



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF LEGAL SERVICES
235 Promenade Street, Room 425
Providence, Rhode Island 02908

October 13, 2017

Dear No LNG in PVD:

Thank you for your October 10, 2017 email. I hope that this response will address the concerns raised in your email in the order in which they were raised:

1. Regarding the timeline and requirements for National Grid's submission of a meeting summary and response:

The two public meetings were held on July 13 and August 9, and National Grid provided the Department with transcripts of those hearings on August 4 and August 23, respectively. The public comment period closed at the end of the day on August 10, and the Department provided National Grid with the written public comments received via email on August 18. The intervening days were spent by Department staff compiling, reviewing, and redacting personal information from the written comments received during the comment period. Also on August 18, the Department directed National Grid to provide written responses to each comment. National Grid provided its proposed responses to the Department on September 7, twenty days later. DEM then undertook to review the submittal and prepare its response, so the September 7 submission was not publicly available until DEM staff completed its review on October 5, at which time the document was posted on the Department's dedicated website for 642 Allens Ave. As soon as DEM finalized its responses to public comments that were directed at the Department on October 6, it made that document available as well.

While Remediation Regulation 7.07(c) states that a response is required from an applicant within 72 hours of a public meeting, the Department has broad discretion in the application of its regulations. In instances where transcripts from public meetings are not available, the public comment period remains open following a public meeting, and where a high volume of comments are received, the Department has the discretion to waive the 72 hour rule, rather than expect applicants to rush to comply. In the interest of efficiency, DEM requests a single response after a comment period has closed and all comments have been submitted. The Department expects all applicants to undertake a thorough and thoughtful analysis of all public comments received, and therefore believes that it is not always in the public interest to require a meeting response in as little as 72

hours, especially in a matter such as this one, where there was such a high volume of comments received. Given DEM's expectations for an applicant's quality review and response to public comments, the Department is satisfied with National Grid's response within 20 days in this instance.

2. Regarding the request that public comment be reopened to receive comments on the response to comments documents and STRAP comment letter:

There is no provision in statute, Regulation or this PIP for public comment at this stage of the process. Just as the public is entitled to comment on the proposed remedy, an applicant is entitled to a predictable process through which their application undergoes review. All stages for public participation are set out in the Regulations and in the PIP, and these do not include further public comment on the applicant's and the Department's responses to comments received during the public comment period.

Similarly, there is no provision for public comments to be accepted relating to DEM's comments on the STRAP proposal or on the amended STRAP proposal. The STRAP was made available to the public on May 12th, and the public was given an opportunity to comment on the STRAP between then and August 10th in addition to two (2) public meetings during that time period. In the event that any of DEM's requests or National Grid's STRAP amendments had included significant alterations to the proposed plan, such as a different remedy altogether, there may have been grounds to re-open a public comment period. That is not the case, however. DEM's comments on the STRAP proposal mainly requested amendments that would address the few functional concerns that were raised during the public comment period, such as increased air monitoring, but no substantive amendments concerning the remedy were requested.

3. Regarding "equal participation" by the public:

The provision in Regulation 7.07(c) and the PIP requiring "equal participation" in the process means that all members of the public should have equal participation in the process, not that the public should participate equally in the process with an applicant and the Department. As the entity charged with regulated soil remediation and the applicant to undertake such a remediation, the Department and National Grid are necessarily more involved participants in the STRAP process than is any member of the public. The goal of the community involvement phase and the PIP is to ensure that all members of the public are provided with equal access to comment at the appropriate times and in an appropriate and meaningful manner. This equal access and participation includes notice and comment hearings at times and in locations that are accessible for as many members of the community as can be achieved, as well as the provision of translation services when and where appropriate and necessary. In addition, comments can be submitted to the Department for consideration through the mail and via email.

There is no provision in the Regulations or the PIP for public comment at the current stage of the proceedings. The DEM comments and STRAP amendments are not substantial changes to the original proposal, and therefore do not merit the additional delay which would occur by re-opening the public comment period at this time.

4. Regarding the Department's communications with National Grid:

In every instance, DEM and an applicant that has proposed a remediation plan necessarily have an open dialogue in order to ensure that the application process flows smoothly and is not unnecessarily delayed. There is no reason that the Department and an applicant cannot communicate directly, outside of the public view. Indeed, if all communications between DEM and an applicant were required to include community input, the Department would take an interminable amount of time to achieve any environmental remediation at all. There is simply no requirement and should be no expectation that all of the Department's communications with an applicant must include participation from the public. By necessity, the majority of DEM's technical review and procedural deliberations are conducted in parallel with the public portions of the regulatory process. The results of all DEM technical comments, revision requests or final decisions, are public documents issued by the Department. Public participation is outlined in the Regulations and in PIPs, where applicable, at specific points in the process. All of the Department's files are also available for public review as appropriate under the Access to Public Records Act.

The "new set of clarifying questions" that DEM sent to National Grid as comments on the STRAP related to factors in the proposed STRAP that DEM asked National Grid to amend in order to address issues raised during the public comment period. DEM did previously communicate some of these concerns to National Grid while it was reviewing the public comments, and National Grid was similarly aware of many of the concerns based on its own review and response to those same comments. This is the same review and communication model that DEM follows with each and every application that it reviews.

Finally, by way of general clarification, National Grid is required by the Remediation Regulations to clean up this site, and it has submitted this STRAP application as part of its efforts to do so. The Department's role is to ensure that the proposal complies with our Regulations, and adequately addresses the identified "risk pathways" of concern (ie: soil, air, surface/groundwater, etc.). DEM generally does not issue denials of this type of request, but instead may respond with deficiencies prior to approving a plan, to ensure it satisfies the regulatory standard. In many cases, there may be round after round of deficiency and response, while in other instances a proposal may be sufficient the first time it is submitted. In any event, it is unlikely that DEM would ever tell the owner of a contaminated site that they may not

remediate their property; we would only seek an improved plan to ensure all risk pathways are adequately addressed.

Sincerely,

A handwritten signature in blue ink, appearing to be 'S. Forcier', with a long horizontal flourish extending to the right.

Susan Forcier
Deputy Chief Legal Counsel