

3-1-2010

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Recommended Citation

Roger Williams University School of Law, "Newsroom: Professor Goldstein on Environmental Law Strategy" (2010). *Life of the Law School (1993-)*. 29.

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Newsroom

Professor Goldstein on Environmental Law Strategy

Environmentalists make law a powerful ally

By Chris Barrett, Providence Business News Staff Writer

House Bill 7014 before the R.I. House Environment and Natural Resources Committee appears, at first glance, innocuous enough. The bill would add just two sentences to Rhode Island law by requiring ships more than 150 feet in length and carrying hazardous material to maintain at least 25 feet of clearance under all Rhode Island bridges.

But the 38-word amendment could spell the death of a proposed liquefied natural gas (LNG) facility in Fall River because the ships carrying the LNG could not meet the clearance requirements. If passed, the law would secure a major victory for environmental groups opposed to the facility, though the bill never mentions the words “environment” or “liquefied natural gas” or “Fall River.”

The roughly seven-year-long battle over whether to allow Weaver’s Cove Energy to construct an LNG terminal in Mount Hope Bay has been a prominent example of environmental groups’ use of creative legal maneuvers to advance a cause. Five years ago, a Massachusetts congressman slipped a little-noticed provision into a \$286 billion transportation bill that designated the Brightman Street Bridge as a historic landmark that could not be demolished. That effectively blocked the initial plan that would have brought massive tankers too big to fit under the bridge directly to the proposed onshore terminal.

“That sounds like A-level work to me,” said Jared Goldstein, an associate law professor at Roger Williams University. “It’s realizing that – as lawyers often do – that there are multiple ways to attack a problem. [A bridge] is not an obvious candidate to stop an LNG facility.”

But obvious candidates often do not work. Despite a massive public campaign, environmental groups proved unable to dissuade the Federal Energy Regulatory Commission from approving various incarnations of a plan to deliver LNG via ship to Fall River. So when the obvious route fails, environmental advocates, policy experts, sympathetic public officials and lawyers hunt for legal alternatives.

“People often have their own idea that law is dry and rational, but really there is a lot of creativity in law when you have to figure what law might apply here,” Goldstein said.

Full story: <http://www.pbn.com/detail/48238.html>