

## Laws and Cases Relevant to LNG

### STATUTES AND EXECUTIVE ORDERS

Administrative Procedures Act, 5 U.S.C. §§551 *et seq* (1970)

Establishes the minimum procedures which agencies of the executive branch must follow in establishing rules and regulations.

Admiralty Extension Act of 1948, 46 U.S.C. § 740 (1970)

Provides that admiralty jurisdiction is to extend to all injuries caused by a vessel even if such damage or injury is “done or consummated” on land.

Coastal Zone Management Act of 1972, 16 U.S.C. §§1451 *et seq* (Supp. 1972)

Authorizes the Secretary of Commerce to make annual grants to any coastal State to assist in developing a management program for land and water resources of its coastal zone. Such grants are contingent on approval by the secretary of the State’s program, i.e. that it meets certain criteria specified in the Act. After approval of a State’s program, no Federal permit or license for an activity affecting that State’s coastal zone unless that activity has been certified as consistent with the State’s program.

Dangerous Cargo Act, 46 U.S.C. §170 (1970)

Directs the Coast Guard to identify all dangerous cargoes, prescribe regulations establishing standards for containers and handling of explosives and other dangerous cargoes and for inspection to ensure compliance with these regulations.

Department of Energy Organization Act of 1977, P.L. 95-91

Creates a new Department of Energy consolidating many of the energy organizations of Government. Of particular interest to LNG is the creation of semiautonomous Federal Energy Regulatory

Commission, which will absorb many of the functions of the Federal Power Commission as they relate to LNG. The major exception is that the Secretary of Energy will have authority to approve or disapprove import applications.

Executive Order *10173-Regulations relating to the safeguarding of vessels, harbors, ports, and waterfront facilities of the United States.*

Authorizes the Coast Guard to “supervise and control” the transportation, loading and unloading of dangerous cargoes. Also allows the Coast Guard to require owners and operators to obtain a Coast Guard permit for the waterfront facilities used in the handling of such cargo. (The Coast Guard does not currently require such a permit. )

Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. §§ 1251 *et seq* (Supp. 1972)

A comprehensive act aimed at cleaning up the Nation’s waters. Discharges of pollutants require permits administered by EPA and the Army Corps of Engineers. In certain cases, this permit authority may be delegated to the States.

National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. §4321 *et seq* (1970)

Provides that each “major Federal action significantly affecting the quality of the human environment” must be preceded by an analysis of that action’s environmental impact.

Natural Gas Act of 1938, 15 U.S.C. §§ 717a *et seq* (1970)

Gives the Federal Power Commission broad powers to regulate imports, exports, and the interstate transportation and sale of natural gas. Under Section 3, no imports or exports may proceed without an order from the Commission. Under Section F, no facilities for interstate transportation or sale

may be constructed without a certificate of public convenience and necessity from the Commission, The Commission's authority over interstate sales of natural gas includes setting the prices at which the gas is sold.

Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. §§1671 *et seq* (1970)

Authorizes the Secretary of Transportation to set minimum Federal safety standards for pipelines, establishes a cooperative State-Federal enforcement program, and provides for Federal aid to States to bring State standards up to the level of Federal standards.

Outer Continental Shelf Act, 43 U.S.C. §§1331 *et seq* (1970)

Declares U.S. jurisdiction over the subsoil and seabed of the Outer Continental Shelf and establishes the system for Federal leasing of these lands for resource development.

Ports and Waterways Safety Act of 1972, 33 U.S.C. §§1221 *et seq* (Supp. 1972)

Title I provides that the Secretary of the Department in which the Coast Guard is operating may prescribe standards and regulations to promote the safety of vessels and structures in or adjacent to the navigable waters of the United States and \$0 protect such waters and their resources from environmental harm due to vessel damage or loss.

Title II provides that the Secretary shall prescribe minimum design, construction, and operation standards for vessels carrying certain cargoes in bulk (e.g. oil).

Shipowners Limitation of Liability Act 46 U.S.C. §§181 *et seq* (1970)

Provides that shipowners may limit their liability after an accident involving their vessels to the value of the vessel and its cargo after the accident. An exception is made for loss of life or bodily injury, in which case liability is limited to \$60 per ton of the vessel.

Submerged Lands Act 43 U.S.C. §§ 1311 *et seq* (1970)

Provides for State resource management of the seabed out to a distance of 3 miles from shore (3 marine leagues in the case of the States bordering the Gulf of Mexico). The Federal Government retains control over the waters over such lands for purposes of commerce, navigation, national security, and international affairs.

## CASES AND FPC OPINIONS

*Distrigas Corporation v. Federal Power Commission*, 495 F.2d 1057 (D.C. Cir. 1974).

Decided that the FPC may, under the Natural Gas Act, impose the equivalent of Section F certification requirements for LNG imports even if the gas is to be sold intrastate. This authority is discretionary, and must be preceded by the Commission's finding such requirements to be necessary to protect the public interest.

Federal Power Commission, Opinion No. 795, *Trunkline LNG Company and Trunkline Gas Company*, Docket Nos. CP74-138, 139, 140, issued April 29, 1977.

Opinion No. 796-A, Issued June 30, 1977.

The first Trunkline opinion ordered incremental pricing and conditioned the certification upon Trunkline compliance with all other Federal, State, and local laws and regulations. In the second opinion, the FPC reversed itself as to pricing (allowing rolled-in pricing) but kept its condition of compliance with other laws and regulations.

*Washington Department of Game v. Federal Power Commission* 207 F.2d 391 (9th Cir. 1953); *Federal Power Commission v. Oregon*, 349 U.S. 435 (1955); *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320 (1957).

The above cases conclusively determined that, in the permitting of hydroelectric facilities, the jurisdiction of the Federal Power Commission preempts that of any State commission or body.

*Transcontinental Gas Pipe Line Corp. v. Hackensack Meadowlands Development Commission*, 464 F.2d 1358 (3d Cir. 1972), cert. denied, 409 U.S. 1118 (1973).

Action by natural gas company to enjoin regional development commission from interfering with an LNG peak shaving facility. Subsequent to the construction of the facility, New Jersey passed a law establishing the Hackensack Meadowlands Development Commission. The gas company, wishing to construct an additional storage tank at the facility, secured a certificate of public convenience and necessity from the FPC. The Hackensack Meadowlands Development Commission, however, refused to issue a permit for the addition. The Federal courts enjoined the State commission from interfering, finding its refusal to grant a permit an unreasonable restraint on interstate commerce.