification Form**

I have notified and provided plans of my proposal to perform work in tidal and nontidal wetlands, waterways, and the 100-year nontidal floodplain to all property owners contiguous to my property located at the address listed below.

- In Person
- By Certified Mail

I have notified and provided plans of my proposal to perform work in tidal and nontidal wetlands, waterways, and the 100-year nontidal floodplain to the Director of Planning in the County(s) in which my project is located:

- In Person
- By Certified Mail

Project Site Address

(Name of Property Owner)

(Project Site Street Address)

(City, State, Zip Code)

Please list below all of the contiguous property owners notified. Attach additional pages if necessary.

<u>Names</u>	<u>Addresses</u>
_____	_____
_____	_____
_____	_____
_____	_____

(Signature)

(Printed Name)

**Maryland Department of the Environment
Water Management Administration
Wetlands and Waterways Program
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3745**

"A Commitment to Excellence in Managing Maryland's Water Resources"

PUBLIC NOTICE BILLING APPROVAL FORM

I agree to pay all expenses associated with the publishing of a public notice for the wetland application of _____ (Applicant's Name) which is dated _____.

Applicant/Agent Signature

Printed Name of Signee

Billing Address: _____

Telephone No.: _____

Proposed LNG Facility — Sparrows Point, Maryland

Pursuant to Environment Article, Title 14, Subtitle 5, Annotated Code of Maryland, and Title 26, Subtitle 22, Code of Maryland Regulations, the Maryland Department of the Environment (MDE) has received an application from AES Sparrows Point LNG, LLC, for authorization under the State's Coastal Facilities Review Act to construct a liquefied natural gas (LNG) facility at Sparrows Point in Baltimore County, Maryland. The project consists of the construction and operation of an LNG terminal and an approximately 38-mile natural gas pipeline that connects the terminal to a terminus in Eagle, Pennsylvania.

The Coastal Facilities Review Act (CFRA) requires a permit from MDE for any proposed energy facility meeting the definition of "Facility" as defined in the law (Environment Article, §14-501(e), Annotated Code of Maryland). The CFRA requires the State to prepare a comprehensive statement of the proposed facility's economic, fiscal, and environmental impacts to Maryland's coastal zone. The law establishes a State review process within which all applicable State permits approvals must be reviewed and processed as part of the CFRA permit application. In addition, CFRA requires the local government within which the facility is proposed to "certify" that the proposed project complies with all local land use requirements.

The following State permits approvals required for the proposed LNG facility will be processed as part of the CFRA application: (1) a Tidal Wetlands License from the State's Board of Public Works for the proposed dredging and dredged material disposal; (2) a Nontidal Wetlands and Waterways Permit from MDE for the proposed construction of the pipeline extending from the proposed facility into Pennsylvania; (3) an Air Quality Permit(s) for air emissions associated with the operation of the LNG Terminal; and (4) a State Water Appropriations Permit and a State Discharge Permit associated with construction and operation of the facility. Also, two federally mandated State authorizations are required for the proposed facility: (1) a Clean Water Act Section 401 Water Quality Certification for federally-permitted discharges to jurisdictional Waters of the United States and contiguous wetlands; and (2) a Federal Consistency determination, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended, on the project's consistency with the State's federally-approved Coastal Zone Management Program (CZMP). Maryland's CZMP is based on existing State laws and regulations. Accordingly, the Federal Consistency determination will be based on compliance with the applicable State laws and regulations, as noted above.

Copies of the CFRA application are available for inspection at the North Point Public Library, MDE, and the Baltimore County Department of Environmental Protection and Resource Management. Additional information may be obtained by contacting Eider Ghigliarelli, Jr., Deputy Administrator, Wetlands and Waterways Program, at (410) 537-3763 or by email at eghigliarelli@mda.state.md.us.

(07-09-39)

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