



## **The U.S. Coast Guard Issues Guidelines on Assessing the Suitability of a Waterway for Liquefied Natural Gas (LNG) Marine Traffic**

On June 14, 2005, the Department of Homeland Security (DHS) United States Coast Guard (USCG) issued Navigation and Vessel Inspection Circular No. 05-05 entitled "Guidance on Assessing the Suitability of a Waterway for LNG Marine Traffic" (NVIC 05-05). Developed to meet the urgent needs for national safety and security guidance on assessing the suitability of waterways for LNG marine traffic, NVIC 05-05 requires an approved waterway suitability assessment (WSA) for each marine shore side LNG terminal prior to its construction.

The guidance (COMDTPUB P16700.4 NVIC 05-05) is an important new development in the area of safety and homeland security for the transportation of LNG. Its purpose is to assist applicants seeking to build a new onshore terminal or existing terminal operators in analyzing issues attendant to the safety and security of the terminal, port, vessels, surrounding public, and infrastructure from the transportation of LNG. This information will be used by the USCG to assess the proposed marine operations and to fulfill its obligations to the Federal Energy Regulatory Commission (FERC) to provide input to their Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA).

An effective WSA requires the following activities:

- Coordination with the USCG personnel responsible for approval of the waterway usage.
- Access to USCG area maritime security assessment and security plan information.
- Inventory of critical infrastructure along the proposed carrier route.
- Involvement of appropriate stakeholders (*e.g.*, local and state law enforcement personnel) in the WSA development.
- Identification of credible threats to LNG marine transportation and the risk mitigation measures necessary to address those threats, including the identification of resources required to provide those mitigation measures.

The NVIC 05-05's guidance outlines a two-phase process for performing a WSA: first providing a "Preliminary WSA" and then working with the USCG and other stakeholders to develop a "Follow-on WSA." Each of these documents must employ a risk-based assessment approach and WSAs must be conducted by personnel who meet the qualifications of 33 CFR 103.410.

The significance of the NVIC 05-05 is profound. It sets precedence for the analysis of security and safety risks of the transportation of LNG. It encourages the involvement of various stakeholders for the analysis and



validation of the WSA. FERC may determine the need to annually review and update the WSA. It tackles difficult issues of safety and security in port operations and intercoastal waterways by LNG tankers.

The basis of the assessment is the results of the recent Department of Energy (DOE) funded study by Sandia National Laboratories on the risks of intentional and accidental spills of LNG on water. While this study was mostly a consequence analysis, it did recommend that a risk-based approach be used for the analysis of these situations. Consequence-based zones of concern have to be overlaid on tanker routes to assess potential consequences, vulnerabilities, likelihood of attack, and mitigation measures. Challenges include the identification of vulnerabilities, the determination of consequences and risk, and the evaluation of risk by the USCG.

Notably, on July 5, 2005, the FERC denied KeySpan LNG L.P.'s request for authorization to construct and operate an LNG terminal at its existing LNG storage facility in Providence, Rhode Island. Although the FERC's order of denial was not expressly based upon marine security and safety issues, the FERC appeared to devote considerable attention to the USCG-authored "Vessel Transit Security Plan" associated with the proposed and ultimately rejected project.

*N.B.: A NVIC provides detailed guidance about the enforcement or compliance with certain federal marine safety regulations and USCG marine safety programs. While NVICs are non-directive, meaning that they do not have the force of law, they are important "tools" for complying with the law. Non-compliance with a NVIC is not a violation of the law in and of itself; however, non-compliance with a NVIC may be an indication that there is non-compliance with a law, a regulation, or a policy.*

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