

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF ADMINISTRATIVE DISPUTE RESOLUTION**

**IN THE MATTER OF: Algonquin Gas Transmission LLC  
Location: Weymouth  
Application No: SE-15-027  
AIR QUALITY PLAN APPROVAL**

**TOWN OF BRAINTREE’S NOTICE OF CLAIM FOR AN ADJUDICATORY HEARING**

The Town of Braintree (“Braintree”), acting by and through its Mayor, Joseph C. Sullivan, hereby requests an adjudicatory hearing for the Air Quality Plan Approval (“Approval”), dated January 11, 2019, issued by the Department of Environmental Protection (“Department”) to the applicant, Algonquin Gas Transmission LLC (“Algonquin”). The Approval was issued pursuant to the Department’s air pollution control regulations, at 310 CMR 7.00 *et seq.* (“Regulations”), for the proposed construction of a new natural gas compressor station, to be located at 50 Bridge Street in Weymouth, Massachusetts (“Project”), as an element of Algonquin’s “Atlantic Bridge” natural-gas pipeline project. The Project is located in Weymouth within a mile radius of Braintree, within the Fore River Basin, in close proximity to the abutting municipalities of Quincy, Hingham, and Braintree. Further, the pipeline that connects to the Project passes through Braintree.

The Preamble to the Regulations states:

The purpose of [the Regulations] is to prevent the occurrence of conditions of air pollution where such do not exist and to facilitate the abatement of conditions of air pollution where and when such occur. They are designed to *attain, preserve, and conserve the highest possible quality of the ambient air compatible with needs of society.*

[Emphasis added.] Notwithstanding these objectives, the Approval authorizes emissions of air pollutants from the Project on the basis of inadequate modeling and questionable assumptions, and includes insufficient conditions to ensure that the operation of the Project will meet applicable standards. The host and neighboring municipalities already are the location of several significant, long-established industrial sources of air pollutants. The addition of the Project will certainly worsen air quality conditions in an already-stressed region: the only issues are by how much, how often, and with what effect on the health of the local residents. The Approval will result neither in preserving the current levels of air quality, nor in attaining “the highest possible quality of the ambient air.” Even assuming, arguendo, that the Project is a necessary component of the Atlantic Bridge project and serves the “needs of society,” the Department has declined to consider whether locating the Project elsewhere might better serve the objective of preserving air quality.

For the reasons stated herein, Braintree is filing this Notice of Claim, to seek further review by the Department of the Approval and its terms and conditions.

**A. Braintree’s Status as an “Aggrieved Person”**

The potential for the Project to affect air quality within Braintree (as well as other municipalities proximate to the Project) has been recognized by the Department, which analyzed and projected potential air quality impacts of the Project of those communities during the Department’s review of the Project. In response to a directive from the Governor, the Department, in conjunction with the Metropolitan Area Planning Council and the Massachusetts Department of Public Health, commissioned a study that produced a document entitled “Health Impact Assessment of a Proposed Natural Gas Compressor Station in Weymouth, MA” (“HIA”), dated January 4, 2019. (The Mayor of Braintree was among those public officials who directly

requested the Governor to require that this study be undertaken.) The HIA focused on existing and projected health conditions within a 1.25-mile radius of the Project site, including portions of Braintree, Quincy, Hingham, and Weymouth. (HIA, p. 22). Braintree was represented on the Advisory Committee for the HIA by its Director of Health and Inspectional Services and its Director of Public Works, who both participated in several meetings of the Advisory Committee and provided input to the scoping of the HIA study. (HIA, pp. 1, 18-19, 24-25).

Braintree is entitled to an adjudicatory proceeding as an aggrieved person, where portions of Braintree are within the recognized area of potential impacts from the Project on the air quality within the Town, and on the health of its residents. An “Aggrieved Person” is defined in Section 7.51(1)(a) of the Regulations as “any person who, because of an act or failure to act by the Department, may suffer in injury in fact that is different either in kind or magnitude from that suffered by the general public, and that is within the scope of the interests protected by [the Regulations].” (The Regulations define a “Person” to include a “political subdivision of the Commonwealth,” i.e., a municipality.) As one of the four municipalities that were within the HIA study area and were specifically addressed by the Department in the Approval (including review of existing conditions, assessment of potential impacts, and inclusion in operational monitoring and notification requirements imposed on the Project), Braintree is an “aggrieved person.”

The Regulations, at Section 7.51(1)(d), provide:

If the Department provides a public comment period on the proposed decision, then any person or ten person group may file written comments on the proposed decision during the public comment period provided by [the Regulations]. Failure by an aggrieved person or ten persons group to submit written comments as provided herein shall result in the waiver of any right to request an adjudicatory hearing. Where the Department is not required under [the Regulations] to provide a public comment period on the proposed decision, then an aggrieved person or ten persons group is not required to submit public comments as a prerequisite for obtaining the right to request an adjudicatory hearing.

In this instance, the Department was not required to provide a public comment period (but chose to do so, in response to a citizen petition). (Approval, p.3; “MassDEP Response to Public Comments on the ‘Proposed Plan Approval’, dated January 11, 2019 [“DEP Comments”], p.1). Pursuant to the third sentence of Section 7.51(1)(d), where the public comment period was not required by the Regulations, Braintree was not required to submit comments as a prerequisite to requesting an adjudicatory hearing. Even assuming, arguendo, that the submission of comments is a prerequisite in any instance in which the Department (whether or not required to do so) provides a public comment period, Braintree’s full participation in the HIA Advisory Committee, and the Mayor’s prior request to the Governor for the study, satisfies the evident intent of Section 7.51(1)(d), which is that any person or persons seeking an adjudicatory hearing must have participated actively and provided input to the preparation of the Department’s decision, if an opportunity was provided for such participation.<sup>1</sup>

#### **B. Grounds for the Appeal**

The following are several of the specific facts on which Braintree bases its claim for an adjudicatory hearing. (Braintree reserves the right to raise additional factual issues at a later time that were the subject of public comments, and of the Department’s responses to those comments, before the Approval was issued.)

1. The Modeling of the Project’s Air Quality Impacts Was Inadequate and Failed to Recognize the Special Emission Issues Associated With the Project.

Given the existence of multiple existing industrial sources of air pollution in the Fore River Basin, in close proximity to the Project Site, and the special and unusual characteristics of

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<sup>1</sup> If the Department Hearing Officer assigned to this proceeding concludes that Braintree lacks “aggrieved person” status, Braintree will seek to intervene in adjudicatory hearings on the Project that may be sought by other parties.

the anticipated emissions from the Project, the Department should have established modeling and data collection procedures that were most likely to result in accurate assessments of the Project's emission levels and air quality impacts. The Department failed to take these steps. As a result, the Department's conclusions are suspect, and its decision to grant the Approval requires further review.

a. Background Levels Used for the Modeling Should Have Been Derived from Long-Term Sampling at a Site Within the Affected Area

The Department relied on data from existing air-quality monitoring locations in Boston, and meteorological data from Logan Airport, as the basis for modeling the projected effect of Project emissions on existing background levels in the communities adjacent to the Project site. (Approval, p.9). The Department asserts that conditions at the Boston sites are similar to those close to the Project site. (DEP Comments, pp. 16-17). These assumptions are questionable, given the location of several specific industrial sources within the Project vicinity (including the Citgo gas and diesel tank farm, the BELD Potter Power Plant, and the Clean Harbors Hazardous Waste Facility in Braintree) (DEP Comments, p.4), and the variability of local atmospheric conditions (considering such factors as temperature, wind direction, and wind speed). The conclusions are particularly suspect in the case of those pollutants, such as Nitrogen Dioxide and Particulate Matter (2.5 microns), for which the Project's emissions, when added to background levels based on the Boston sites, are a significant percentage of the National Ambient Air Quality Standards. (Approval, pp. 8-9). Where the numbers were, in some instances, close to the Standards, the possibility exists that the use of a local monitoring site would have yielded a different conclusion.

Braintree recognizes that the Department was subjected to pressure from Algonquin to issue the Approval without a long-term local study, and to regulatory constraints imposed by the Federal Energy Regulatory Commission (“FERC”), which limits the time allowed for issuing local and state permits needed before a FERC–approved natural-gas project can commence construction. Nonetheless, in order to reach a speedier permitting decision than might have been warranted, the Department took shortcuts that undermine the credibility of its results. The Department should uphold the intent of its Regulations, and base its decision on a comprehensive and accurate local evaluation of the Project’s air-quality impacts.

- b. The Department’s modeling, which is based on averaging projected emissions, fails to account for the sporadic and intensive emission levels that are anticipated to occur periodically, due to the nature of the Project’s operations.

Even assuming, arguendo, that the Department’s assumptions of background levels are accurate, and that correct estimates have been used to project emissions from the Project turbine’s usual mode of operation, an analysis that averages emissions on an annual basis solely from the normal operations of the turbine at the compressor station ignores the unique features of the Project. The Department acknowledges that natural gas will be released during the start-up and shut-down phases of operations, as well as during “blowdowns” during compressor station maintenance. (Approval, p.4-5; DEP Comments, pp.15-17). Further, there is the probability of periodic pipeline blowdowns (venting of the pipeline section for maintenance purposes) (Approval, p.5) that would release significant quantities of natural gas. The Department has not included either planned facility blowdowns or pipeline releases in its calculations of emissions. (See DEP Comments, p.24, and the discussion of emissions at p.2, which does not include pipeline blowdowns in the list of emission sources that are regulated by the Approval.) An

“averaging” approach fails to account for the quantities of these surges of pollutants, and for the episodic pattern of such releases. The Approval does not address whether or how large, episodic releases would affect air quality and public health impacts through short-term exposure, rather than the long-term exposure to average conditions that are the focus of the Department’s modeling.

c. Notwithstanding the Existence of Background Levels of Certain Pollutants That Exceed State-Established Exposure Limits, the Approval Allows the Project to Release Significant Additional Quantities of Those Pollutants.

The Department did undertake testing of Volatile Organic Compounds (“VOCs”) at several locations within the subject communities, and in doing so, determined that, in some locations, the levels of certain substances (notably, Formaldehyde and Benzene) exceeded the guidelines established by the Department for levels of safe exposure. (DEP Comments, p.6; HIA, pp. 83-8). Further, the Department estimates that the Project will generate significant quantities of these pollutants, though not enough to exceed the Department’s state standards for individual sources. (Approval, pp.10-11). On the basis of the Project’s adherence to individual-source standards, the Department has approved the Project without requiring either on-site or off-site mitigation measures, notwithstanding the Project’s additional contribution to background pollutant levels that already exceed Department standards. (DEP Comments, pp.7-8). This is illogical and perplexing, and is an outcome that is difficult to reconcile with the purpose of the Regulations.

d. The Approval Does Not Impose a Limit on the Number of Pipeline Blowdowns.

According to the Department, Algonquin’s application for the Approval states that there will be two pipeline blowdowns per year. (DEP Comments, p.22). However, the Approval itself

does not appear to include this information or to incorporate it as a condition of the Approval. The Approval should impose a limit and treat the limit's exceedance as a violation of the Approval, to establish a basis for the Department to investigate and penalize unplanned blowdowns that exceed this limit.

2. The Monitoring Conditions in the Approval Are Not Adequate to Determine the Actual Impacts of the Project's Operations, and the Notification Provisions Should Impose Stricter Requirements for Notice to Municipal Authorities.

Braintree recognizes that the Department has responded to some of the public concerns expressed prior to the issuance of the Approval, and has imposed conditions intended to address those concerns. However, the conditions are not adequate to address the underlying concerns as to the Project's impacts on air quality and public health, or to ensure that municipal officials have sufficient notice of significant pollution episodes, particularly those associated with both planned and unanticipated blowdowns.

- a. Monitoring Conditions Should Provide More Assurance That Pollutant Quantities Will Be Accurately Recorded, and Should Address Additional Factors To Provide a Basis for Long-Term Assessment.

The Approval identifies "venting (gas releases)" as an "Emissions Unit" ("EU") of the Project, and establishes "Operational Production and Emission Limits" for this "EU." (See Sections 2 and 3 of the Approval, beginning at page 13.) In particular, Table 8A establishes monthly and annual quantity limits for VOCs and single and total Hazardous Air Pollutants ("HAPs"). In turn, Tables 9 and 10 require Algonquin to "monitor the date, time, duration and quantity of gas released for each gas release event", and to maintain records of this information. What is unclear is whether "blowdowns" (planned and unplanned) for the maintenance of the gas

turbine are covered by these requirements, and the mechanism for accurately monitoring and recording data on these releases. Nor is it clearly stated whether pipeline blowdowns are to be monitored and recorded in any fashion.

Further, the Approval should require Algonquin to record additional information that could provide a basis for assessing the Project's impacts, or responding to public inquiries when significant releases occur. For example, information should be recorded on atmospheric conditions (temperature, wind direction, wind speed) at the time of a major event. The Department and Algonquin, as well as municipal officials, will be in a better position to address public concerns with the operation of the Project, if more data is available.

b. Algonquin Should Be Required to Provide Better Notification of Blowdown Releases than is Currently Provided in the Approval.

Table 11, at ¶2, provides that Algonquin is to notify the Department at least 48 hours prior to scheduled maintenance events that are “expected to result in a blowdown with volume expected to be greater than 10,000 scf”, with information on the anticipated time and duration, and steps that will be taken to minimize emissions and nuisance impacts. Algonquin is to provide a copy of this notification to the four municipalities (but Table 11 does not specify when this copy is to be provided).

Table 11, at ¶3, also provides that Algonquin is to notify the Department of any unplanned releases with a volume greater than 10,000 scf “within 2 business days of said event.” This would mean that, if the release occurs on a Friday of a holiday weekend, the notification might not occur until the following Wednesday. Moreover, there is no provision for any notification to municipal officials when these unplanned releases occur.

These provisions in Table 11 should be revised to improve the notification to both the Department and municipal officials. The notification for scheduled releases should be made at least 72 hours in advance, and the notice to municipal officials should be given simultaneously with the notice to the Department. For unplanned releases, the notification should be given immediately to both the Department and the municipalities. These revisions are consistent with the recommendations of the HIA. (HIA, pp. 153-4).

**C. Relief Sought**

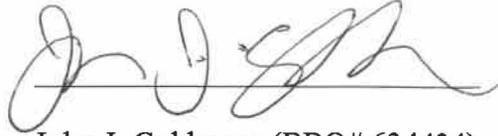
Braintree respectfully requests that a Recommended Final Decision issue that vacates the Approval and remands Algonquin's application to the Department for further review, with the Department instructed to base its modelling on a local monitoring site and a year-long analysis of background levels, and not to issue an Approval if the Project will increase existing levels of those VOCs and HAPs that currently exceed state standards.

In the alternative, if the Approval is to be upheld, Braintree requests that the terms and conditions of the Approval be revised to ensure adequate monitoring and recording of emissions levels, and to provide more timely and complete notification to the Department and municipal officials when significant gas releases occur.

Respectfully Submitted,

TOWN OF BRAINTREE,

By its attorney,

A handwritten signature in black ink, appearing to read "John J. Goldrosen", written over a horizontal line.

John J. Goldrosen (BBO# 634434)

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