

CITY OF SOUTH PORTLAND



DEPARTMENT OF  
PLANNING & DEVELOPMENT

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PATRICIA DOUCETTE  
Code Enforcement Director  
Deputy Director of  
Planning & Development

January 8, 2016

Stephen R. Bushey, P.E.  
Fay, Spofford & Thorndike  
778 Main Street, Suite 8  
South Portland, ME 04106

Re: NGL Supply Terminal Company, LLC / NGL Terminal Relocation Project /  
20 Rigby Yard, South Portland

Dear Steve:

I am writing to follow up Planning Director Tex Haeuser's December 21, 2015 letter to you regarding NGL Supply Terminal Company, LLC's (NGL) pending site plan application and related Zoning Ordinance interpretation issues.

A number of residents have inquired of the Planning Department whether the rail cars themselves constitute "storage" and, if so, whether the amount of LPG product that NGL proposes to have on site (the leased premises) at any one time complies with the limitations on gas storage set forth in Sec. 27-964(14) of the Zoning Ordinance. The Planning Director and the City Manager have asked me to make a formal use determination pursuant to Sec. 27-131 of the Zoning Ordinance regarding this issue.

While I addressed the above ground storage tank storage limitations set forth in the Zoning Ordinance in my September 11, 2015 letter to you, I did not address the rail car storage issue in that letter. (Note that I do not consider rail cars to be above ground storage tanks within the meaning of Sec. 27-1517 of the Zoning Ordinance.) The term "storage or permanent storage" is defined in Sec. 27-201 of the Zoning Ordinance as "retention on site for any period longer than twenty-four (24) consecutive hours."

I have carefully reviewed NGL's September 18, 2015 site plan application and NGL's supplemental application materials dated November 20, 2015. As I understand the specifics of NGL's proposed rail car off-loading, storage and truck loading operations from start to finish, the maximum number of rail cars that will be present on the leased premises at any one time is 16 full rail cars and 8 empty rail cars. This will be in addition to the single above ground storage tank capable of storing 24,000 gallons of LPG product. As I understand the nature of propane, it is one of a group of liquefied petroleum gases (LP gases). It exists as a liquid and a gas. It is normally a gas, but

compressible to a transportable liquid. It is considered a petroleum product, and it is either a gas or a liquid when contained in a pressurized container. Any space in a pressurized container, such as a rail car, that is not filled with liquid propane is filled with propane gas. Ten thousand cubic feet of gas is equivalent to approximately 75,000 gallons of empty liquid storage vessel capacity (1 cu. ft. gas = 7.48052 liquid gallons).

Section 27-962 of the Zoning Ordinance lists the allowed uses in the INR zoning district, which includes a storage and distribution facility as an allowed use. Sec. 27-964 of the Zoning Ordinance lists the prohibited uses in the INR zoning district, and Sec. 27-964(14) of the Zoning Ordinance provides, in part, that gas (fuel or illuminating) storage in excess of 10,000 cubic feet of gas is prohibited in the INR zoning district, with some exceptions to the prohibition included therein. It is my interpretation of the Zoning Ordinance that none of the exceptions to the Sec. 27-964(14) prohibition apply to NGL's proposed project.

Given the nature of propane as either a liquid or a gas when contained in a pressurized container, I interpret the definition of "storage" in the Zoning Ordinance in conjunction with Sec. 27-964(14) of the Zoning Ordinance's prohibition on the storage of more than 10,000 cubic feet of gas in the INR zoning district to mean that NGL is allowed to store 74,805 gallons of LPG product on site for no more than 24 hours at a time (7.48052 gallons x 10,000 cu. ft. = 74,805 gallons). Thus, if NGL has its one proposed above ground storage tank filled with 24,000 gallons of LPG product, that leaves 50,805 gallons of LPG product storage capacity in the rail cars available to NGL without it exceeding the gas storage limitation set forth in Sec. 27-964(14) of the Zoning Ordinance. Because NGL proposes to have as much as 504,000 gallons of LPG product (24,000 gallons [1 above ground storage tank] + 480,000 gallons [16 full rail cars x 30,000 gallons of LPG product per rail car = 480,000 gallons] = 504,000 gallons grand total) retained on site for more than 24 hours, I hereby determine that NGL's proposed use as set forth in its September 18, 2015 site plan application does not comply with Sec. 27-964(14) of the Zoning Ordinance's 10,000 cubic feet gas storage limitation for the INR zoning district. NGL will need to amend its site plan application to comply with Sec. 27-964(14)'s storage limitation if it wants the Planning Board review process to proceed further.

To the extent that this formal use determination differs from my prior memos on NGL's proposed use from March and April of last year, this determination supersedes those two prior memos. A new site plan application was filed by NGL with the Planning Board on September 23, 2015 containing a revised proposal; additional information was submitted by NGL to the Planning Department in November of 2015; and the Planning Department has received more information on the specifics of NGL's proposed use, the technical aspects of LPG and its storage/transfer/distribution, and the regulatory scheme governing LPG on the federal, state and local level since I wrote those two memos last spring. In other words, a lot of new information has been provided to the Planning Department and me over the last 7-8 months that I had not considered last spring. This is a very complex proposed project and it has taken everyone involved a significant amount of time to understand the project and the applicable regulatory

scheme. Thank you for your patience and cooperation with Planning Department staff to date.

If NGL wishes to dispute this determination, an appeal may be filed within 30 days with the Board of Appeals pursuant to Section 27-152 of the Zoning Ordinance.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Doucette". The signature is written in black ink and is positioned above the printed name and title.

Patricia Doucette  
Director of Code Enforcement

cc: Kevin Fitzgerald, NGL Manager of Terminal Operations  
Charles (Tex) Haeuser, Planning Director  
Steve Puleo, Community Planner