

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: March 4, 2002.

T.J. Barrett,

*Rear Admiral, Coast Guard Commander,
Seventeenth Coast Guard District.*

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2000-8229]

Notice of Availability, Final Programmatic Environmental Impact Statement for the Integrated Deepwater System Project

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Final Programmatic Environmental Impact Statement (PEIS) on the Integrated Deepwater System Project. This PEIS covers general issues in a broad program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. The Coast Guard seeks public and agency input on the Final PEIS.

DATES: The PEIS will be available on March 29, 2002. Comments must reach the Coast Guard on or before April 29, 2002.

ADDRESSES: Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility [USCG-2000-8229], US Department of Transportation, Room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to Room PL-401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the Final Programmatic

Environmental Impact Statement for inspection or copying at Room PL-401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated statement, call LCDR Eric Johnson, Deepwater Environmental & Facilities Planner by telephone at 202-267-1665, or by e-mail at ejohnson@comdt.uscg.mil or at the Coast Guard's Deepwater EIS Web page at <http://www.deepwatereis.com/>. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

NEPA provides for a 30-day comment period after publication of the Final PEIS, during which the public may comment on the adequacy of responses to comments and the Final PEIS. Persons submitting comments should include their names and addresses, identify the docket number [USCG-2000-8229], and the reason for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under Addresses, but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. For additional information about this notice of the Programmatic Environmental Impact Statement, contact Joan Lang, Deepwater Program NEPA Coordinator (under contract to the Coast Guard), 202-267-0284 or via e-mail at jiang@comdt.uscg.mil.

Proposed Action

In accordance with section 202[2][c] of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (NEPA:

Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D), the Coast Guard has prepared a Final PEIS on the Deepwater Program. The purpose of a PEIS is to develop a high-level approach and direction for implementing a broad policy or program. The Deepwater Program meets those criteria. As a first tier EIS, this PEIS covers general issues in a broader program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. Subsequent NEPA documentation will concentrate on specific implementing actions, such as home basing of new ships and aircraft, as required.

The Coast Guard published a Notice of Intent and Request for Public Comments on November 9, 2000 (65 FR 67441). That same Notice included the dates and locations of several meetings that were held around the country to accept comments on what the Coast Guard should consider in its PEIS. During this scoping process, and based on Federal Agency comments, it was determined that the PEIS should address two alternatives: Action and No-action. The Action Alternatives includes the proposed system replacements discussed in the NOI. The Coast Guard determined that the best way to describe the impacts of the Action Alternative in the programmatic EIS was by combining all of the proposals into ranges of asset quantities and types and ranges of environmental impacts. This approach protects the procurement-sensitive information regarding the specific number and types of assets proposed by each industry team. However, to more accurately identify potential environmental impacts, the actual numbers and types of each teams' assets were used in the impact modes.

The Coast Guard's ability to predict future environmental impacts of this multi-decade acquisition with 100% accuracy is drastically reduced by uncertainties with regard to funding, technology, political, social and logistic changes. When viewed from a programmatic level, these uncertainties more than outweigh any differences that may exist among the various proposed system replacements. Therefore, the use of ranges to show possible impacts from the two alternatives provides an analysis commensurate with the level of detail of the decision being made, protects procurement-sensitive information, and provides the public with sufficient information to submit informed comments.

The specific industry team proposal information will be maintained in the

administrative record for Coast Guard agency use only, as described in the NOI.

The Coast Guard published a Notice of Availability of the Draft Programmatic Environmental Impact Statement on October 26, 2001 (66 FR 54324). Comments were originally due on December 10, 2001. However, due to delivery problems resulting from anthrax concerns, comments were received in January that had been mailed prior to the original deadline. These comments were accepted and included in the Final PEIS. A total of 28 letters were received from various agencies and the public. All comments are discussed, along with any changes made in response to the comments, in Appendix M of the Final PEIS. No requests for public hearings were received.

After the 30-day comment period described in the *Request for Comments* section of this notice, a Record of Decision (ROD) detailing the Coast Guard's decision of the selected alternative will be prepared and published in the **Federal Register**. The entire ROD will be made available for public review at that time.

Dated: March 13, 2002.

P.M. Stillman,

Rear Admiral, U.S. Coast Guard, Program Executive Officer, Integrated Deepwater System.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-01-10293 (PD-28(R))]

Town of Smithtown, New York Ordinance on Transportation of Liquefied Petroleum Gas

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Local Laws Affected: Smithtown Town Code Sections 164-108 and 164-109.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180.

Modes Affected: Highway.

SUMMARY: Federal hazardous material transportation law preempts:

(1) The requirement in Section 164-108 of the Smithtown Town Code for a permit to deliver liquefied petroleum gas (LPG) within the Town of Smithtown with respect to trucks that are based outside of Smithtown because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside Smithtown.

(2) the requirement in Section 164-109 of the Smithtown Town Code for a certificate of fitness insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 164-109 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR.

FOR FURTHER INFORMATION CONTACT:

Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

The Town of Smithtown, New York (the Town) has asked RSPA to determine whether Federal hazardous material transportation law preempts requirements in Sections 164-108 and 164-109 of the Town Code for permits and "certificates of fitness" for the delivery of LPG within the Town. According to the Town's application these requirements were adopted in 1983, and they are similar to provisions of Nassau County Ordinance No. 344-1979 that RSPA considered in Preemption Determination (PD) No. 13(R), Nassau County, New York Ordinance on Transportation of Liquefied Petroleum Gases, 63 FR 45283 (Aug. 25, 1998), decision on petition for reconsideration, 65 FR 60238 (Oct. 10, 2000), complaint for judicial review dismissed, *Office of the Fire Marshal of the County of Nassau v. U.S. Dep't of Transportation*, Civil Action No. 00-7200 (E.D.N.Y. Mar. 18, 2002). The Town is located on Long Island in Suffolk County, which is adjacent to Nassau County.

In PD-13(R), RSPA found that, as enforced and applied to vehicles based outside Nassau County, that County's permit requirement is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR because it is not possible

to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside the County. 65 FR at 60245. RSPA also found that Nassau County's certificate of fitness requirement is preempted insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG because it imposes more stringent training requirements than provided in the HMR. 63 FR at 45288.

In a notice published in the **Federal Register** on August 9, 2001, RSPA invited interested persons to submit comments on the Town's similar permit and certificate of fitness requirements. 66 FR 41931. In response to that notice, RSPA received written comments from National Tank Truck Carriers, Inc. (NTTC) and the National Propane Gas Association (NPGA). The Town submitted a response to NTTC's comments.

RSPA believes that it received all comments on the Town's application despite the disruption of mail delivery to DOT between mid-October and the end of November 2001. On October 25, 2001, DOT posted on its Docket Management System Web site (<http://dms.dot.gov>) a notice that comments could also be submitted in person, electronically, and by alternate delivery services, and that DOT would consider late-filed comments to the extent possible. *See also* DOT's Notice that "we will do everything possible to ensure that we consider comments that we otherwise would have received before the close of the comment period," and advising interested persons "to check our Dockets Web page * * * to see if we received and processed your document(s)." 67 FR 1391, 1392 (Jan. 10, 2002). RSPA's procedural regulations specifically provide that "Late-filed comments are considered so far as practicable" in a preemption determination proceeding. 49 CFR 107.205(c).

II. Federal Preemption

RSPA explained in its August 9, 2001 notice that 49 U.S.C. 5125 contains express preemption provisions that are relevant to this proceeding. 66 FR at 41933-34. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under Section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation