Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2026 Nationwide Permits for New York State

Effective March 15, 2026 - Expiration March 15, 2031

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12. Oil or Natural Gas Pipeline Activities. Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Oil or natural gas pipelines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel. heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground oil or natural gas pipelines: This NWP authorizes the construction or maintenance of foundations for above-ground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of

non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of

waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-

Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

Buffalo and New York Districts Permit-Specific Regional Conditions:

a. For Submerged Pipelines Across Navigable Waters and Federal Navigation Channels:

1. This nationwide permit is not applicable to activities on the following waterways across deep-draft Federal Navigation Channels: (1) Arthur Kill; (2) Atlantic Ocean; (3) East River; (4) Harlem River; (5) Hudson River, downstream of the southern limit of the New York State Barge Canal at Waterford, New York; (6) Jamaica Bay/Rockaway Inlet, 20 foot deep entrance channel from the mouth of the inlet, upstream to the second channel bend at Rockaway Point; (7) Kill Van Kull; (8) Long Island Sound; (9) Lower New York Bay; (10) Newark Bay; (11) Raritan Bay; (12) Rondout Creek/Harbor, downstream of the Route 9W highway bridge; and (13) Upper New York Bay, including Bay Ridge, Red Hook and Buttermilk Channels.

2. For proposed submerged pipelines buried within navigable waterways, excluding waters listed in 12.a.1. above:

   i. The top of the pipeline crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.
   ii. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line.
   iii. In cases where the channel's existing bottom is already deeper than the authorized project depth, the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
   iv. In areas outside of Federal project channels, fleeting or anchorage areas, the top of the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
   v. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate (i.e. water intake lines, dry hydrants, etc.). Any request to modify these depth requirements must include a discussion of potential

effects of the utility line to public safety associated with public use of the waterway (i.e. fishing anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.

vi. Where trenching and backfilling are proposed, backfill material shall consist of suitable heavy materials and shall be placed no higher or lower than the adjacent river bottom elevation.

3. For proposed submerged pipelines placed on the waterway bottom within navigable waters, excluding waters listed in 12.a.1. above and Federal project channels, fleeting or anchorage areas: the Pre-Construction Notification (PCN) shall include justification for the need to place the utility line on the waterway bottom, a discussion on potential effects of the proposed exposed utility line to public safety associated with public use of the waterway (i.e. fishing, anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.

4. This nationwide permit is not applicable for single and complete linear projects in navigable waters that would exceed 500 linear feet and the pipeline is located in but would not cross the waterway, unless a variance is issued by the District Engineer.

5. Within 15 days after completion of the authorized work, the permittee shall post visible signage on weatherproof placards no smaller than 4 feet by 4 feet on each shoreline at the location of the authorized crossing. The placard shall contain language informing waterway users of the presence of a pipeline crossing (e.g., “WARNING PIPELINE CROSSING”), unless specifically authorized otherwise by the District Engineer. The sign shall be maintained in place for as long as the pipeline remains in place.

6. Within 60 days of completion of the work, the permittee shall furnish the Corps with certification that the cable or pipeline has been installed in compliance with the approved plans. The certification shall include a as-built plans and/or surveys, conducted by a licensed surveyor, which clearly shows the elevations and alignment of the pipeline across the waterway. If the post-completion survey reveals a discrepancy between the authorized and actual alignment of the pipeline, the permittee shall note clearly these discrepancies in the survey. As-built plans and/or surveys shall be emailed to the appropriate district office.

b. A PCN is required for any utility line or transmission facility whenever the Federal Energy Regulatory Commission (FERC) requires an Environmental Impact Statement.

New York District Only Permit-Specific Regional Conditions:

c. As discussed in Section G-E.8. below, if any work is proposed Within tidal waterways supporting anadromous fish migration and spawning, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.

d. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 1 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

e. Within Essential Fish Habitat (EFH), this NWP does not authorize the discharge into waters of the United States of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as “frack out”.

f. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 100 feet of Submerged Aquatic Vegetation (SAV), and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS). A PCN is not required if the applicant will avoid work between April 15 and October 15 of any year.

g. A Pre-Construction notification is required for any work occurring in the Atlantic Ocean. The PCN should include an Essential Fish Habitat (EFH) assessment for coordination with National Marine Fisheries Service (NMFS).

Section 401 of the Clean Water Quality Certifications (WQC): See Enclosure 5-7 for the specific WQC terms and conditions that must be complied with.

- The WQC has been <u>waived</u> for all activities occurring on Saint Regis Mohawk and Seneca Nation Tribal lands. Please contact the respective

Indian Nation for further information regarding required local authorizations.

- New York State Department of Public Service (NYSDPS) denied WQC for NWP 12 as related to the construction and operation of major fuel gas or electric transmission facilities subject to New York State Public Service Law (PSL) Article VII (Siting of Major Utility Transmission Facilities); major electric transmission facilities pursuant to PSL Article VIII (Siting of Renewable Energy and Electric Transmission); major renewable energy facilities pursuant to PSL Article VIII; and major electric generating facilities pursuant to PSL Article 10 (Siting of Major Electric Generating Facilities). Applicants conducting activities authorized by this Nationwide Permit, where the New York State Public Service Commission (Commission), the New York State Board on Electric Generation Siting and the Environment (Siting Board), or the Department's Office of Renewable Energy Siting and Electric Transmission (ORES), is the certifying authority, must apply for and obtain an individual Water Quality Certification from the respective certifying authority in accordance with procedures at 40 CFR 121, New York State PSL Article VII; PSL Article VIII; and PSL Article 10. [Enclosure 5]
- U.S. Environmental Protection Agency (USEPA) as the certifying agency for six (6) New York Indian Nations (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation and Tuscarora Nation), granted WQC with conditions for NWP 12. [Enclosure 6]
- The New York State Department of Environmental Conservation (NYSDEC) has denied WQC for NWP 12 activities. [Enclosure 7]

Any party proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section J below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination: Pursuant to 15 CFR §930.41 and §930.43 the New York State Department of State (NYSDOS) objects to the Corps' consistency determination for NWP 12 anywhere in the New York coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR §930.154 and §930.53(1). Projects where NYSDOS has objected will require an individual consistency review and approval by NYSDOS prior to use of the NWP. See Section H below and Enclosure 8 for further information.

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest

practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such

designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of

separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is

required. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activities authorized by NWPs, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands

adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas

involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which

another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

(b) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3 acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1⁄3-acre.

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which as a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

_____

(Transferee)

_____

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing*. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all

of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification*: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and

any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction

notification, federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination*: (1) The district engineer will consider any comments from federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS,

state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States

authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add activity-specific conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed NWP activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. However, compensatory mitigation shall not be required for activities authorized by NWP 27 because those activities must result in net increases in aquatic resource functions and services (see the text of NWP 27). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal when determining whether the net adverse environmental effects of the proposed NWP activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the proposed activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed

compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed NWP activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN review period (unless additional time is required to comply with general conditions 16, 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical

markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of

owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

G. Buffalo and New York District Regional General Conditions (applicable to all NWPs)

G-A. Construction Best Management Practices (BMPs): Unless specifically approved otherwise through issuance of a variance by the District Engineer, the following BMPs must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts. Note that at a minimum, all erosion and sediment control and stormwater management practices must be designed, installed, and maintained throughout the entire construction project in accordance with the latest version of the New York Standards and Specifications for Erosion and Sediment Control and the New York State Stormwater Management Design Manual. These documents are available at: http://www.dec.ny.gov/chemical/29066.html and http://www.dec.ny.gov/chemical/29072.html, respectively. Prior to the discharge of any dredged or fill material into waters of the United States, including wetlands, authorized by NWP, the permittee must install and maintain erosion and sedimentation controls in and/or adjacent to wetlands or other waters of the United States.

1. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be abandoned in place.

2. Materials resulting from trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled into waters of the United States must be backfilled or removed to an upland area within 30 days of the date of deposition. Note: Upland options shall be utilized prior to temporary placement within waters of the U.S., unless it can be demonstrated that it would not be practicable or if the impacts of complying with this upland option requirement would result in more adverse impacts to the aquatic environment.

3. For trenching activities in wetlands, the applicant shall install impermeable trench dams or trench breakers at the wetland boundaries and every 100 feet within wetland areas to prevent inadvertent drainage of wetlands or other waters of the United States.

4. Dry stream crossing methods (e.g., diversion, dam and pump, flume, bore) shall be utilized for culvert or other pipe, or utility installations to reduce downstream impacts from turbidity and sedimentation. This may require piping or pumping the stream flow around the work area and the use of cofferdams.

5. No in-stream work shall occur during periods of high flow, except for work that occurs in dewatered areas behind temporary diversions, cofferdams or causeways.

6. Construction access and staging areas shall be by means that avoid or minimize impacts to aquatic sites (e.g. use of upland areas for access & staging, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads, staging areas, and work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to pre-construction contours, elevations, and wetland conditions, including cover type. All vegetation utilized in the restoration activity shall consist of native species.

7. All return flow from dredged material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions. (See NWP #16)

8. For activities involving the placement of concrete into waters of the U.S., the permittee must employ watertight forms. The forms shall be dewatered prior to the placement of the concrete. The use of tremie concrete is allowed, provided that it complies with New York State water quality standards.

9. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain preconstruction surface water flows/conditions between remaining on or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Furthermore, the activity must not restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters). The activity may alter the preconstruction flows/conditions if it can be shown that it benefits the aquatic environment (i.e., wetland restoration and/or enhancement).

10. Stone aprons and scour protection placed in streams shall not extend higher than the stream bed in order to create a uniform grade and shall be filled with native stream bed material and supplemented with similarly sized material, if needed, to fill interstitial spaces to maintain water flow on the surface of the stream bed.

G-B. Culverts

1. <u>ALL NEW OR REPLACEMENT CULVERTS IN STREAMS</u>, to the extent they are regulated, shall be constructed/installed in accordance with the following, in order to ensure compliance with NWP General Condition #2 – Aquatic Life Movement and #9 – Management of Water Flows:

a. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within a single culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain. A bottomless culvert or

bridge must be used to span the stream channel where practicable. If the stream cannot be spanned, the culvert width shall be minimum of 1.25 times width of the stream channel at the ordinary high water, which is generally equivalent to the width of the channel during the 2-year design storm.

b. Depth: To maintain low flow and aquatic life movement within culverts with a bottom, the culvert invert, including end sections, must be embedded. Specifically, the culvert must be installed with its bottom buried below the grade of the stream bed, as measured at the average low point, to a depth of a minimum of 20 percent of the culvert vertical rise (height) throughout the length of the culvert. (Note: When not practicable to do so due to small culvert size, it is acceptable to allow natural deposition to cover the interior of the culvert bed following placement of the culvert invert to the 20% depth.)

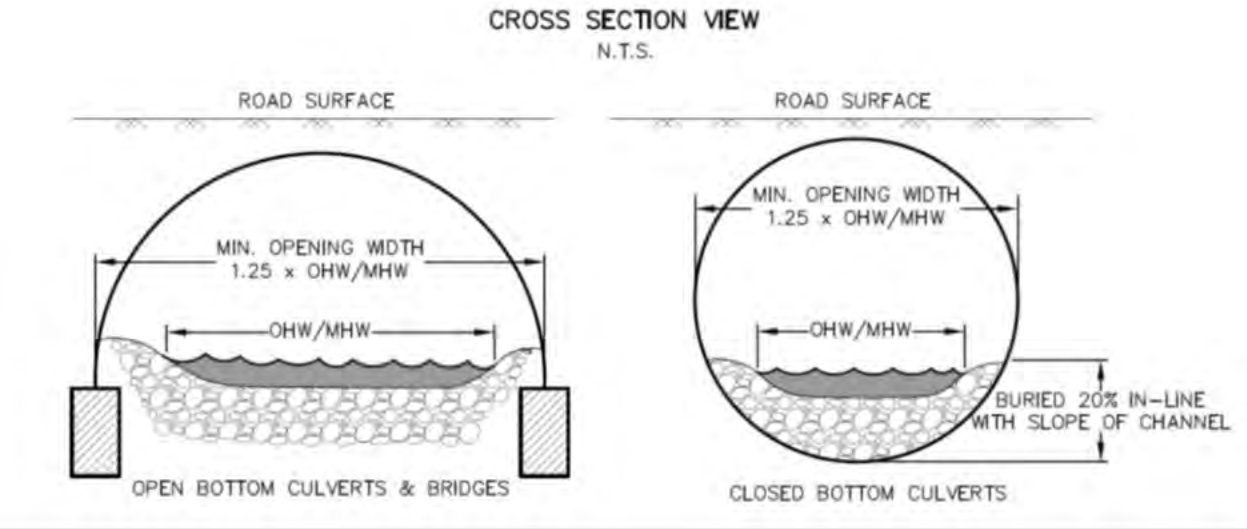
c. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.

d. The culvert bed slope shall remain consistent with the slope of the adjacent stream channel.

Note 1: Use of the requirements alone will not satisfy the need for proper engineering and design. In particular, appropriate engineering is required to ensure structures are sized and designed to provide adequate capacity (to pass various flood flows) and stability (bed, bed forms, footings and abutments, both upstream and downstream). It is the permittee's responsibility to ensure the structure is appropriately designed.

Note 2: This condition does not apply to temporary culverts used for construction access that are in place for less than one construction season. However, compliance with General Conditions #2 and #9 still applies.

Note 3: For further guidance on identification of the Ordinary High Water mark, please see Regulatory Guidance Letter 05-05 available at: https://www.usace.army.mil/Missions/Civil-Works/RegulatoryProgram-and-Permits/Guidance-Letters/ and the Final National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams at: https://www.erdc.usace.army.mil/ohwm



Preconstruction Notification (PCN) Requirements: A PCN is required for projects that do not meet all of the above requirements. In addition to the PCN requirements of General Condition #32, the PCN must include the following information:

i. A statement indicating which of the above requirements will not be met by the proposed project;

ii. Information as to why the use of such structures or measures would not be practicable;

iii. A brief description of the stream discussing:
- Site specific information (i.e. stream bed slope, type and size of stream bed material, stream type, existing natural or manmade barriers, etc.) assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement;
- Evaluation of the replacement for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability; and
- Flow/storm event the proposed culvert is designed to pass (2 year, 50 year, etc.)

iv. Cross sections of the stream used to calculate the stream bed low point and ordinary high water width, consisting of:
- Stream channel cross sections shall be taken at proximal locations to the crossing location to determine the average of the lowest points in elevation of the stream bed and the average width at ordinary high water.

- For new crossing locations, the average values from at least three measurements (project location and straight sections of the stream upstream and downstream) shall be used.
- For replacement of an existing structure, the average values from at least two cross sections (straight sections of the stream upstream and downstream from the existing structure representative of the natural channel) shall be used. Note: sections should not be taken in the immediate vicinity of the structure as the channel width may be affected by the structure and not provide an accurate representation of the natural channel.
- This average low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.
- If the above cross section method was not practicable to use, an alternative method may be utilized. The PCN shall include justification for the method used including the data used and an explanation as to how it provides an equivalent measure.

v. An evaluation of the effects the crossing would have on aquatic life movement and/or water flows; and

vi. Mitigation measures that will be employed to minimize these effects. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures.

A variance of the requirement(s) will be issued by the Corps if it can be demonstrated that the proposal would meet General Conditions #2 & #9 and would result in a less environmentally damaging practicable alternative (e.g. If compliance with any of the requirement(s) would result in detrimental impacts to the aquatic system then an alternate design should be proposed and a variance request submitted which outlines how compliance with the general conditions will be met.).

2. <u>ALL CULVERT REHABILITATION PROJECTS IN STREAMS</u>, to the extent they are regulated, not including culvert replacement projects (See G-B.1 above), shall be constructed in accordance with the following, in order to ensure compliance with NWP General Condition #2 – Aquatic Life Movement and #9 – Management of Water Flows:

a. An evaluation of the existing culvert shall be conducted prior to the proposed culvert rehabilitation to determine if the existing culvert is in compliance with NWP GC #2 and #9. Specifically, the culvert shall be evaluated regarding its effect upon aquatic life movements and low/ high water flow. If the above requirements in General Regional Condition B. 1 (a)-(e) are met, then the culvert is considered in compliance with NWP General Conditions #2 & # 9. (Potential

evaluation methods to consider include: North Atlantic Aquatic Connectivity Collaborative (NAACC) (Note: Projects should not result in a reduction of the NAACC passability score by reducing passage or creating a barrier), US Forest Service Aquatic Organism Passage FishXing, etc.)).

b. A PCN is not required for projects that utilize cured-in-place pipe lining or other repair activities that do not raise the existing invert elevation such that it causes an impediment to the passage of either aquatic life movement or water flow, unless there is an existing impediment which will not be corrected by the proposed repair.
c. A PCN is required for any culvert rehabilitation project that includes a culvert which is not in compliance with GC #2 and/or #9 (i.e., impedes aquatic life movement or water flow) and which will not be corrected by the proposed repair.

d. A PCN is required for culvert rehabilitation projects which will involve pipe slip lining or other activities, including concrete invert paving and concrete lining that raise the existing invert elevation such that it causes an impediment to the passage of low flow or aquatic life movement. Slip lining is defined as the insertion of a smaller diameter pipe into an existing pipe by pulling pushing, or spiral winding.

Preconstruction Notification (PCN) Requirements:
In addition to the PCN requirements of General Condition #32, the PCN must include the following information:

i. A summary of the evaluation required in Item a. above including a discussion of the impediment(s) to aquatic life movement and/or water flow; and

ii. Information as to how the proposal will mitigate for the impediment. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures.

G-C. Bogs and Fens: No regulated activity authorized by a Nationwide Permit can cause the loss of areas classified as a bog or fen in the State of New York, as determined by the Buffalo or the New York District Corps of Engineers, due to the scarcity of this habitat in New York State and the difficulty with in-kind mitigation. The Districts will utilize the following document in the classification:

Reschke, C. March 2014. Ecological Communities of New York State. Second Edition. New York Natural Heritage Program. New York State Department of Environmental Conservation. Latham, N.Y. This document is available at the following location: https://www.nynhp.org/ecological-communities/

G-D. National Wild and Scenic Rivers (NWSR): The Upper Delaware River has been designated as a National Wild and Scenic River from the confluence of the East and West Branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York. Also, the portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. In accordance with General Condition #16, no activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. Therefore, a PCN is required for any NWP which would impact the designated portions of the Genesee River or the Upper Delaware River, unless NPS has previously indicated the project will not adversely affect the waterway. (Note: the applicant may not commence work under any NWP until the NPS determines in writing that the project will not adversely affect the NWSR even if 45-days have passed since receipt of the PCN package.) Information regarding NWSR may be found at: https://www.rivers.gov/new-york.php

G-E. For all proposals requiring a pre-construction notification (PCN), in addition to the requirements in General Condition 32, the applicant shall also include: (Note: the application will not be considered complete until all of the applicable information is received).

1. PCN Application Submission: All pre-construction notifications, including applicable support materials, should be submitted electronically through the USACE Regulatory Request System (RRS) - https://rrs.usace.army.mil/rrs/home. Applicants are advised to continue to submit the appropriate application materials to the relevant New York State agencies as each agency requires.

2. Drawings: The PCN must include clear legible project drawings. Do not clutter the drawings with extraneous information. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross section). The Vicinity Map shall provide the location of the entire project site. In addition, each illustration should be identified with a figure or attachment number. The location map shall include the Latitude and Longitude or UTM coordinates of the project. For linear projects, the PCN shall include a map of the entire project including a delineation of all waters of the U.S. within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, etc.) A Bar scale and text scale (e.g., "1 inch = 250 ft") not to exceed 1 inch = 400 feet should also be included. In tidal waters, the plans should include the Spring High Water, Mean High Water, and Mean Low Water lines.

- In non-tidal waters, the plans should include the Ordinary High Water lines (https://www.erdc.usace.army.mil/ohwm)
- Special Aquatic Sites (SAS) including wetlands, coral reefs, mud flats, vegetated shallows/ submerged aquatic vegetation, river riffle/pool complexes, sanctuaries, and refuges should be identified on the plans.
- Plans should note the dimensions and/or the sizes of proposed structures, dredge areas, fill areas, etc. The quantity of material to be dredged and/or the quantity of fill material to be discharged should also be called out on the plans.

3. Color photographs: The photos should be sufficient to accurately portray the project site, keyed to a location map and not taken when snow cover is present.

4. Avoidance and Minimization: The PCN must include a written narrative explaining how avoidance and minimization of temporary impacts and permanent losses of waters of the U.S. were achieved on the project site (i.e. site redesign, reduction in scope, alternate methods, etc.). It should include a description of the proposed construction practices that would be implemented to perform the proposed work and a description of the reasonably foreseeable direct and indirect effects to waters of the U.S. from the proposed construction practices.

5. Mitigation (See General Conditions 23 & 32(b)(6)): The PCN must include at least a conceptual compensatory mitigation plan for all projects resulting in the loss of greater than 1/10th of an acre of wetlands and/or 3/100th of an acre of stream. Mitigation conceptual plans submitted with the PCN must include the following information at a minimum: proposed compensation type (bank or in-lieu fee credit, restoration, creation, preservation, etc.), location and brief discussion on factors considered for site selection (i.e. soils, water source, potential for invasive species, etc.), amount proposed per resource type and a discussion of how the proposal will compensate for aquatic resource functions and services lost as a result of the project.

Note 1: All mitigation projects must comply with the Federal Regulations on compensatory mitigation (33 CFR 332) entitled “Compensatory Mitigation for Losses of Aquatic Resources: Final Rule”, dated April 10, 2008, which is available at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/ and any applicable District Guidelines as posted on the Districts websites.

Note 2: Although a conceptual mitigation plan may be sufficient for the purposes of a PCN submission, a detailed mitigation plan must be approved by the Corps before any jurisdictional work may occur on the project site.

Note 3: If more than 0.10 acres of designated EFH habitat (as discussed in Section G-E.8. below) would be impacted such that habitat would be lost, compensatory mitigation at a minimum ratio of 1:1 is required. A ratio of more

than 1:1 may be required depending upon the ecological value of the habitat to be lost or degraded and the form of compensatory mitigation proposed to be provided.

Note 4: For additional information regarding natural stream channel design, please refer to https://www.epa.gov/cwa-404/natural-stream-channel-design-techniques-and-review for the Natural Stream Channel Design Techniques and Review Checklist as developed by U.S. EPA and U.S. Fish and Wildlife Service.

Note 5: As per 33 CFR 332.3(f)(1), in cases where appropriate functional or condition assessment methods or other suitable metrics are available, these methods should be used where practicable to determine how much compensatory mitigation is required. Once finalized, applicants shall utilize the USACE New York State Freshwater Wetland Rapid Assessment Procedure as the functional assessment for determining compensatory wetland mitigation requirements. A public notice will be issued announcing the finalization of the functional assessment and related materials will be made available on the Districts' websites.

6. Nationwide Rivers Inventory: The PCN shall indicate if a river segment listed within the National Park Service Nationwide Rivers Inventory (NRI) is located within the proposed project area. NRI river segments are potential candidates for inclusion in the National Wild and Scenic River System (See General Condition #16). For project areas containing a listed NRI segment, the PCN shall also include a statement as to how adverse effects to the river have been avoided or mitigated. The list is available at: http://www.nps.gov/ncrc/programs/rtca/nri/states/ny.html.

7. Historic or Cultural Resources: Historic or Cultural Resources: In accordance with General Condition 20, a PCN is required for any non-federal activity which may have the potential to cause effects to any historic properties* listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places (NR). Please refer to General Condition 20 for submission requirements. In addition, all PCNs must include:

a) A written statement indicating if any such properties may be affected by the proposed project;
b) A copy of any completed archaeology or building/structure survey reports. If a survey has not been performed, the statement shall include a list of resources checked in the determination;
c) Copies of any available correspondence from the New York State Office of Parks, Recreation, and Historic Preservation State Historic Preservation Officer (SHPO) regarding historic properties;
d) Copies of any available correspondence from federally recognized Indian Nations regarding historic properties that may be affected by the project;

e) Projects with ground disturbance may have the potential to cause effects to buried historic properties, regardless of occurring outside SHPO designated archaeological sensitive areas. Therefore, the PCN shall indicate if the ground disturbance will occur in any areas of previously undisturbed soil. For areas with prior disturbance, the PCN shall include a brief narrative describing the disturbance and its limit (i.e. type of disturbance, size of area with current undisturbed soil, size of area with existing disturbed soils, when the disturbance occurred, an estimate on how deep the soil disturbance extends, etc.) as well as photos of the existing ground disturbance; and

f) Above ground buildings/structures that are over 50 years old and potentially affected by the project will need to be assessed to determine if they are eligible for the NR. The PCN shall: identify any structures present in the project area, which have not already been subject to SHPO review, include photos of the structures, and describe how the project would/would not affect them.

* - see NWP definition section for further clarification

Note 1: Information regarding historic properties may be found at: https://cris.parks.ny.gov. In addition, assistance regarding the determination of the presence of historic or cultural resources at or near the project site should be directed to SHPO.

Note 2: As stated in General Condition 20, if any listed, eligible or potentially eligible properties are present, the applicant shall not begin the activity until notified by the district engineer in writing either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

8. Endangered Species and Essential Fish Habitat (EFH): In accordance with General Condition #18, non-federal applicants must submit a PCN if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity (See Note 2 & 3 below), or if the activity is located in designated critical habitat (or critical habitat proposed for such designation). Please refer to General Condition #18 for submission requirements. In addition, all PCNs must include:

1. A written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed or proposed Threatened or Endangered (T&E) species or designated and/or proposed critical habitat that might be affected or located in the vicinity of the project (See Note 2 below); and

2. An Official Species List (T&E) printed within 90 days of the PCN submission, and a copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) and/or National Oceanic and Atmospheric Administration Fisheries Service

(NOAA-Fisheries), regarding the potential presence of T&E species on the project site.

i. An applicant should use the USFWS Information for Planning and Consultation (IPAC) website (https://ecos.fws.gov/ipac) as the primary resource to determine if there may be listed T&E species.
ii. Information on NOAA Fisheries (NMFS) consultations (both T&E and EFH) can be found at: https://www.fisheries.noaa.gov/about/greater-atlantic-regional-fisheries-office
iii. Region-specific EFH information can we found at: https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/essential-fish-habitat-consultations-greater-atlantic-region
iv. Region specific ESA information can be found at: https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultations-greater-atlantic-region

3. For projects where T&E species are listed, including proposed listings, a discussion of potential T&E species habitat within the project site (See USFWS T&E website for species habitat information). https://www.fws.gov/office/new-york-ecological-services-field/new-york-project-reviews

4. If there is potential habitat for any T&E species within the project site the following, as applicable, shall be submitted:

i. The results of any habitat surveys and presence/absence surveys. Note: all surveys should be coordinated with the USFWS and/or NOAA-Fisheries prior to initiation.

ii. If any species Determination Keys (Dkeys) were used in the USFWS IPAC website, you are required to include them with the PCN application to streamline any required ESA consultation by USACE.

iii. A detailed description of the proposed project, including secondary impacts and approximate proposed project construction schedule of project activities (e.g. land clearing, utilities, stormwater management).

iv. A description of potential habitat for listed T&E species or designated critical habitat, including Proposed listings, in the area to be directly and indirectly impacted by the proposed project. In addition, for a complete PCN the following information is required to be submitted:

1. For listed bats and proposed tree clearing/felling: A list of tree species and typical Diameter at Breast Height (DBH), acres or number of individual

trees proposed to be felled/cleared, and the time of year the tree felling/clearing will be taking place.

2. For bridge or culvert replacement projects that have any listed or proposed bats on the Official Species List (generated in the USFWS IPaC website): A copy of the results of the bridge/culvert assessment form for potential bat use. For information on the bridge/culvert assessment and form, see Appendix K of the "USFWS Range-wide Indiana Bat and Northern Long-eared bat Survey Guidelines" for the applicable year.

3. For freshwater mussels: A description of the dominant stream/waterbody substrate, and color photographs of the waterbody and substrate in the project area.

v. The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5-minute topographic quadrangle (quad) with the name of the quad(s) and latitude/longitude clearly labeled.

vi. A description of avoidance & minimization measures or conservation measures to avoid, minimize and/or mitigate impacts to listed species. (For listed bats, it is recommended tree clearing/felling of suitable roost trees be proposed as much as practicable between November 1 and March 31, or dates recommended by USFWS, to reduce direct effects to potential roosting bats.)

Note 1: There are no known T&E species or EFH species under the jurisdiction of the NOAA-Fisheries within the Buffalo District. Therefore, all requests for information regarding the presence of T&E species within the Buffalo District should be directed to the USFWS IPaC website. In addition, no EFH review is necessary within the following New York District counties: Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Otsego, Schenectady, Schoharie and Warren.

Note 2: General Condition #18 is emphasized, … "For activities where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps."

Note 3: Please refer to the following websites for further guidance and information relating to regulatory permits & T&E species in New York, including protocols for defining "vicinity" for the Indiana bat, Northern long-eared bat, and Tricolored bat:

- Buffalo District: https://www.lrd.usace.army.mil/Missions/Regulatory/New-York/
- New York District: https://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/

Note 4: Where a PCN is required for EFH consultation, refer to the following links for the EFH Assessment Worksheet and Mapper utilized to inform the preparation of the worksheet:

- EFH Assessment Worksheet: https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/essential-fish-habitat-assessment-consultations
- EFH Mapper: https://www.habitat.noaa.gov/apps/efhmapper/

Note 5: Where information is required for submerged aquatic vegetation (SAV) in the permit area or within 50 feet of the proposed work, please utilize the following map data:

- NYSDEC Statewide Seagrass Map: https://nysdec.maps.arcgis.com/apps/mapviewer/index.html?webmap=9dcdd6a5840b444fa9743c87fa261a5d
- NYS GIS Clearinghouse (for SAV data in the Hudson River): https://data.gis.ny.gov/maps/df852b71818d4b6588409ebe7dd923b8/about
- Hudson Valley Natural Resource Mapper: https://gisservices.dec.ny.gov/gis/hvnrm/
- Recent SAV surveys should be within 3 years and follow the 2016 New England Joint Federal Agency Submerged Aquatic Vegetation Survey Guidance: https://www.nae.usace.army.mil/portals/74/docs/regulatory/JurisdictionalLimits/Submerged_Aquatic_Vegetation_Survey_Guidance(11-Aug-2016).pdf

Note 6: Where information is required regarding waters that support anadromous fish:

- Hudson Valley Natural Resource Mapper (for SAV, migratory fish runs): https://gisservices.dec.ny.gov/gis/hvnrm/

- NYS DEC River Revival Map: https://www.arcgis.com/home/webmap/viewer.html?webmap=e6ab78352f2e4076876380e7500567e9&extent=-73.3924,40.6352,-72.7036,40.9549

G-F. CRITICAL RESOURCE WATERS

In accordance with NWP General Condition (GC) #22, certain activities in Critical Resource Waters cannot be authorized under the NWP program or would require a PCN (see GC #22 for a list of the NWP activities that are either excluded or require a PCN).

Critical Resource Waters in New York State include the following:

1. **East-of-Hudson portion of the New York City Water Supply**:
This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on Enclosure 2.

2. **Hudson River National Estuarine Research Reserves (NERR)**:
The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats.

3. **Lake Ontario National Marine Sanctuary (LONMS)**:
The area encompasses 1,300 square nautical miles (1,722 square miles) of eastern Lake Ontario waters and bottomlands adjacent to Jefferson, Oswego, Cayuga, and Wayne counties in the state of New York (https://sanctuaries.noaa.gov/lake-ontario/). The shoreline sanctuary boundary is set at the Low Water Datum (LWD) as defined by the International Great Lakes Datum (IGLD). Currently LWD is 243.3 feet IGLD. LONMS excludes the ports and harbors of Oswego, Pultneyville, Little Sodus Bay, Sodus Bay, and Port Ontario from the sanctuary as well as the Federal navigation channel approaches to these harbors and Federal anchorage areas. LONMS also excludes privately owned bottomlands from the sanctuary. The boundary of LONMS cuts across the mouths of rivers, streams, creeks, and ponds as it continues along the coastline of the sanctuary, which excludes those water bodies from the sanctuary. This is the case for East Bay, Port Bay, Blind Sodus Bay, North Pond, South Colwell Pond, Goose Pond, Floodwood Pond, and Black Pond. LONMS includes Sackets Harbor.

H. NYSDOS Coastal Zone Management Consistency Additional Information (applicable to all projects located within the NYS Coastal Zone)

Where NYSDOS has objected to the USACE consistency determination, as outlined in the specific NWP listing in Section B above and Enclosure 8, the applicant must submit a request for an individual consistency determination to NYSDOS.

Further Information:

- NWPs are not valid within the Coastal Zone unless NYSDOS issues consistency concurrence or USACE has determined that NYSDOS concurrence is presumed.
- All consistency concurrence determination requests must be submitted directly to NYSDOS with a copy provided to USACE with any required Preconstruction Notification submissions.
- Limits of the coastal zone and details regarding NYSDOS submission requirements, including application forms can be obtained at: https://www.dos.ny.gov/opd/programs/consistency/index.html.
- For additional information regarding the NYSDOS Coastal Zone Management program, their application forms, and requirements, please contact NYSDOS. See Section J for NYSDOS contact information.

I. Information on Nationwide Permit Verification

Verification of the applicability of these Nationwide Permits is valid until March 15, 2031, unless the Nationwide Permit is modified, suspended, revoked, or the activity complies with any subsequent permit modification.

It is the applicant's responsibility to remain informed of changes to the Nationwide Permit program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website:

New York District – https://www.nan.usace.army.mil/Missions/Regulatory/

Buffalo District – https://www.lrd.usace.army.mil/Missions/Regulatory/New-York/

Please note in accordance with 33 CFR part 330.6(b), that if you commence or are under contract to commence an activity in reliance of the permit prior to the date this Nationwide permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the terms and conditions, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of the permit, unless the permit has been subject to the provisions of discretionary authority.

Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2026 Nationwide Permits for New York State

Effective March 15, 2026 - Expiration March 15, 2031

Possession of this permit does not obviate you of the need to contact all appropriate state and/or local governmental officials to ensure that the project complies with their requirements.

J. Agency Contact Information

NYS Board on Electric Generation Siting and the Environment (Siting Board)
Three Empire State Plaza
Albany, NY 12223-1350
https://dps.ny.gov/siting-board

NYS Department of Environmental Conservation
www.dec.ny.gov

NYS DEC REGION 1
Regional Permit Administrator
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409
(631) 444-0365

NYS DEC REGION 2
Regional Permit Administrator
1 Hunter's Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407
(718) 482-4997

NYS DEC REGION 3
Regional Permit Administrator
21 South Putt Corners Road
New Paltz, NY 12561-1620
(845) 256-3054

NYS DEC REGION 4
Regional Permit Administrator
1130 North Westcott Road
Schenectady, NY 12306-2014
(518) 357-2068

NYS DEC REGION 4 Sub-Office
Deputy Regional Permit Administrator
65561 State Hwy 10
Stamford, NY 12167-9503
(607) 652-7741

NYS DEC REGION 5
Regional Permit Administrator
PO Box 296
1115 Route 86
Ray Brook, NY 12977-0296
(518) 897-1234

NYS DEC REGION 5 Sub-Office
Deputy Regional Permit Administrator
PO Box 220
232 Golf Course Rd
Warrensburg, NY 12885-1172
(518) 897-1234

NYS DEC REGION 6
Regional Permit Administrator
317 Washington Street
Watertown, NY 13601-3787
(315) 785-2245

NYS DEC REGION 6 Sub-Office
Deputy Regional Permit Administrator
207 Genesee Street, Room 1404
Utica, NY 13501-2885
(315) 793-2555

NYS DEC REGION 7
Regional Permit Administrator
5786 Widewaters Parkway
Syracuse, NY 13214-1867
(315) 426-7438

NYS DEC REGION 8
Regional Permit Administrator
6274 E. Avon - Lima Road
Avon, NY 14414-9519
(585) 226-5400

NYS DEC REGION 9
Regional Permit Administrator
700 Delaware Avenue
Buffalo, NY 14209
(716) 851-7165

NYS DEC REGION 9 Sub-Office
Deputy Regional Permit Administrator
182 East Union Street, Suite 3
Allegany, NY 14706-1328
(716) 372-0645

NYS Department of Public Service (NYS DPS)
Three Empire State Plaza
Albany, NY 12223-1350
www.dps.ny.gov

Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2026 Nationwide Permits for New York State

Effective March 15, 2026 - Expiration March 15, 2031

NYS Department of State (NYSDOS)
Consistency Review Unit
Office of Planning, Development and Community Infrastructure
New York State Department of State
99 Washington Avenue
One Commerce Plaza, Suite 1010
Albany, NY 12231
(518) 474-6000
cr@dos.ny.gov

https://dos.ny.gov/federal-consistency-review-projects-requiring-federal-permits-or-authorizations

NYS Office of Renewable Energy Siting and Electric Transmission (ORES)
3 Empire State Plaza
Albany, NY 12223-1350
www.ores.ny.gov

Saint Regis Mohawk Tribe
Water Resources Program
(SRMT-CSB) 850 St. Rt. 37
Akwesasne, NY 13655
http://www.srmt-nsn.gov

Seneca Nation
Environmental Protection Department
12837 Route 438
Irving, NY 14081
(716) 532-4900

For Allegany Territory
90 Ohi:yo' Way, P.O. Box 231
Salamanca, NY 14779
Phone (716) 945-1790

US Environmental Protection Agency Region 2
Wetlands Protection Section
290 Broadway, 24th Floor
New York, NY 10007
212-637-3838
Email: Region2_CWA401@epa.gov

US Army Corps of Engineers

(Covering NYSDEC Regions 1, 2 and 3)
US Army Corps of Engineers, NY District (NAN)
ATTN: Regulatory Division, Room 16-406
26 Federal Plaza
New York, NY 10278-0090
For DEC Regions 1 & 2 - (917) 790-8511
For DEC Region 3 - (917) 790-8411

(Covering NYSDEC Regions 4, 5)
US Army Corps of Engineers, NY District (NAN)
Upstate Regulatory Field Office
ATTN: CENAN-OP-RU, Bldg. 10, 3rd Floor North
1 Buffington Street, Watervliet Arsenal
Watervliet, NY 12189-4000
(518) 266-6350

NAN website:
http://www.nan.usace.army.mil/Missions/Regulatory/

(Covering NYSDEC Regions 6, 7, 8, 9)
US Army Corps of Engineers, Buffalo District (LRB)
ATTN: Regulatory Division
478 Main Street
Buffalo, NY 14202
(716) 879-4330

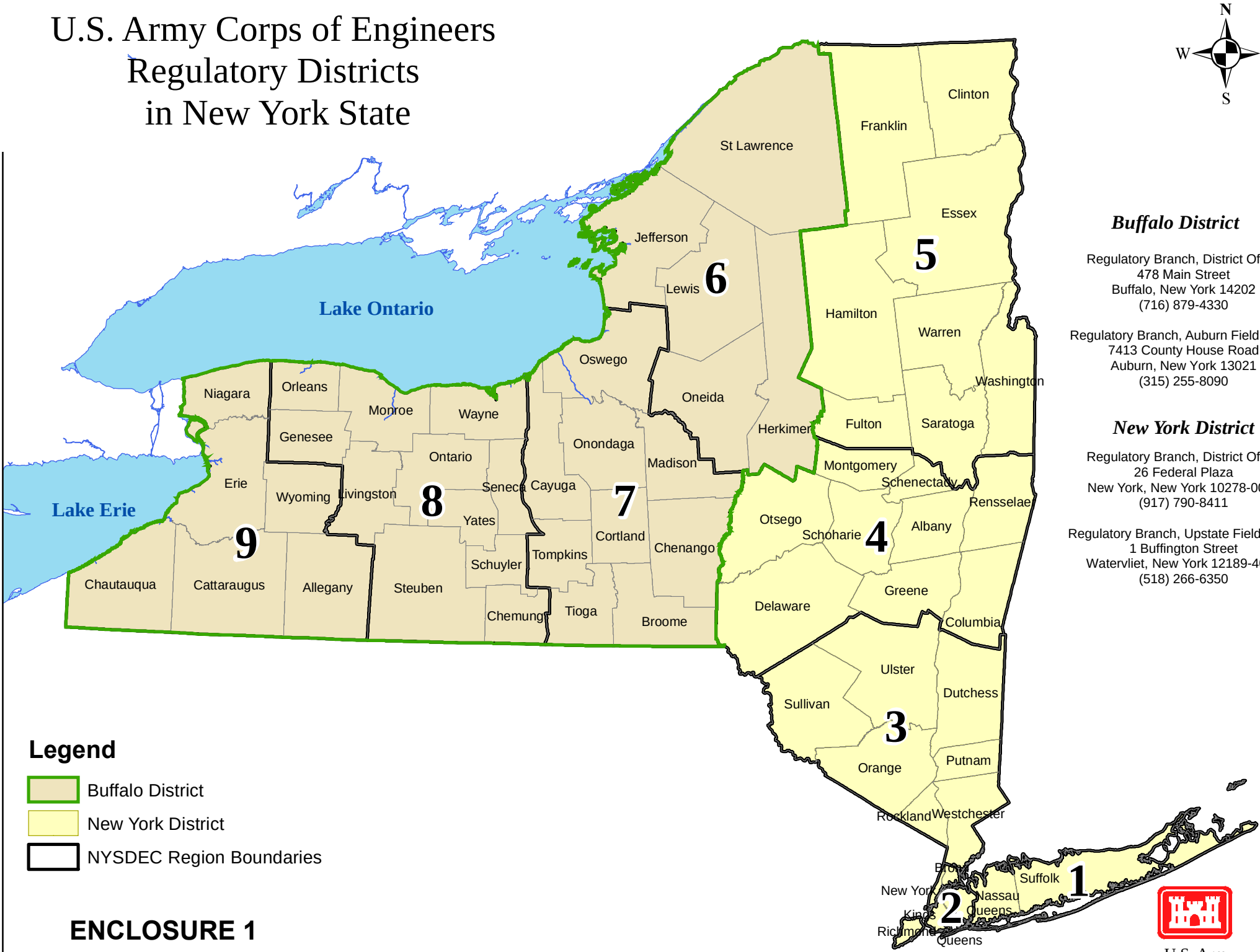
LRB Website:
https://www.lrd.usace.army.mil/Wetlands-Permits/New-York/

Preconstruction Notifications should be submitted to USACE through the Regulatory Request System (RRS):
https://rrs.usace.army.mil/rrs

Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2026 Nationwide Permits for New York State

Effective March 15, 2026 - Expiration March 15, 2031

U.S. Army Corps of Engineers Regulatory Districts in New York State



Legend

- Buffalo District
- New York District
- NYSDEC Region Boundaries

ENCLOSURE 1

Buffalo District

Regulatory Branch, District Office
478 Main Street
Buffalo, New York 14202
(716) 879-4330

Regulatory Branch, Auburn Field Office
7413 County House Road
Auburn, New York 13021
(315) 255-8090

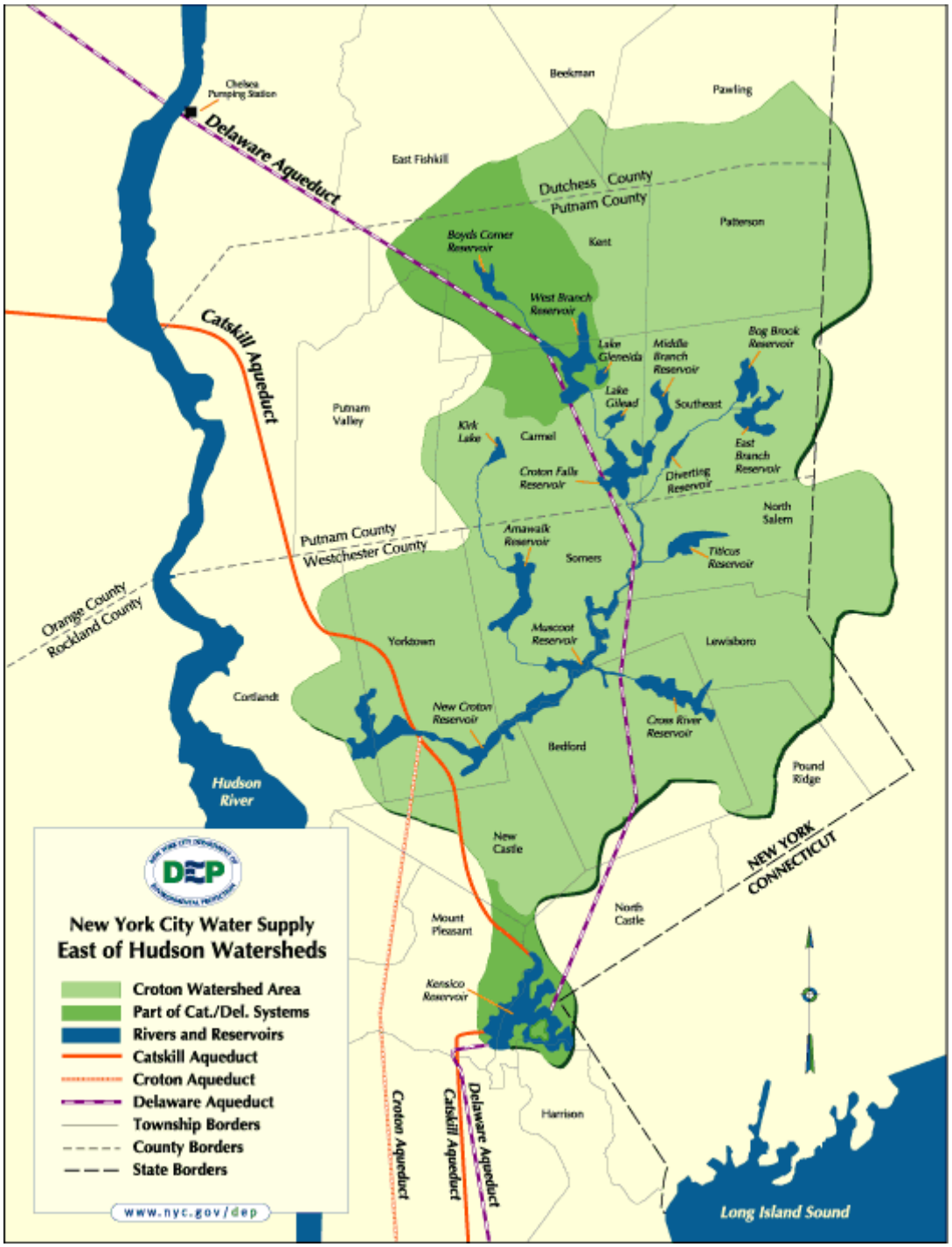
New York District

Regulatory Branch, District Office
26 Federal Plaza
New York, New York 10278-0090
(917) 790-8411

Regulatory Branch, Upstate Field Office
1 Buffington Street
Watervliet, New York 12189-4000
(518) 266-6350

U.S. Army
Corps of Engineers

ENCLOSURE 2


Chelsea Pumping Station
Delaware Aqueduct
Catskill Aqueduct
Beekman
Pawling
East Fishkill
Dutchess County
Putnam County
Patterson
Kent
Boyds Corner Reservoir
West Branch Reservoir
Lake Gleneida
Middle Branch Reservoir
Bog Brook Reservoir
Lake Gilead
Southeast
East Branch Reservoir
Putnam Valley
Kirk Lake
Carmel
Croton Falls Reservoir
Diverting Reservoir
North Salem
Amawalk Reservoir
Somers
Titicus Reservoir
Putnam County
Westchester County
Orange County
Rockland County
Yorktown
Muscoot Reservoir
Lewisboro
Cortlandt
New Croton Reservoir
Cross River Reservoir
Bedford
Pound Ridge
Hudson River
New Castle
NEW YORK
CONNECTICUT
Mount Pleasant
North Castle
Kensico Reservoir
Harrison
Croton Aqueduct
Catskill Aqueduct
Delaware Aqueduct
Long Island Sound
DEP
New York City Water Supply
East of Hudson Watersheds
Croton Watershed Area
Part of Cat./Del. Systems
Rivers and Reservoirs
Catskill Aqueduct
Croton Aqueduct
Delaware Aqueduct
Township Borders
County Borders
State Borders
www.nyc.gov/dep

ENCLOSURE 3

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

REPLY TO
ATTENTION OF

REGULATORY BRANCH Attn:_____

Commercial Mooring Buoy Application Additional Information

Permit Application Number NAN-_____

Company Name: _____ Phone: _____
Attn: _____
Address: _____

Initial☐Renewal☐
If Renewal, USCG Permit No._____

Purpose: _____

LOCATION OF MOORING:

Anchorage: _____ Chart: _____ On Scene Depth (ft.):_____

Position*:_____ N _____ W

MOORING BUOY DATA:

No. of anchors: _____ Lbs. per anchor: _____ Type: _____

Chain size (in.):_____ Scope (yds.):_____

Pennant length (yds.):_____ Circ. /dia. (in.):_____ Type: _____

VESSEL/BARGE DATA:

Max size (LxBxD):_____x_____x_____ Max No. of barges: _____

Configuration (# abreast x # astern):____x____ Watch circle** (yds.):_____

Swing Radius (yards):_____

* Please provide a copy of the NOAA chart showing your proposed mooring buoy location and the swing radius; also identify the Anchorage Ground, if applicable

** Watch Circle =$\sqrt{(length\ of\ scope)^2 - (water\ depth)^2}$
Swing Radius =$(Watch\ circle) + (Barge(s)\ length\ astern) + \big(Pendant\ length(s)\big) + (10\%\ of\ swing\ radius)$. You must maintain an additional 10% of your Swing Radius from any adjacent mooring buoy Swing Radius for safety and maneuvering.

ENCLOSURE 4

Incident Report of Sea Turtle Take
U.S. Army Corps of Engineers, New York District

Date _____ Time (specimen found) _____

Species Taken: Loggerhead Kemp's ridley Leatherback
Green Unknown turtle Other
(*please circle and describe how specimen was identified in Comments*)

Animal: Alive / Dead (*please circle*)
Specimen Decomposition: FRESH SLIGHTLY MODERATELY SEVERELY
Approximate length _____ Approximate width _____
(*please designate cm/m or inches*)

Condition of specimen/description of animal
_____
_____
_____

Animal tagged: YES / NO (*please circle and record all tag numbers*)
Tag # _____

Photograph attached: YES / NO (*please circle*)
(*please label species, date, geographic site and name on photo back*)

Fate of animal _____

Geographic Site _____
Location: Lat/Long _____
Approx. depth of gear _____

Location where animal found (*leader, anchor line, buoy line, etc.*)
_____
_____

Thickness and type of line (*if applicable*) _____
Mesh size and type of net (*if applicable*) _____
Debris in gear? _____

Weather conditions _____
_____
Water temp: Surface _____ Below midwater (*if known*)_____
Tide state (Ebb or Flood) _____
Entanglement on downcurrent or upcurrent side of net? _____

Comments/other (*include justification on how species was identified*)
_____
_____
_____

Observer's Name _____ Permit # _____

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person by subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number.

ENCLOSURE 5

NEW YORK STATE | Department of Public Service

KATHY HOCHUL
Governor

RORY M. CHRISTIAN
Chief Executive Officer

December 18, 2025

Via Email and U.S. Mail: stephan.a.ryba@usace.army.mil
Stephan A. Ryba, Chief
Regulatory Branch
New York District, U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278-0090

Via Email and U.S. Mail: martin.p.wargo@usace.army.mil
Martin Wargo, Chief
Regulatory Branch
Buffalo District, U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207-3199

Re: **DPS Matter No. 20-02615 Section 401 Water Quality Certification Decision**
U.S. Army Corps of Engineers Nationwide Permits

Dear Stephen Ryba and Martin Wargo,

On June 18, 2025, the United States Army Corps of Engineers (Corps) published a notice in the Federal Register (Vol. 90 No. 116) announcing its proposal to reissue and modify its Nationwide Permits issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Nationwide Permits). The notice also indicated that each Corps' district office would request Section 401 Water Quality Certifications for the proposed Nationwide Permits from the certifying agencies.

Subsequent to the Federal Register notice, joint requests for Section 401 Water Quality Certification (Water Quality Certification) on the proposed Nationwide Permits were sent from the New York and Buffalo Corps Districts to the New York State Department of Public Service (Department).

This letter constitutes a response from the Department for all matters subject to the jurisdiction of the New York State Public Service Commission (Commission), New York State Board on Electric Generation Siting and the Environment (Siting Board), and the Department's Office of Renewable Energy Siting and Electric Transmission (Office). This letter provides the Department's decision on the Corps' Water Quality Certification request for activities in New York State only where the Department is the certifying authority. This decision has no effect on activities undertaken in New York State where the Department is not the certifying authority; such activities are subject to the Water Quality Certification decisions of the applicable certifying authorities.

This Water Quality Certification decision is being provided on the proposed Nationwide Permits, and there currently is no date certain for the Corps to finalize and issue the Nationwide Permits. In addition, this Water Quality Certification decision is based on the Nationwide Permits as described in

the Federal Register notice, including the scope of authorized activities for each permit and the general conditions that would apply to all permits. Because the date for finalization of the Applicable Nationwide Permits is unknown, the effective date and expiration date of this Water Quality Certification decision will be concurrent with the effective date and expiration date of final Nationwide Permits. However, in the event any final Applicable Nationwide Permits include substantial changes in the scope of the proposed Nationwide Permit activities or their associated conditions, the Department reserves its rights to revoke or modify this Water Quality Certification decision.

The Corps proposes to re-issue 56 existing Nationwide Permits and proposes one new Nationwide Permit for a total of 57 Nationwide Permits. The Nationwide Permits listed in Attachment 1 do not require a Water Quality Certification from the Department because the Nationwide Permits are authorized under Section 10 of the Rivers and Harbors Act of 1899 or involve permit activities that would not come under the statutory authority of the Commission, Siting Board, and Office.[1] The Department hereby denies the request for Water Quality Certification for the Nationwide Permits listed in Attachment 2 of this letter that may apply to activities undertaken pursuant to New York State Public Service Law (PSL) Article VII for major utility transmission facilities (fuel gas or electric transmission facilities); PSL Article 10 for major electric generating facilities; and PSL Article VIII for major electric transmission facilities and major renewable energy facilities except as to those Nationwide Permits identified in Attachment 3, below. The basis for the denial is provided in Attachment 2.

The Department hereby conditionally grants blanket Water Quality Certification for the Section 404 Nationwide Permits 14, 51 and 57, listed in Attachment 3 to this letter, only as to major renewable energy facilities, as these Nationwide Permits may apply to activities undertaken pursuant to PSL Article VIII for such facilities. The basis for the conditional grant of blanket Water Quality Certification is provided in Attachment 3, and the statements of necessity for the conditions are provided in Attachment 4 to this letter.

If you have any questions, please feel contact Chase Chaskey at chase.chaskey@dps.ny.gov or (518) 474-9870, or Tim DePriest at timothy.depriest@dps.ny.gov or (518) 473-2590.

Sincerely,

John Sipos
General Counsel
Office of General Counsel
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Zeryai Hagos
Executive Director
Office of Renewable Energy Siting
and Electric Transmission
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

cc: Hon. Michelle L. Phillips, Secretary
Christopher Minck, USACE

[1] For actions within New York State where the Department is not the certifying authority, separate requests from the Corps for Section 401 Water Quality Certification decisions have been sent to the United States Environmental Protection Agency, the Seneca Nation of Indians, the St. Regis Mohawk Tribe, the New York State Department of Environmental Conservation.

Bridget Brown, USACE

Attachment 1 – Nationwide Permits Not Requiring Water Quality Certification from the Department of Public Service
Attachment 2 – Nationwide Permits Denied Water Quality Certification
Attachment 3 – Nationwide Permits Granted Conditional Blanket Water Quality Certification for Major Renewable Energy Facilities Only
Attachment 4 – Water Quality Requirements and Statements of Necessity for Department Conditions pertaining to Nationwide Permits listed in Attachment 3

ATTACHMENT 1

The following Nationwide Permits require no Section 401 Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Act of 1899:

NWP 1. Aids to Navigation
NWP 2. Structures in Artificial Canals
NWP 8. Oil and Gas Structures on the Outer Continental Shelf
NWP 9. Structures in Fleeting and Anchorage Areas
NWP 10. Mooring Buoys
NWP 11. Temporary Recreational Structures
NWP 24. Indian Tribe or State Administered Section 404 Programs
NWP 28. Modifications of Existing Marinas
NWP 35. Maintenance Dredging of Existing Basins
NWP 55. Seaweed Mariculture Activities

The following Nationwide Permits require Section 401 Water Quality Certification for activities outside of the jurisdiction of the New York State Public Service Commission (Commission), New York State Board on Electric Generation Siting and the Environment (Siting Board), and the Department of Public Service's (Department's) Office of Renewable Energy Siting and Electric Transmission (Office).

NWP 29. Residential Developments
NWP 34. Cranberry Production Activities
NWP 42. Recreational Facilities
NWP 48. Commercial Shellfish Mariculture Activities

ATTACHMENT 2

The New York State Department of Public Service (Department) hereby **denies** Section 401 blanket Water Quality Certification (Water Quality Certification) for activities undertaken pursuant to the Nationwide Permits listed below, as they relate to the construction and operation of major fuel gas or electric transmission facilities subject to New York State Public Service Law (PSL) Article VII; major electric generating facilities pursuant to PSL Article 10; and major electric transmission facilities pursuant to PSL Article VIII. The Department also hereby denies Water Quality Certification for activities undertaken pursuant to the Nationwide Permits listed below for major renewable energy facilities pursuant to PSL Article VIII with the exception of Nationwide Permits 14 (Linear Transportation Projects), 51 (Land-Based Renewable Energy Generation Facilities), and 57 (Electric Utility Line and Telecommunications Activities). Any party conducting activities authorized by these Nationwide Permits, where the New York State Public Service Commission (Commission), the New York State Board on Electric Generation Siting and the Environment (Siting Board), or the Department's Office of Renewable Energy Siting and Electric Transmission(Office), is the certifying authority, must apply for and obtain an individual Water Quality Certification from the respective certifying authority in accordance with procedures at 40 CFR 121, New York State PSL Article VII (Siting of Major Utility Transmission Facilities); PSL Article VIII (Siting of Renewable Energy and Electric Transmission); and PSL Article 10 (Siting of Major Electric Generating Facilities).

NWP 3. Maintenance
NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
NWP 5. Scientific Measurement Devices
NWP 6. Survey Activities
NWP 7. Outfall Structures and Associated Intake Structures
NWP 12. Oil or Natural Gas Pipeline Activities
NWP 13. Bank Stabilization
NWP 14. Linear Transportation Projects
NWP 15. U.S. Coast Guard Approved Bridges
NWP 16. Return Water From Upland Contained Disposal Areas
NWP 18. Minor Discharges
NWP 19. Minor Dredging
NWP 20. Response Operations for Oil or Hazardous Substances
NWP 21. Surface Coal Mining Activities
NWP 22. Removal of Vessels
NWP 23. Approved Categorical Exclusions
NWP 25. Structural Discharges
NWP 27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
NWP 30. Moist Soil Management for Wildlife
NWP 31. Maintenance of Existing Flood Control Facilities
NWP 32. Completed Enforcement Actions
NWP 33. Temporary Construction, Access, and Dewatering
NWP 36. Boat Ramps
NWP 37. Emergency Watershed Protection and Rehabilitation
NWP 38. Cleanup of Hazardous and Toxic Waste
NWP 39. Commercial and Institutional Developments
NWP 40. Agricultural Activities

NWP 41. Reshaping Existing Drainage Ditches
NWP 43. Stormwater Management Facilities
NWP 44. Mining Activities
NWP 45. Repair of Uplands Damaged by Discrete Events
NWP 46. Discharges in Ditches
NWP 49. Coal Remining Activities
NWP 50. Underground Coal Mining Activities
NWP 51. Land-Based Renewable Energy Generation Facilities
NWP 52. Water-Based Renewable Energy Generation Pilot Projects
NWP 53. Low-Head Dam Removal
NWP 54. Living Shorelines
NWP 55. Seaweed Mariculture Activities
NWP 57. Electric Utility Line and Telecommunications Activities
NWP 58. Utility Line Activities for Water and Other Substances
NWP 59. Water Reclamation and Reuse Facilities
NWP A. Activities to Improve Passage of Fish and Other Aquatic Organisms

Basis for Denial of Water Quality Certification

In accordance with 40 CFR § 121.7(e)(2)(i-iii), the Department's denial of Water Quality Certification is based on the following:

1. State water quality standards for Water Quality Certification found in 301-303, 306 and 307 of the Federal Water Pollution Control Act, as implemented in New York State by the following provisions:

   a. Effluent limitations and water quality-related effluent limitations set forth in section 750-1.11 of Title 6 of New York Codes Rules and Regulations (6 NYCRR);
   b. Water quality standards and thermal discharge criteria set forth in Parts 701, 702, 703 and 704 of 6 NYCRR;
   c. Standards of performance for new sources set forth in section 750-1.11 of 6 NYCRR;
   d. Effluent limitations, effluent prohibitions and pretreatment standards set forth in section 750-1.11 of 6 NYCRR;
   e. Prohibited discharges set forth in section 750-1.3 of 6 NYCRR; and
   f. State statutes, regulations and criteria otherwise applicable to such activities, including requirements of provisions of PSL § 120 *et. seq.* and 16 NYCRR part 86.5; PSL § 137 *et seq.* and 16 NYCRR part 1100; and PSL § 160 et seq. and 16 NYCRR chapter X.

2. Reasons why water quality standards are not met. Given the nature and scope of projects subject to review under PSL Articles VII, VIII, and 10, these projects require an individual assessment of compliance with water quality standards based on project- and site-specific circumstances for the Nationwide Permits listed in this Attachment 2. The facilities subject to Commission, Siting Board and Office jurisdiction are large and complex projects involving consideration of primary and potential alternatives including site location, facility design, control technology and impact avoidance, minimization or mitigation measures, and cost constraints to minimize effects on utility ratepayers.

3. Reasons why an individual assessment of compliance with water quality standards is necessary include, among other things, as follows. Projects seeking certification by the Commission and the Siting Board are not required to provide final facilities' design and environmental control and mitigation plans until after siting authorization has been issued based on preliminary design information, and as such, water quality impacts cannot generally be determined until final design has been provided and compliance with certificate conditions and applicable NYS water quality standards has been demonstrated. Under PSL Articles VII and 10, the applicant for a major electric transmission or gas utility line or major electric generating facility would be required to provide additional information to determine whether water quality standards are met, including: final approved facility location and layout; final facility design plans; identification of site-specific control technology and impact avoidance, minimization and/or mitigation measures, including wetlands mitigation plans; and detailed erosion and sedimentation control plans for all areas of disturbance. In addition, most major transmission and major electric generating project proposals exceed threshold criteria associated with Clean Water Act Section 404 applicability for wetlands fill and streambank disturbance. The nationwide permit criteria and consideration of each stream crossing or wetland impact area as a stand-alone project does not account for impacts on an individual watershed or even single waterbody basis. These reasons also apply for major electric transmission facilities seeking permits from the Office pursuant to PSL Article VIII. For major renewable energy facility projects seeking permits from the Office pursuant to PSL Article VIII, individual assessment of compliance with water quality standards is necessary for all Nationwide Permits except 14, 51, and 57, as they authorize activities that are not commonly associated with such projects and therefore, they are not necessarily already addressed by regulatory uniform permit standards and conditions.

Attachment 3

The New York State Department of Public Service (Department) **grants** Section 401 blanket Water Quality Certification (Water Quality Certification) for activities undertaken pursuant to the Section 404 Nationwide Permits (Nationwide Permits) listed below, as they relate to the construction and operation of major renewable energy facilities subject to New York State Public Service Law (PSL) Article VIII, subject to conditions. Anyone conducting activities authorized by these Nationwide Permits, where the Department's Office of Renewable Energy Siting and Electric Transmission (Office) is the certifying authority, must meet the blanket Water Quality Certification conditions below, or apply for and obtain an individual Water Quality Certification from the Office.

NWP 14. Linear Transportation Projects

NWP 51. Land-Based Renewable Energy Generation Facilities

NWP 57. Electric Utility Line and Telecommunications Activities

Blanket Water Quality Certification Conditions
The conditions listed below are necessary to ensure that the discharges authorized under the Nationwide Permits listed in this Attachment 3 will comply with state water quality requirements. Anyone conducting activities authorized by these Nationwide Permits, where the Office is the certifying authority, must meet the blanket Water Quality Certification conditions below, or apply for and obtain an individual Water Quality Certification from the Office.

1. **Scope of Certification** – This blanket water quality certification does not apply to activities undertaken pursuant to New York State Public Service Law (PSL) Article VII for major utility transmission facilities (fuel gas or electric transmission facilities); PSL Article 10 for major electric generating facilities; and PSL Article VIII for major electric transmission facilities. Those seeking nationwide permit coverage for such activities must apply for and obtain an individual Water Quality Certification from the respective certifying authority in accordance with procedures at 40 CFR 121 and New York State PSL Articles VII, 10 and VIII. In addition, those seeking nationwide permit coverage for activities for major renewable energy facilities under any nationwide permit not listed in this Attachment 3 must apply for and obtain an individual Water Quality Certification from the Office in accordance with procedures at 40 CFR 121 and New York State PSL Article VIII.
2. **Applicability** – This blanket Water Quality Certification applies to any regulated discharges to Waters of the United States covered under a nationwide permit listed in this Attachment 3 where the Office confirms jurisdiction applicable to an applicant and specific major renewable energy facility under a permit pursuant to PSL Article VIII and its implementing regulations at 16 NYCRR § 1100 *et seq.*. For renewable energy generation facilities permitted pursuant to the regulations at 16 NYCRR § 1100 *et seq.*, under PSL Article VIII, the following conditions apply:

1. *Equipment maintenance, refueling, and storage.* Equipment storage, refueling, maintenance, and repair, and handling of containers containing pesticides, chemicals, or petroleum

products, shall be conducted and safely contained more than one hundred (100) feet from all wetlands, waterbodies, and streams and stored at the end of each workday unless moving the equipment will cause additional environmental impact. Dewatering pumps operating within one hundred (100) feet of wetlands, waterbodies, or streams may be refueled in place and shall be within a secondary containment large enough to hold the pump and accommodate refueling. All mobile equipment, excluding dewatering pumps, shall be fueled in a location at least one hundred (100) feet from wetlands, waterbodies and streams unless moving the equipment will cause additional environmental impact.

2. *Fuel storage.* Fuel or other chemical storage containers shall be appropriately contained and located at least three hundred (300) feet from wetlands, waterbodies, and streams.

3. *Clean fill.* All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, demolition debris, broken concrete, garbage, household refuse, tires, woody materials, and metal objects. Reasonable efforts shall be made to use fill materials that are visually free of invasive species based on onsite and source inspections. The introduction of materials toxic to aquatic life is expressly prohibited.

4. *Turbid water*. Turbid water resulting from dewatering operations shall not be allowed to enter any wetland, waterbody, or stream. Water resulting from dewatering operations shall be discharged directly to settling basins, filter bags, or other approved device. Construction and maintenance activities shall not result in substantial visible contrast due to turbidity or sedimentation downstream of the work site.

5. *Equipment washing*. Washing of trucks and equipment shall occur one hundred (100) feet or more from an ESA, and waste concrete and water from such activities shall be controlled to avoid it flowing into a wetland or adjacent area, waterbody or stream. If runoff from such activities flows into any wetlands and adjacent areas subject to ECL article 24, or waterbodies and streams regulated pursuant to ECL article 15, the NYS Department of Environmental Conservation (NYSDEC) Regional Supervisor of Natural Resources shall be contacted within two (2) hours.

6. *Concrete washouts*. Concrete washouts and batch plants, or concrete from truck cleanout activity, any wash water from trucks, equipment, or tools, if done on site, shall be located and installed to minimize impacts to water resources. Locations should be at least one hundred (100) feet from any wetland, waterbody or stream, and located outside wetland adjacent areas to the maximum extent practicable. Waste concrete and wash water shall be disposed of as construction debris.

7. *Trenching*. Open cut trenching in wetlands, waterbodies and streams shall be conducted in one continuous operation and shall not exceed the length that can be completed in one (1) day.

8. *Discharge notice and response*. If construction activities undertaken by the permittee result in a discharge to a wetland, waterbody or stream that violates New York Water Quality Standards at 6 NYCRR Part 703, the permittee shall notify the office within two 2 (hours)

and, in coordination with the environmental monitor as required by the PSL Article VIII permit, take appropriate corrective action. Following the implementation of appropriate corrective actions, if New York Water Quality Standards are not met the permittee shall stop work in the affected area of the Facility until authorized to proceed by the environmental monitor in consultation the office.

9. *Construction in wetlands and adjacent areas*. All construction activities completed within wetlands and/or adjacent areas shall adhere to the following requirements:

    a. Work should be conducted during dry conditions without standing water or when the ground is frozen, where practicable.

    b. Excavation, installation, and backfilling in wetlands shall be performed in one continuous operation.

    c. Temporary construction matting in wetlands shall be used as necessary to minimize disturbance to the wetland soil profile during all construction and maintenance activities. All temporary construction matting shall be removed when it is no longer needed as a best management practice (BMP). Matted wetland crossings shall be monitored to assure correct functioning of the mats. Mats that become covered with soils or construction debris shall be cleaned and the materials removed and disposed of in an upland location. Where necessary, mats that become embedded shall be reset or layered to prevent mud from covering them or water passing over them. Following removal from the wetland, mats shall be cleaned of any invasive species (seed, plant materials, insects, etc.). Matting shall be removed by equipment stationed on a mat or areas outside the wetland.

    d. In the event that construction results in an unanticipated alteration to the hydrology of a wetland (i.e., lowering), the breach shall be immediately sealed, and no further activity shall take place until the office is notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved.

    e. Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of possible turbid trench water from entering the wetland.

    f. Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction.

    g. In wetland areas, the topsoil shall be removed and stored separate from subsoil. Both the topsoil and subsoil shall be placed adjacent to the trench on geo-textile blankets.

    h. Trenches and excavations shall be backfilled with wetland subsoil and then covered with wetland topsoil, such that the restored topsoil is the same depth as prior to disturbance. Only the excavated wetland topsoil and subsoil shall be utilized as backfill, except where clean bedding material for electrical collection lines and/or conduits is required or where trenches or excavations occur in areas with permanent fill. All excess

materials shall be completely removed to upland areas and suitably stabilized.

i. All temporarily disturbed wetlands not located on land where agricultural production will resume during operations shall be seeded with an appropriate native wetland seed mix, shrubs, live stakes, or tree planting, as site conditions and design allow, as appropriate for existing land uses. Straw mulch shall be maintained until the disturbed area is permanently stabilized. Hay shall not be used for mulching of wetlands.

j. All temporarily disturbed wetlands located on lands where agricultural practices will resume during operations, shall be managed in accordance with the NYSAGM "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."

k. Installation of underground collection lines in wetlands shall be performed using the following methods:

   i. the permittee shall implement best management practices to minimize soil compaction;

   ii. during excavation, all topsoil shall be stripped and segregated from subsoils. The permittee shall consolidate trenching areas to the maximum extent practicable to minimize impacts to agricultural soils;

   iii. all reasonable efforts shall be made to conduct excavation, installation, and backfilling activities in one continuous operation; open trenches shall be backfilled within the same workday if rain is predicted, wherever practicable; and

   iv. all excess wetland subsoil shall be completely removed to upland areas.

l. *Wetland restoration.*

   i. The permittee shall restore all temporarily disturbed areas within wetlands to original grades and conditions with permanent native re-vegetation and erosion controls appropriate for those locations.

   ii. Restoration of temporary impacts to wetlands to pre- construction contours shall be completed within forty-eight (48) hours of final backfilling of the trench/excavated areas.

   iii. Immediately upon completion of grading, and as consistent with existing land use/land cover, the area shall be seeded with an appropriate native species mix for wetlands and upland areas adjacent to wetlands, except that adjacent areas may be reseeded differently at the request of the landowner.

   iv. The permittee shall attain eighty (80) percent vegetative cover across all disturbed soil areas by the end of the first full growing season following

construction. Overall vegetative cover in restored areas shall be monitored for a minimum of five (5) years. Post- construction monitoring shall continue until an eighty (80) percent survivorship of native woody species or eighty-five (85) percent absolute cover of native herbaceous species appropriate wetland indicator status has been reestablished over all portions of the replanted area.

m. *Access roads through wetlands.* Installation of access roads through wetlands shall be performed using the following methods:

   i. Temporary access roads shall use timber/construction matting that is completely removed after construction/maintenance activities are completed and removal shall be verified with the office by the on-site environmental monitor after construction, or by the facility operator after maintenance work is completed.

   ii. Permanent access roads shall use a layer of geotextile fabric and a minimum of six (6) inches of gravel shall be placed in the location of the wetland crossing after vegetation and topsoil is removed. Access roads shall be designed and constructed to adequately support the type and frequency of the anticipated vehicular traffic and include suitable culverting or other drainage infrastructure as needed to minimize the impact to wetland hydrology.

n. *Solar panel support installation.* Installation and construction techniques shall minimize the disturbance of the wetland soil profiles (e.g., the use of helical screws and driven H-pile with no backfilling for solar arrays sites in wetlands).

o. *Fill placement.* The placement of fill in wetlands shall be designed to maintain pre-construction surface water flows/conditions between remaining on- or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Construction activity and final design shall not restrict or impede the passage of normal or expected high flows.

p. *Concrete use.* For activities involving the placement of concrete into regulated wetlands, watertight forms shall be used. The forms shall be dewatered prior to the placement of the concrete. The use of tremie-supplied concrete is allowed if it complies with NYS water quality standards.

q. *Stormwater setback.* Any new stormwater management infrastructure shall be located outside of the wetland and adjacent area to the extent practicable.

10. *Work in streams.* The permittee shall implement the following:

a. *Dry conditions.* In-stream work shall only occur in dry conditions, using appropriate water handling measures to isolate work areas and direct stream flow around the work area. Any waters accumulated in isolated work areas shall be discharged to an upland

settling basin, field, or wooded area to provide for settling and filtering of solids and sediment before water is return to the stream. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

b. *In-water work windows.* In-stream work shall be prohibited from September 15 through May 31 in cold water fisheries and March 15 through July 15 in warm water fisheries unless the permittee receives site-specific approval from the office.

c. *Stream channels.* The restored stream channel shall be equal in width, depth, gradient, length and character to the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. The planform of any permanent stream shall not be changed, unless dictated by restoration or mitigation objectives. All disturbed stream banks shall be mulched within two (2) days of final grading, stabilized with one hundred (100) percent natural or biodegradable fiber matting, and seeded with an appropriate riparian seed mix.

d. *Felled trees in an ESA.* Trees shall not be felled into an ESA stream or its stream bank. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion.

e. *Culvert repairs.* If a culvert is blocked or crushed, or otherwise damaged by construction or maintenance activities, the permittee shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage, embedment and aquatic connectivity.

f. *Access road crossings of streams.* The creation, modification or improvement of any permanent road crossing of a regulated waterbody shall meet the following requirements:

    i. culvert pipes shall be embedded beneath the existing grade of the stream channel;

    ii. width of the structure shall be a minimum of one and a quarter (1.25) times the width of the mean high-water channel, as practicable; and

    iii. the culvert slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than three (3) percent, an open bottom culvert shall be used.

g. *Stream flows.* During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

h. *No aquatic impediments*. In-stream work, including the installation of structures and bed material, but excluding dewatering associated with dry trench crossings, shall not result in an impediment to aquatic organisms. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream.

i. *Drop height*. Any in-stream structures placed in a stream shall not create a drop height greater than six (6) inches.

Attachment 4

Water Quality Requirements and Statements of Necessity

The New York State Department of Public Service (Department) implements the State water quality standards for Water Quality Certification found in Sections 301-303, 306 and 307 of the Federal Water Pollution Control Act, as implemented in New York State by the following provisions:

a. Effluent limitations and water quality-related effluent limitations set forth in Section 750-1.11 of Title 6 of New York Codes Rules and Regulations (6 NYCRR);

b. Water quality standards and thermal discharge criteria set forth in 6 NYCRR Parts 701, 702, 703 and 704;

c. Standards of performance for new sources set forth in 6 NYCRR § 750-1.11;

d. Effluent limitations, effluent prohibitions, and pretreatment standards set forth in 6 NYCRR § 750-1.11;

e. Prohibited discharges set forth in 6 NYCRR § 750-1.3; and

f. State statutes, regulations, and criteria otherwise applicable to such activities. These would include, but are not limited to, Article VIII of the New York State Public Service Law and its implementing regulations at 16 NYCRR part 1101.

In accordance with the requirements of 40 CFR § 121.7(d), water quality requirements and statements of necessity for each condition in **Attachment 3** are provided in the sections below with corresponding conditions contained in **Attachment 3** referenced for each section.

1. Non-Contamination of Waters (Conditions 1 through 8)

Water quality requirements: 6 NYCRR § 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances.

Statement of condition necessity: These conditions are required to ensure that the Permittee take avoidance, minimization, and mitigation measures, to the maximum extent practicable, to prevent the contravention of water quality standards during the construction, operation, maintenance, and decommissioning of the Facility.

2. Protection of Wetland Hydrology and Soils (Conditions 9(a) through 9(k))

Water quality requirements: 6 NYCRR § 701: Classification of surface waters and identification of best usages; 6 § NYCRR 703.2: Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: The conditions are necessary to ensure that all construction work in wetlands that may affect hydrology and soil profile is conducted in a manner that ensures discharges do not contravene State water quality standards, best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3. Wetland Restoration (Condition 9(l))

Water quality requirements: 6 NYCRR § 701: Classification of surface waters and identification of best usages; 6 NYCRR § 703.2: Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: The conditions are necessary to ensure that all temporary impacts to wetlands are restored and all permanent impacts are compensated for with an appropriate mitigation plan, which requires that State water quality standards are met, best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

4. Construction in Wetlands (Conditions 9(m) through 9(q))

Water quality requirements: 6 NYCRR § 701: Classification of surface waters and identification of best usages; 6 NYCRR § 703.2: Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: The conditions are necessary to establish standards for construction of facility components that are protective of wetland hydrology, which requires that State water quality standards are met, best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

5. Stream Protection (Conditions 10(a) through 10(e))

Water quality requirements: 6 NYCRR § 701: Classification of surface waters and identification of best usages; 6 NYCRR § 703.2: Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: The conditions are necessary to ensure that in-stream work is conducted in a manner that discharges do not contravene State water quality standards, best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

6. Installation of Roads Across Streams (Condition 10(f))

Water quality requirements: 6 NYCRR § 703.2: Narrative water quality standards for turbidity, toxic materials, and other deleterious substances; 6 NYCRR § 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: The conditions are necessary to ensure that installation of roads and other infrastructure across streams does not result in the constriction or blockage of flow or negatively affect State water quality standards, best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

7. Dewatering and Diversion of Flow (Condition10(g) through 10(j))

Water quality requirements: 6 NYCRR § 703.2: Narrative water quality standards for turbidity, toxic materials, and other deleterious substances; 6 NYCRR § 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: The conditions are necessary to ensure that in-stream work is conducted in a manner that discharges do not contravene State water quality standards, best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

ENCLOSURE 6

REGION 2
NEW YORK, N.Y. 10007

U.S. Environmental Protection Agency Region 2 Clean Water Act Section 401 Water Quality Certification for Corps of Engineers CWA Section 404 Nationwide Permits Reissuance Applicable to Indian Nations in the Buffalo and New York Corps Districts

Clean Water Act (CWA) Section 401 requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, the Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation do not have the authority to provide CWA Section 401 certification for projects within their respective Indian Nation lands in New York, therefore, the EPA serves as the certifying authority on their behalf.

Project Description

On June 18, 2025, the Corps proposed to reissue 56 NWPs and 1 new NWP that would expire in March 2026. 90 FR 26100 (June 18, 2025). The purpose of the NWPs is to authorize categories of activities under CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental impacts. For more details see: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/

The EPA's Public Notice Process

On June 18, 2025, the EPA received a request for certification from the project proponent. On July 8, 2025, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until August 7, 2025. No public comments were submitted during the designated public notice period.

General Information

The general information provided in this section does not constitute a certification condition(s).

General Applicability

- The Corps did not request for certification for NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35, and 55, and as such, the certification process did not begin and EPA neither certified nor waived certification. Consequently, if any activity authorized by this NWP may result in a discharge into a water of the United States, on lands that EPA acts as the certifying authority, the Corps must seek CWA 401 certification from EPA.
- If a project proposal does not meet either the general or NWP-specific certification conditions, or if certification is denied for a specific NWP, the project proponent must request an individual certification from EPA Region 2.

Documentation Recommendations

- Project proponents for potential projects authorized under the NWPs should retain this certification in their files with the applicable NWPs as documentation of EPA's certification decisions for the above-referenced proposed NWPs. This certification is specifically associated with the proposed NWPs described above and

expires when those NWPs expire, five years from Corps issuance date, or are otherwise superseded by subsequent reissuance if less than five years.
- Copies of this certification should be kept on the job site and made readily available for reference.

Contact Information
- The project proponents for potential projects authorized under an NWP are encouraged to contact EPA Region 2 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance.
- Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.
- In the case of a spill, EPA recommends that the project proponent notify EPA Region 2 within 8 hours from discovery. For emergency spills, EPA recommends that the project proponent contact the EPA's National Response Center at 1-800-424-8802 as well as the appropriate personnel identified in the project's Spill Prevention Control and Countermeasures, or similar plan, if applicable.
- If you have any questions regarding this certification, please contact Jaclyn Wollard woollard.jaclyn@epa.gov.

Certification Decision Templates

Grants of Certification with Conditions

EPA is granting certification with conditions for NWP(s) #3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59 and A. For NWPs that EPA grants certification with conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and State or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of State or Tribal law, subject to the conditions listed under the NWP below, pursuant to CWA Section 401(d).

Condition 1: Plan Development and Implementation for Projects that require Pre-Construction Notification (PCN)

Prior to construction for projects that require a PCN, the project proponent shall develop a plan that includes a copy of the PCN and the following information (if not already included in the PCN):

- Time stamped photo-documentation of the baseline conditions (*i.e.*, 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area).
- Identifies on a site map, as applicable:
  - Project site with all waters of the U.S. demarcated. Identify all locations where the project will cross jurisdictional waterbodies and identify the ordinary high-water mark and/or wetland boundaries; the planned work area where wetlands/aquatic resources will be removed, disturbed, and/or protected; buffer zones; and areas to be restored/reclaimed, as well as site access points and other approved work areas.
  - Staging areas and stockpiling of materials and equipment, including locations for containment booms and/or absorbent materials, and/or hazardous materials. Stockpiles (*e.g.*, sediment, soil, or other construction materials) shall be stored at least 50 feet from where it may enter waters of the U.S.
  - Construction access points.
  - Disturbance limits.
  - Locations where site dredging and placement of dredged material activities will occur.
  - Locations where dewatering activities will occur including as applicable locations of cofferdams, temporary berms, piling, and/or dikes.
  - Locations of undergrounding or directional drilling (including bore pits).
  - Locations where hazardous materials are stored. Identify where containment booms and/or absorbent materials are located for corrective action if needed. Hazardous materials shall be stored in leak-proof containers with appropriate secondary containment measures (*e.g.*, spill berms, dikes, spill containment pallets, absorbent materials).
  - Any silt/sediment fencing.
  - Photo-reference sites. The project proponent shall indicate the directional view and location where photos were taken on the site map.
- A description of how the site will be restored to pre-construction conditions, as applicable, including measures that will be used to promote and maintain:
  - stream hydrology and stability.
  - aquatic resource composition.
  - diversity of native species existing on site and as introduced via restoration activities.
  - stability of soils.
  - establishment of vegetation at the same percent cover as pre-construction activities.
- The timeframe/schedule for revegetation following completion of construction. Revegetation should occur at the earliest practicable date following completion of construction. Drill seeding is the preferred method, where applicable.
- Non-native and invasive species shall not be used for restoration activities.
- Includes the following, as applicable:
  - <u>Cofferdams, temporary berms, pilings, and/or dikes</u>: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
  - <u>Dredging</u>: Describe how contaminated materials will be managed (*e.g.*, sediment testing data and information to identify whether sediments are clean or contaminated), if included in the project dredged area. Describe methods for minimizing dredging impacts (*i.e.*, sedimentation resuspension) in the water column.
  - <u>Erosion and sediment control</u>: Identify the types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, and/or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting. If using velocity dissipation structures (e.g., riprap aprons, check dams etc.), structures shall be

constructed to include both peak flow rates and total stormwater volume, and provide protection from the erosive potential of high-velocity flows to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. The project proponent shall ensure all erosion and sediment control measures are in place prior to the onset of construction.

- Bank stabilization and channel modification. If the project requires bank stabilization or stream channel modification, include pre-construction cross sections. If the project includes steep bank slopes of 3:1 or greater, include revetment cross sections. Bioengineering techniques suitable for steep slope disturbances are preferred (e.g., vegetated toe, bioengineered boulder toe, etc.) Slopes of disturbed banks shall be designed and installed to not reduce the bottom width of the stream.
- Dewatering: Work shall be completed in the dry unless coordinated with EPA Region 2. Describe methods for dewatering, including the equipment that would be used to conduct the dewatering activities. Identify the locations and timing, including length of time the area is to be dewatered. Explain removal method of the temporary structures and/or fill and what measures will be taken to minimize downstream turbidity and adaptive management measures that will be taken and employed to prevent the draining of waters of U.S., including wetlands.
- Ditching and trenching: Explain ditching/trenching and material placement techniques and stabilization methods to be employed, as well as timing. In wetlands, the top 6 to 12 inches of the ditch/trench shall be backfilled with topsoil from the trench, unless other techniques are approved. Include activity timing needs for ditching and stabilization.
- Undergrounding or directional drilling: Describe measures taken to prevent, contain and cleanup any inadvertent return of drilling fluid to the surface (i.e., "frac-outs").

- Submit the plan to EPA Region 2 at Region2_CWA401@epa.gov at least 30 days prior to commencing construction activities.

During construction for projects that require a PCN, the project proponent shall:

- Visually inspect construction activities daily.
- Prevent sediment, debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes from entering waters of the U.S. The discharge of unset cement, concrete, grout, or water that has contacted uncured concrete or cement, or related washout to waters of the U.S. is prohibited.
- Maintain documentation onsite that all equipment was cleaned of dirt, mud, and other materials prior to arriving on the project site.
- Inspect all equipment daily and prior to entering any waters of the U.S. for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the U.S.; and within 24 hours of detection of a leak, repair the equipment in a staging area or move it offsite.
- Limit vegetation clearing and disturbance to waters. Limit the clearing and grubbing of vegetation and disturbance to areas demarcated on the site map submitted as part of the vegetation restoration and monitoring plan. The boundaries of vegetation to protect shall be flagged in the field prior to beginning construction activities.
- Limit restoration of the channel bed to pre-existing contours and conditions. Any proposed deviations must be specified in advance. For example, if any improvements will be made using natural channel design.
- Photo-document any failures or increased turbidity due to construction activities.
  - Within 24 hours of observing a failure or marked increase in turbidity associated with construction, the project proponent shall remedy and implement any additional adaptive management measures to stabilize the activity and prevent further unauthorized discharges into waters of the U.S. The project proponent shall photo-document the failure (*i.e.*, 50 feet upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and the adaptive management measures taken immediately following implementation. The project proponent shall take remediation condition photos at the same

location(s) and direction(s) as in the failure condition photos.
    - Within 48 hours of observing any failure, the project proponent shall provide EPA Region 2 with the required photo-documentation, and descriptions of all observed failures and implemented remedies.
    - Within three weeks of observing a failure, the project proponent shall provide EPA Region 2 with a description of the impacts and effectiveness of the employed adaptive management measures.
- Carry out as applicable:
    - Erosion control: Inspect sediment and erosion control measures daily during project implementation and within 12 hours of precipitation events. After construction is complete, remove sediment and erosion control structures once vegetation is established to the same percent cover as pre-construction conditions, unless they are needed for long term stabilization purposes.
    - Dewatering: Assess all dewatering measures within 24 hours after a severe storm event.

Post construction for projects that require a PCN, the project proponent shall, as applicable:

- Submit a post-construction report, as defined below, within 90 days of completing construction activity to EPA Region 2 at Region2_CWA401@epa.gov or, if the Corps requires a post-construction report for the project activity, the applicant may submit that report to EPA to fulfill this post-construction requirement. The project proponent shall include the following items in the post-construction report:
    - Construction dates.
    - As-built drawings.
    - Documentation of site restoration activities using photographs and any field data sheets showing that the site was restored to pre-existing conditions or better. Include photographs of the site restoration areas on a map.
    - Any water quality data gathered before, during, and post-construction and associated maps showing the sample locations.
    - A description of any adaptive management strategies that were employed during construction, with a focus on strategy effectiveness.
    - Details on the removal of any sediment and erosion control structures, unless they are needed for long term stabilization purposes.
    - Effectiveness of the plan developed and implemented as required under this condition, and recommendations to remedy any deficiencies in plan development and implementation where employed measures were ineffective.
- For activities that require dredging, submit a copy of the as-builts and a post dredged and disposal report within 45 days of each dredging or disposal event to EPA Region 2 at Region2_CWA401@epa.gov. The project proponent shall include the following items in the post-dredged and disposal report:
    - Dredging and disposal dates.
    - Updated site map displaying the disposal location(s).
    - Dredging and disposal volumes.
    - Water quality monitoring data.
    - Post-dredged bathymetry.
    - Updated site maps displaying any new ditches, spoil piles, widths, and depths.

Why these conditions are necessary: This condition is necessary to minimize suspended particulates /turbidity caused by construction activities and is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, including construction materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project, or discharges from dust abatement activities as well as contaminants in dredged material. This condition also appropriately minimizes impacts from access roads, staging areas, and stockpiling to further ensure that construction activities will result in no more than minimal individual and cumulative adverse environmental effects. This condition will protect water quality because it ensures that the project proponent is using planning and construction practices that will maintain the integrity of the site hydrology and maintain the aquatic resource functions and values, and ensures that appropriate

revegetation measures are used to re-establish riparian/wetland vegetation to minimize the adverse impacts of discharges of sediment and pollutants that enter waterways. Limiting the amount of vegetation that is disturbed will minimize the adverse environmental impacts of any potential discharges. Monitoring for at least three growing seasons, or until replanted areas meet monitoring success criteria, will provide an adequate indication that the restoration effort is able to demonstrate restoration is successful.

The general conditions in the Corps' NWP package do not address concerns about resuspension and turbidity caused by construction and dredging activities, thereby justifying the inclusion of this condition. GC 32 only requires agency coordination in certain circumstances. Additionally, GC 11 (equipment), GC 12 (soil erosion and sediment controls), and GC 13 (removal of temporary structures and fills) provide some aquatic resource protections, but greater specificity is needed to determine what measures are suitable to comply with applicable water quality requirements.

Citations: 33 U.S.C. 1341(a)(4); 40 CFR 230.10(c)-(d);40 CFR 230.10(d); 40 CFR 230.21(a); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74; 40 CFR 230.75

Condition 2: Special Aquatic Resources

Projects or activities expected to have potential discharges into the below special aquatic resources areas on tribal lands in the state of New York are not covered by this certification and applicants must request a project-specific CWA Section 401 certification from EPA Region 2 consistent with 40 CFR 121.5.

- **Wetlands classified as peatlands**: For the purposes of this condition, peatlands are permanently or seasonally waterlogged areas containing organic soils classified as a Histosol with a specific thickness of an accumulation of peat (i.e., organic matter) and include fens, bogs and muskegs.[1]
- **Natural Springs**: Within 100 feet of the water source in natural spring areas. For the purposes of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Some examples of spring-fed wetlands are hanging gardens. Some examples of spring-fed headwater slopes are peat-accumulating wet meadows and fens (see above). These resources may be identified using U.S. Fish and Wildlife Service's online digital National Wetland Inventory maps, or other aquatic resource mapping tools.
- **Riffle and Pool Complexes**: For the purposes of this condition, riffle and pool complexes are steep gradient sections of streams recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate.
- **Wild rice (*Manoomin*) waters**. Wild rice is especially sensitive to changes in water quality. "The species benefits from habitat protection and the maintenance of wetland hydrology, including the natural cycle of water fluctuations."[2]
- **State-listed Special Aquatic Resources**: For the purposes of this condition, State-listed Special Aquatic Resources are those aquatic habitats that are state classified by the New York Department of Environmental Conservation (NYSDEC) as Class I and Class II wetlands; fresh surface waters Class N, AA-Special (AA-S), A-Special (A-S), AA and A; and Class SA saline surface waters.

Why this condition is necessary: This condition is necessary to ensure a case-by-case review of any point source discharges into waters of the United States that are proposed in these specific aquatic resource site types which are inherently difficult to replace and have important ecological functions and values. Discharges into these systems have the potential to alter water circulation patterns and hydroperiods, release nutrients causing shifts in native to non-native species composition, release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, or otherwise change the capacity of these systems to support

[1] It is a general rule that a soil is classified as an organic soil (Histosol) if more than half of the upper 80 cm (32 inches) of the soil is organic or if organic soil material of any thickness rests on rock or on fragmental material having interstices filled with organic materials. Generally, organic soil materials have organic carbon content by weight of 12 percent or more. See the following for more information on what constitutes "organic soil material", limits between Histosols and soils of other orders, problematic hydric soils situations, and other indicators to identify peatlands: Soil Survey Staff. 1999. Soil taxonomy: A basic system of soil classification for making and interpreting soil surveys. 2nd edition. Natural Resources Conservation Service. U.S. Department of Agriculture Handbook 436. https://www.nrcs.usda.gov/resources/guides-and-instructions/soil-taxonomy; United States Department of Agriculture, Natural Resources Conservation Service. 2025. Hydric soils of problematic conditions and altered materials, Version 1.0. https://usace.contentdm.oclc.org/utils/getfile/collection/p266001coll1/id/11824; United States Department of Agriculture, Natural Resources Conservation Service. 2024. Field Indicators of Hydric Soils in the United States, Version 9.0. https://www.nrcs.usda.gov/sites/default/files/2024-09/Field-Indicators-of-Hydric-Soils.pdf

[2] https://plants.usda.gov/plant-profile/ZIAQ, last visited 15 Dec 2025.

aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Project specific information is needed to ensure compliance with water quality requirements.

Citations: 40 C.F.R. 230.1(d); 40 C.F.R. 230.10(a)(3); 40 C.F.R. 230.10(c); 40 C.F.R. 230.10(d); 40 C.F.R. 230.20-24; 40 C.F.R. 230.21-22; 40 CFR 230.41; 40 C.F.R. 230.45; 40 C.F.R. 230.75(c); 6 NYCRR Part 664; 6 NYCRR Part 671; 6 NYCRR Parts 800-941

Condition 3: Specific Condition for Bridges for NWP 3, 14, 15, 57, 58 and A

Project proponents shall use an established bridge analysis and hydraulic design tool when designing and constructing bridges (e.g., HEC-RAS, FHWA, etc.). Bridges shall be constructed in a manner such that stormwater does not drain directly into the waterbody. Bridges shall span greater than or equal to 1.2 times the bankfull width and adjacent wetlands of the affected waterbody, where feasible. Crossings shall be placed perpendicular to the direction of the stream flow where possible and account for potential future lateral migration in the stream, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

Why this condition is necessary: This condition is necessary to ensure that discharges associated with bridge design and placement minimally affect water quality and aquatic resource functions and values. Perpendicular stream crossings minimize the impacts of bank erosion and scouring from length of stream bed and bank impacts for a project. Drainage directly from the bridge decks may cause erosion and scouring, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway. This condition will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.

Citation: 40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26

Condition 4: Specific condition for NWP 7

Outfall design and placement shall include an appropriate energy dissipation structure (e.g., rip rap aprons) and shall be sized to prevent high pressure discharge. For intake structures, project proponents shall use an intake screen that reduces the size of aquatic organisms that can be entrained (e.g., a Johnson-type screen/intake), where feasible. Intake velocities shall not exceed 0.5 feet per second.[3]

Why this condition is necessary: This condition is necessary to ensure that outfall structures and intakes are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and assimilative capacity of the waterbody. Erosion from outfall structures due to improperly designed and placed structures increases sedimentation that alters stream and wetland hydrology (e.g., scouring and deposition) and uncontrolled stormwater contaminants harm aquatic organisms and habitat. Impingement controls for intake structures reduce the size of aquatic organisms that can be entrained and minimize impacts to aquatic species.

Citations: 40 CFR 230.10(c)-(d); 40 CFR 230.30; 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.74; 40 CFR 230.75

[3] Additional guidance on water intakes is available from the U.S. Fish and Wildlife Service: https://www.fws.gov/sites/default/files/documents/water-intake-recommendations.pdf

Condition 5: Specific Condition for NWP 13

For projects using gabions, the project proponent shall visually inspect and repair any damage to gabions and the gabion installation area after construction is completed at least once a year after spring flows.

Why this condition is necessary: This condition is necessary to reduce the individual and cumulative adverse environmental effects caused by hard bank stabilization structures on aquatic biodiversity, habitat, and aquatic resource functions and services. This condition is also necessary to minimize the potential for gabion failure and corresponding water quality impacts. Gabion failure leads to erosion and sediment release, which can significantly affect aquatic ecosystem diversity, productivity and stability, and can potentially release wire into the environment that can impact aquatic habitat. Rock released from damaged gabions can impact channel flow, which can interfere with aquatic habitat processes and infrastructure.

Citations: 40 CFR 230.10(c)-(d); 40 CFR 230.72; 40 CFR 230.74

Condition 6: Specific Condition for NWP 16

The project proponent shall provide EPA Region 2 with a description of the return water from the upland disposal area prior to discharge, including a description of the nature of the dredged material and a description of any contaminants present in the discharge. The project proponent shall also provide an analysis of how the return water may impact the physiochemical conditions of the receiving water prior to discharge, including a description of how the project proponent will ensure controls are in place to ensure compliance with applicable water quality requirements.

Why this condition is necessary: This condition is necessary to ensure any return water meets applicable water quality requirements and does not degrade receiving waters. Dredged material from industrial and urban areas, stormwater and agricultural runoff, as well as from areas of natural deposits of minerals and other natural substances, often contain contaminants from these sources and may have the potential to alter the chemistry of receiving waters, including but not limited to, nutrients, metals, organic carbon, and invasive species. To ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem from contaminants are addressed, the project proponent should consider the unique nature of dredged material and the related contaminant pathway to understand the physicochemical conditions of each disposal site under consideration.

Citation: 40 CFR 230.10(b)-(d); 40 CFR 230.11; 40 CFR 230.12; 40 CFR 230.22; 40 CFR 230.31; 40 CFR 230.32; 40 CFR 230.61

Condition 7: Specific Condition for NWP 40

The project proponent shall ensure that any return water flows back into waters of the U.S. does not contain levels of toxic and priority pollutants in excess of effluent limitation guidelines established under Section 307 of the Clean Water Act.

Rationale: This condition is necessary to ensure that return water to waters of the U.S. meets water quality requirements. Agricultural runoff can degrade receiving waters due to contaminants, including toxic and priority pollutants that are subject to effluent limitations pursuant to Section 307 of the Clean Water Act. Project specific information is needed to consider the contaminants proposed for discharge and the aquatic environment at the proposed discharge site to ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem are addressed.

Citations: 33 U.S.C. 1317(a)(1); 40 CFR 401.15; 40 CFR 230.10(c); 40 CFR 230.31; 40 CFR 230.32

JAVIER LAUREANO PEREZ

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Date: 2025.12.17 16:37:35 -05'00'

Javier E. Laureano, Ph.D., Director
Water Division

ENCLOSURE 7

NEW YORK STATE | Department of Environmental Conservation

KATHY HOCHUL
Governor

AMANDA LEFTON
Commissioner

December 18, 2025

Via Email (Stephan.A.Ryba@usace.army.mil , Martin.P.Wargo@usace.army.mil) and US Mail

Stephan A. Ryba, Chief, Regulatory Branch
New York District
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278-0090

Martin P. Wargo, Chief, Regulatory Branch
Buffalo District
U.S. Army Corps of Engineers
478 Main Street
Buffalo, NY 14202

Re: **Section 401 Water Quality Certification Decision**
United States Army Corps of Engineers Nationwide Permits

Dear Mr. Ryba and Mr. Wargo,

On June 18, 2025, the United States Army Corps of Engineers (Corps) published a notice in the Federal Register (Vol. 90, No. 116) announcing its proposal to reissue 56 Nationwide Permits issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Nationwide Permits or NWPs). Additionally, in a letter dated June 18, 2025, the New York and Buffalo Corps Districts jointly requested the New York State Department of Environmental Conservation's (DEC) Section 401 Water Quality Certification (Water Quality Certification) decision on the proposed Nationwide Permits for actions where DEC is the certifying authority.[1] The deadline for reasonable period of time established for DEC's response to the certification request is December 18, 2025.

This letter provides DEC's decision on the Corps' Water Quality Certification request for activities in New York State only where DEC is the certifying authority. In issuing this decision, DEC has complied with its public notice procedures established pursuant to Clean Water Act Section 401(a)(1). This decision has no effect on activities undertaken in New York State where DEC is not the certifying authority; such activities are subject to the Water Quality Certification decisions of the applicable certifying authorities.

Because Section 401 of the Clean Water Act does not apply to Nationwide Permits solely issued pursuant to Section 10 of the Rivers and Harbors Act of 1899, Water Quality Certification is not required. Accordingly, this response does not apply to the Nationwide Permits listed in Attachment 1 to this letter. Instead, this Water Quality Certification decision applies only to the proposed Nationwide Permits that the Federal Register notice indicated would be issued pursuant to Section 404 of the Clean Water Act and require Section 401 Water Quality Certification. In the event any final Nationwide Permits include substantial changes in the scope of the proposed Nationwide Permit activities or their associated conditions, DEC reserves its rights to revoke or modify this Water Quality Certification decision.

[1] For actions within New York State where DEC is not the certifying authority, separate requests from the Corps for Section 401 Water Quality Certification decisions have been sent to the United States Environmental Protection Agency, the Seneca Nation of Indians, the St. Regis Mohawk Tribe, the New York State Department of Public Service and the New York State Office of Renewable Energy Siting.

DEC denies blanket Water Quality Certification for those Section 404 Nationwide Permits listed in Attachment 2 to this letter and conditionally grants blanket Water Quality Certification for the Section 404 Nationwide Permits listed in Attachment 3 to this letter. Individual Water Quality Certifications will be required for those activities where Water Quality Certification has been denied, or that do not meet the conditions of the blanket Water Quality Certification, where granted. An individual certification request must, at a minimum, follow the requirements outlined in 40 CFR §121.5 of the Clean Water Act §401 Certification Rule, effective November 27, 2023, along with DEC's regulatory requirements in 6 NYCRR § 608.9, 6 NYCRR Part 621, and relevant information identified on DEC's website.

DEC issued its last Water Quality Certification decisions on the Nationwide Permits on October 15, 2021, effective through March 14, 2026.[2] Unless and until the proposed Nationwide Permits are finalized, the Nationwide Permits finalized by the Corps in 2020 and 2021 remain in effect, along with DEC's 2021 Water Quality Certification decisions. There may also be some projects that the Corps provides with continued coverage under the 2020 and 2021 Nationwide Permits after the proposed Nationwide Permits are finalized. Any projects provided with continuing coverage under the 2020 or 2021 Nationwide Permits would also be subject to DEC's 2021 Water Quality Certification decisions. Otherwise, the effective date and expiration date of this Water Quality Certification decision will be concurrent with the effective date and expiration date of any final Nationwide Permits.

We await the Corps' final decision on the proposed Nationwide Permits. In the meantime, if you have any questions, please feel free to contact me at 518-402-2125 or Scott.Sheeley@dec.ny.gov .

Sincerely,

Scott E. Sheeley

Scott E. Sheeley
Chief Permit Administrator

Attachments:
Attachment 1 – Nationwide Permits Not Requiring Water Quality Certification
Attachment 2 – Nationwide Permits Denied Water Quality Certification
Attachment 3 – Nationwide Permits Granted Conditional Blanket Water Quality Certification
Attachment 4 – Water Quality Requirements and Statements of Necessity for DEC Conditions pertaining to Nationwide Permits listed in Attachment 3

[2] The Corps finalized two groups of NWPs, some effective March 15, 2021, through March 14, 2026, and others effective February 25, 2022, through March 14, 2026. DEC's original blanket WQC decision on December 18, 2020, was applied to NWPs effective March 15, 2021, and the updated WQC decision on October 15, 2021, was applied to NWPs effective February 25, 2022. Both blanket WQC decisions were reflected in DEC's October 15, 2021, updated letter.

ATTACHMENT 1

The following Nationwide Permits require no Section 401 Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Act of 1899:

NWP 1. Aids to Navigation
NWP 2. Structures in Artificial Canals
NWP 8. Oil and Gas Structures on the Outer Continental Shelf
NWP 9. Structures in Fleeting and Anchorage Areas
NWP 10. Mooring Buoys
NWP 11. Temporary Recreational Structures
NWP 24. Indian Tribe or State Administered Section 404 Programs
NWP 28. Modifications of Existing Marinas
NWP 35. Maintenance Dredging of Existing Basins
NWP 55. Seaweed Mariculture Activities

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ATTACHMENT 2

The New York State Department of Environmental Conservation (DEC) hereby denies Section 401 Water Quality Certification (Water Quality Certification) for activities undertaken pursuant to the Nationwide Permits listed below. Any party conducting activities authorized by these Nationwide Permits, where DEC is the certifying authority, must apply for and obtain an individual Water Quality Certification from DEC in accordance with procedures at 40 CFR § 121, 6 NYCRR § 608.9, and the New York State Uniform Procedures Act regulations (6 NYCRR Part 621). For more information on the application process, applicants may visit the DEC website at https://dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program .

NWP 12. Oil or Natural Gas Pipeline Activities
NWP 16. Return Water from Upland Contained Disposal Areas
NWP 17. Hydropower Projects
NWP 21. Surface Coal Mining Activities
NWP 38. Cleanup of Hazardous and Toxic Waste
NWP 44. Mining Activities
NWP 49. Coal Remining Activities
NWP 50. Underground Coal Mining Activities
NWP 52. Water-Based Renewable Energy Generation Pilot Projects
NWP 54. Living Shorelines

DEC Basis for Selective Denial of Water Quality Certification

In accordance with 40 CFR § 121.7(e)(3), DEC's selective denial of Water Quality Certification for the above-referenced Nationwide Permits is based on the following:

1. State water quality standards for Water Quality Certification found in Sections 301-303, 306 and 307 of the Federal Water Pollution Control Act, as implemented in New York State by the following provisions:

   a. effluent limitations and water quality-related effluent limitations set forth in section 750-1.11 of Title 6 of New York Codes Rules and Regulations (6 NYCRR);
   b. water quality standards and thermal discharge criteria set forth in 6 NYCRR Parts 701, 702, 703 and 704;
   c. standards of performance for new sources set forth in 6 NYCRR § 750-1.11;
   d. effluent limitations, effluent prohibitions and pretreatment standards set forth in 6 NYCRR § 750-1.11;
   e. prohibited discharges set forth in 6 NYCRR § 750-1.3; and
   f. State statutes, regulations and criteria otherwise applicable to such activities. These would include, but are not limited to, 6 NYCRR Parts 182 (Endangered and Threatened Species of Fish and Wildlife…), 505 (Coastal Erosion Management), 575 (Aquatic Invasive Species Spread Prevention), 608 (Use & Protection Waters), 661 (Tidal Wetlands), and 663 (Freshwater Wetlands).

2. The activities included in some of the Nationwide Permits identified in this Attachment involve discharges that either potentially contain toxic and other deleterious substances that do not meet water quality standards or are likely to be of a scope and nature that exceed minimal adverse environmental impacts. Examples of potentially toxic discharges to waters of the United States include, but are not limited to, petroleum products, acidic and metal-laden discharges as a result of mining activities, hazardous and toxic waste from environmental cleanup activities, and discharge of legacy pollutants such as DDT or PCBs that are within sediments that would be released as a result of low-head dam removal activities. Examples of activities that are likely to be of a scope and nature that would likely exceed minimal adverse environmental impacts include, but are not limited to, the disturbance of soils, vegetation, and hydrology at multiple crossings of a stream that cumulatively impose a watershed-level disruption of the functional benefits of the stream.

3. DEC denial of certification for prospective discharges from the activities authorized by the Nationwide Permits above is also based on insufficient information to determine if such discharges will comply with water quality requirements. Many projects and activities included in some of the Nationwide Permits identified in this Attachment may be significant in scope and, depending on case-specific circumstances, could result in numerous adverse impacts to water quality. Without evaluating necessary project- and activity-specific information, DEC cannot currently determine that such projects and activities would comply with applicable water quality standards.

   The necessary information would need to be identified in the review of an individual Water Quality Certification request, which would involve a review of the entire scope of any proposed project and/or associated pollutants and the identification of resources of concern on an individual, site-specific basis. To ensure that the range of discharges from potential projects will comply with water quality requirements, the information DEC would need may include, but is not limited to, the following:
   a. review of impacts at multiple stream crossings on the overall function of the stream to carry water and bedload, and to ensure that the water remains suitable for fish, shellfish and wildlife propagation and survival;
   b. surveys to identify potential endangered and threatened species or their habitats;
   c. review of physical and chemical sediment analysis to evaluate the potential for discharge of toxins in toxic amounts;
   d. review of methods used to ensure that no more than minimal individual and cumulative adverse environmental impacts result from projects. These would include reports or plans for dewatering, pollution containment/treatment, and water flow management; and
   e. review of detailed stormwater management and erosion & sediment control plans, which are required for projects in New York State that result in the disturbance of over one acre of land.
   f. Detailed and site-specific environmental pollution control plans and environmental impact assessments developed for pipeline projects regulated by the Federal Energy Regulatory Commission (FERC). Such projects involve the consideration of potential alternatives, including site location, facility design,

control technology and impact avoidance, and development of minimization or mitigation measures, all which are necessary to determine whether proposed discharges comply with state water quality requirements.

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ATTACHMENT 3

The New York State Department of Environmental Conservation (DEC) grants Section 401 blanket Water Quality Certification (Blanket WQC) for activities undertaken pursuant to the Section 404 Nationwide Permits (Nationwide Permits or NWPs) listed below, subject to conditions. Anyone conducting activities authorized by these Nationwide Permits, where DEC is the certifying authority, must meet the applicable Blanket WQC conditions below, or apply for and obtain an individual Water Quality Certification from DEC in accordance with procedures at 40 CFR 121, 6 NYCRR § 608.9, and the New York State Uniform Procedures Act regulations (6 NYCRR Part 621). For more information on the application process, applicants may visit the DEC website at https://dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program .

NWP 3. Maintenance
NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
NWP 5. Scientific Measurement Devices
NWP 6. Survey Activities
NWP 7. Outfall Structures and Associated Intake Structures
NWP 13. Bank Stabilization
NWP 14. Linear Transportation Projects
NWP 15. U.S. Coast Guard Approved Bridges
NWP 18. Minor Discharges
NWP 19. Minor Dredging
NWP 20. Response Operations for Oil or Hazardous Substances
NWP 22. Removal of Vessels
NWP 23. Approved Categorical Exclusions
NWP 25. Structural Discharges
NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
NWP 29. Residential Developments
NWP 30. Moist Soil Management for Wildlife
NWP 31. Maintenance of Existing Flood Control Facilities
NWP 32. Completed Enforcement Actions
NWP 33. Temporary Construction, Access, and Dewatering
NWP 34. Cranberry Production Activities
NWP 36. Boat Ramps
NWP 37. Emergency Watershed Protection and Rehabilitation
NWP 39. Commercial and Institutional Developments
NWP 40. Agricultural Activities
NWP 41. Reshaping Existing Drainage Ditches
NWP 42. Recreational Facilities
NWP 43. Stormwater Management Facilities
NWP 45. Repair of Uplands Damaged by Discrete Events
NWP 46. Discharges in Ditches

NWP 48. Commercial Shellfish Mariculture Activities
NWP 51. Land-Based Renewable Energy Generation Facilities
NWP 53. Removal of Low-Head Dams
NWP 57. Electric Utility Line and Telecommunications Activities
NWP 58. Utility Line Activities for Water and Other Substances
NWP 59. Water Reclamation and Reuse Facilities
NWP A. Activities to Improve Passage of Fish and Other Aquatic Organisms

DEC Blanket Water Quality Certification Conditions

The conditions listed below are necessary to ensure that the discharges authorized under the Nationwide Permits (NWPs) listed in this Attachment 3 will comply with state water quality requirements. The conditions are organized as follows:

- Conditions 1 and 2 – Identify DEC state-level jurisdictions that, when applicable, qualify a project for this blanket Water Quality Certification (Blanket WQC). Conditions 3-17 are not applicable to activities qualifying for this Blanket WQC under Conditions 1 or 2.
- Condition 3 – Identifies activities and locations where this Blanket WQC does not apply. Individual Water Quality Certifications are required for projects where this Blanket WQC does not apply
- Conditions 4-17 – Identify thresholds and pollution control requirements that must be observed in carrying out activities authorized under NWPs in Attachment 3 where Conditions 1 and 2 do not apply or they are excluded under condition 3.

Where no NWP is specified in Conditions 3-17, the condition applies to all NWPs for which this Blanket WQC is granted, unless otherwise indicated. Where a specific NWP is identified in the Conditions 3-17, the condition applies to activities authorized under the identified NWP.

In accordance with 40 CFR § 121.7(d)(3), water quality requirements and statements of necessity for each condition in this Attachment 3 are provided in Attachment 4.

1. **DEC General and Individual Permits –** This Blanket WQC applies to any regulated discharges to Waters of the U.S. covered under a NWP listed in Attachment 3 where DEC confirms jurisdiction applicable to an applicant and specific project proposal under a general or individual permit pursuant to ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), or Article 34 (Coastal Erosion Management). Where such certification is granted, no other conditions contained in Attachment 3 of this Blanket WQC shall apply.

2. **DEC Emergency Authorizations** - This Blanket WQC applies to any regulated discharges to Waters of the U.S. covered under a NWP listed in Attachment 3 where DEC makes a finding of emergency pursuant to New York State Uniform Procedures Act regulations at 6 NYCRR § 621.12. Such a finding may also, but is not required to, include DEC emergency authorizations under ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), or Article 34 (Coastal Erosion Management). Where such certification is granted, no other conditions contained in Attachment 3 of this Blanket WQC shall apply.

3. **Scope of Blanket Certification –** This Blanket WQC does not authorize the following activities:

(3.a-3.k, Applicable to all NWPs)

a. Culvert rehabilitation projects that involve slip lining, invert paving, or similar treatments.
b. Construction of new bulkheads or vertical walls.
c. Waterward extension of existing bulkheads, except where minimally necessary to reface the bulkhead when in-place replacement is not feasible.
d. Any activity that results in a permanent water level alteration in waterbodies, such as draining or impounding, except for activities authorized by NWP 27.
e. Discharges likely to result in the take or taking of any species listed as endangered or threatened in 6 NYCRR Part 182.5 (a) or (b) or discharges likely to destroy or adversely modify the habitat of such listed species. To be eligible for coverage under this Blanket WQC, applicants must either verify that the activity is outside of the occupied habitat of such species or, if located within the habitat of such species, obtain a determination from the DEC Regional Office that the proposed activity is not likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182. Information on New York State endangered or threatened species may be obtained from the DEC regional offices, the New York Natural Heritage Program in Albany, New York or on the DEC website at https://dec.ny.gov/nature/animals-fish-plants/biodiversity-species-conservation/endangered-species/list .
f. Disturbances or discharges to waters of the United States that support mollusks listed as S-1 or S-2 on the New York State Natural Heritage database, unless DEC staff have determined that the project location does not contain mussels listed as S-1 or S-2 on the Natural Heritage database.
g. Any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602 (NYCRR, Title 19, Chapter XIII, Waterfront Revitalization of Coastal Areas and Inland Waterways). https://dos.ny.gov/significant-coastal-fish-wildlife-habitats
h. Projects that disturb greater than ¼ acre or 300 linear feet of waters of the United States within mapped Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505. https://www.dec.ny.gov/lands/86541.html
i. This Blanket WQC does not authorize activities subject to a license or blanket approval issued by the United States Federal Energy Regulatory Commission (FERC).
j. Maintenance or other activities associated with hydroelectric power generation projects.
k. For projects involving utility generation and transmission projects, this Blanket WQC does not authorize the construction of substation facilities or permanent access roads exceeding ¼ acre of impacts in wetlands or within the Federal Emergency Management Agency mapped 100-year floodplain.

(3.l-3.v, Applicable to the Specific NWPs Identified)

l. NWP 14. Linear Transportation Projects - This Blanket WQC does not authorize the construction of new linear transportation facilities (such as new roads or crossings structures in wetlands) located within a FEMA designated 100-year floodplain.
m. NWP 19. Minor Dredging -This Blanket WQC does not authorize any activities conducted under NWP 19 in tidal wetlands, as defined in Article 25 of New York State Environmental Conservation Law (https://www.dec.ny.gov/lands/4940.html), or in the marine and coastal district as described in Article 13 of New York State Environmental Conservation Law (ECL § 13-0103).
n. NWP 25. Structural Discharges – Except for bridges carrying vehicle traffic, the following restrictions apply to structural discharges:
    i. This Blanket WQC does not authorize structural discharges for any pile-supported structure with a surface area greater than 4,000 square feet.
    ii. This Blanket WQC does not authorize any structural support member with an area footprint greater than 64 square feet.
    iii. This Blanket WQC does not authorize piles or structural support members with spacing that has the effect of fill or that causes the buildup of bottom sediments due to wave action or shoreline drift.
o. NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities - The following restrictions and conditions apply to aquatic habitat restoration, establishment, and enhancement activities:
    i. This Blanket WQC authorizes only restoration projects conducted with oversight by a federal or state natural resource agency, or a County Soil and Water Conservation District.
    ii. This Blanket WQC does not authorize stream restoration projects over 300 feet in length.
    iii. This Blanket WQC does not authorize filling done for shellfish restoration which results in an alteration of existing substrate and benthic habitat.
    iv. This Blanket WQC does not authorize the conversion of one wetland type to another or the conversion of lotic (flowing water) communities to wetland or lentic (standing water) communities.
p. NWP 29. Residential Developments - This Blanket WQC does not authorize construction of new residential developments in wetlands located within a FEMA-designated 100-year floodplain.
q. NWP 33. Temporary Construction, Access, and Dewatering - This Blanket WQC does not authorize activities that exist on-site for more than 180 days from the date of installation.
r. NWP 39. Commercial and Institutional Developments – This Blanket WQC does not authorize construction of new commercial and institutional developments in wetlands located within a FEMA-designated 100-year floodplain.
s. NWP 40. Agricultural Activities – This Blanket WQC authorizes only buildings necessary for the agricultural productivity of farmland, and does not authorize the following:
    i. This Blanket WQC does not authorize any discharge of dredged or fill material into streams. Alteration of natural stream courses is not authorized by this Blanket WQC.

ii. This Blanket WQC does not authorize non-agricultural buildings on farms such as roadside stands.
iii. This Blanket WQC does not authorize construction of ponds in wetlands.

t. NWP 41. Reshaping Existing Drainage Ditches – This Blanket WQC does not authorize in-stream channel re-shaping of Waters classified as “AA”, “A”, “B”, or “C” under Article 15 of New York State Environmental Conservation Law.
u. NWP 43. Stormwater Management Facilities – This Blanket WQC does not authorize the construction of new stormwater management facilities located within waters of the United States, except for outfall structures and emergency spillways.
v. NWP 48. Commercial Shellfish Mariculture Activities - This Blanket WQC does not authorize the expansion of aquaculture activities into new areas of a project.

4. **Non-contamination of Waters** - All necessary precautions shall be taken to preclude contamination of any waters of the United States by suspended solids, resins, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, inadvertent returns of drilling muds (“frac-outs”) or any other environmentally deleterious materials associated with the project.

5. **Installation, Rehabilitation, and Replacement of Culverts -** To be covered under this Blanket WQC, all the following criteria must be met for culvert installations, rehabilitations, and replacements:
   a. Culverts shall be designed to pass a storm event with an annual chance of 2% or less (i.e., 50-year storm event or greater) such that the water surface remains below the top of the inlet opening.
   b. All culverts with closed bottoms and culvert pipes must be appropriately embedded. Round culverts must be installed so that at least 20% of the culvert’s vertical height is embedded below the existing stream bed at the outlet end of the culvert.
   c. Width of the structure must be a minimum of 1.25 times (1.25X) width of the Mean High-Water Channel.
   d. The slope of the stream bed within or under the culvert shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert must be used.
   e. The culvert must not be located under a roadway that provide sole access to “Critical Facilities”.[3]
   f. This Blanket WQC does authorize the rehabilitation of culverts utilizing Cure in Place Pipe Lining (CIPP) or concrete spray lining for culverts which currently meet Nationwide Permit General Condition and other requirements pertaining to Aquatic Life Movements.

[3] Critical Facilities are defined as facilities designed for bulk storage of chemicals, petrochemicals, hazardous or toxic substances or floatable materials; hospitals, rest homes, correctional facilities, dormitories, patient care facilities; major power generation, transmission or substation facilities, except for hydroelectric facilities; major communications centers, such as civil defense centers; or major emergency service facilities, such as central fire and police stations. [See 6 NYCRR Part 502.4(a)(17)]

6. **Discharges and Disturbances Limits-** The following discharge and disturbance limits apply to this Blanket WQC:
   a. For NWPs 5, 7, 13, 14, 15, 18, 19, 23, 25, 29, 32, 34, 36, 37, 39, 40, 42, 45, 46, 48, 51, 53, 57 and non-maintenance activities under NWP 43, the following discharge limits apply:
      i. Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the United States must not exceed ¼ acre;
      ii. Temporary or permanent impacts (i.e., loss) to stream beds, lake shorelines, and ocean shorelines must not exceed 300 linear feet; and
      iii. The discharge area limit under paragraph i above plus the equivalent stream, lake, or ocean impact area limit under paragraph ii above must not exceed ¼ acre total.
   b. For NWPs 3, 4, 6, 20, 22, 27, 30, 31, 33, 41, A, and maintenance activities under NWP 43, this Blanket WQC authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.
   c. If a project requiring coverage under two or more Nationwide Permits listed in condition 6.a and 6.b above results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.

7. **Bulkheads –** Activities involving bulkheads are restricted as follows:
   a. New toe-stone protection may not extend more than 36 inches waterward from the existing bulkhead face.

8. **Dewatering –** Dewatering activities must be conducted in the following manner:
   a. Authorized dewatering is limited to immediate work areas that are within coffer dams or otherwise isolated from the larger waterbody or waters of the United States.
   b. Dewatering must be localized and must not drain extensive areas of a waterbody or reduce the water level such that fish and other aquatic organisms are killed, or their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.
   c. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a waterbody.
   d. All dewatering structures must be permanently removed, and disturbed areas must be graded and stabilized immediately following completion of work. Return flows from the dewatering structure shall be as visibly clear as the receiving waterbody.

9. **Horizontal and Directional Drilling** – For projects that involve horizontal or directional drilling, the permittee must prepare and implement a plan that addresses prevention, containment and cleanup of inadvertent drilling fluid returns or “frac-outs”.

10. **Prohibition Period for In-water Work -** In-water work is prohibited in cold water trout fisheries (waterbodies classified under Article 15 of New York State Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31.

    Water classification values can be found on the DEC's Environmental Resource Mapper available on DEC's website at https://gisservices.dec.ny.gov/gis/erm/. Applicants may also contact the Regional Fisheries Manager in the appropriate DEC regional office to determine the classification of the water body and whether the prohibition period applies.

11. **Preventing the Spread of Aquatic Invasive Species -** To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation, and other debris before entering any approved construction areas within waters of the United States. When using construction equipment, projects authorized under this Blanket WQC shall take reasonable precautions to prevent the spread of aquatic invasive species as required under the provisions in ECL § 9-1710.

12. **Utility Lines –** The following restrictions and conditions apply to activities involving utility line installation:
    a. Materials resulting from utility line trench excavation that are temporarily sidecast into waters of the United States must be used to backfill the trench or removed within 30 days of deposition.

13. **NWP 14. Linear Transportation Projects –** The following restrictions apply to transportation activities:
    a. Linear transportation activities that cross multiple waterbodies or cross the same waterbody at multiple locations, while viewed as multiple "single and complete" projects for the purposes of the Nationwide Permit program, will be considered by DEC as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.

14. **NWP 41. Reshaping Existing Drainage Ditches –** The following restrictions and conditions apply to reshaping existing drainage ditches:
    a. Sidecast organic soils may not be stacked deeper than 18 inches or in such a way as to interfere with surface water flow.
    b. Sidecasting of non-organic soils into wetlands is prohibited.

15. **NWP 43 Stormwater Management Facilities -** This Blanket WQC authorizes the maintenance of existing storm water management facilities.

16. **NWP 53. Low-head Dam Removal** – The following restrictions and conditions apply to low-head dam removal projects undertaken pursuant to NWP 53:
    a. This Blanket WQC authorizes only those projects where heavy equipment will be kept out of flowing water. Adequate upland access to adjacent shoreline must be available and must not be associated with other jurisdictional natural resources (e.g., freshwater wetlands, habitat of endangered species, etc.)
    b. The physical composition of accumulated sediments shall be characterized by a grain size analysis of samples taken throughout the site adequate to properly represent all of the accumulated sediments. This Blanket WQC only applies where the physical composition of the accumulated sediment is at least 90% sand and gravel.
    c. This Blanket WQC only applies where at least one of the following criteria is met:
        i. the dam is less than six (6) feet high;
        ii. the dam impounds no more than one million gallons; or
        iii. the dam is less than fifteen (15) feet high and impounds no more than three million gallons

17. **NWPs 57 and 58 Utility Line Activities –** The following restrictions apply to utility line activities undertaken under NWPs 57 and 58:
    a. Materials resulting from utility line trench excavation that are temporarily sidecast into waters of the United States must be used to backfill the trench or removed within 30 days of deposition.
    b. Utility line activities that cross multiple waterbodies or cross the same waterbody at multiple locations, while viewed as multiple “single and complete” projects for the purposes of the Nationwide Permit program, will be considered by the DEC as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.
    c. Buried utility lines that cross under streams must be placed at a depth to prevent future exposure of the line. A site-specific vertical adjustment potential (VAP) analysis, or similar engineering analysis, must be conducted by a licensed engineer to determine the proper depth for all lines except water lines.

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ATTACHMENT 4

In accordance with the requirements of 40 CFR § 121.7(d)(3), DEC is providing the relevant water quality requirements and statements explaining why each condition in Attachment 3 is necessary to ensure that any discharge will comply with water quality requirements.

DEC implements the state water quality standards for Water Quality Certification found in 301-303, 306 and 307 of the Federal Water Pollution Control Act, as implemented in New York State by the following provisions:

a. effluent limitations and water quality-related effluent limitations set forth in section 750-1.11 of Title 6 of New York Codes Rules and Regulations (6 NYCRR);
b. water quality standards and thermal discharge criteria set forth in 6 NYCRR Parts 701, 702, 703 and 704;
c. standards of performance for new sources set forth in section 6 NYCRR § 750-1.11;
d. effluent limitations, effluent prohibitions and pretreatment standards set forth in 6 NYCRR § 750-1.11;
e. prohibited discharges set forth in 6 NYCRR § 750-1.3; and
f. State statutes, regulations, and criteria otherwise applicable to such activities. These would include, but are not limited to, 6 NYCRR Parts 182 (Endangered and Threatened Species of Fish and Wildlife…), 505 (Coastal Erosion Management), 575 (Aquatic Invasive Species Spread Prevention), 608 (Use & Protection Waters), 661 (Tidal Wetlands), and 663 (Freshwater Wetlands). In addition, portions of the New York State Environmental Conservation Law (ECL) are applicable to such activities.

In accordance with 40 CFR § 121.7(d)(3), water quality requirements and statements of necessity for each condition in Attachment 3 are provided below, numbered and titled to correspond to the conditions contained in Attachment 3.

1. DEC General and Individual Permits

Water quality requirements: State statutes applicable to this condition include Environmental Conservation Law (ECL) Articles 15, 24, 25, and 34. State regulations applicable to this condition include 6 NYCRR Parts 505 (Coastal Erosion Management), 608 (Use & Protection Waters), 661 (Tidal Wetlands), 663 (Freshwater Wetlands), and 666 (Wild, Scenic, and Recreational Rivers). In addition to the underlying water quality standards contained in 6 NYCRR Parts 701, 702, 703 and 704, these statutes and regulations impose requirements on discharges of fill that affect water quality in state regulated streams, rivers, wetlands, and coastal waters.

Statement of condition necessity: This condition is necessary to ensure that this Blanket WQC granted for projects authorized under DEC general and individual permits pertains only to specific regulatory programs that contain sufficient provisions to ensure water quality requirements will be met through those decisions.

2. DEC Emergency Authorizations

Water quality requirements: State statutes applicable to this condition include Environmental Conservation Law (ECL) Articles 15, 24, 25, and 34. State regulations applicable to this condition include 6 NYCRR Parts 505 (Coastal Erosion Management), 608 (Use & Protection Waters), 661 (Tidal Wetlands), 663 (Freshwater Wetlands), and 666 (Wild, Scenic, and Recreational Rivers). In addition to the underlying water quality standards contained in 6 NYCRR Parts 701, 702, 703 and 704, these statutes and regulations impose requirements on discharges of fill that affect water quality in state regulated streams, rivers, wetlands, and coastal waters.

Statement of condition necessity: This condition is necessary to ensure that Blanket WQC granted for projects subject to DEC emergency authorizations also address provisions of the identified regulatory programs that pertain to water quality.

3. Scope of Blanket Certification

3.a – Culvert Slip Lining

Water Quality Requirements: 6 NYCRR 703.2 Narrative water quality standards for flow: no alteration that will impair the waters for their best usages; 6 NYCRR 608.2(a) “Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.”; 6 NYCRR 608.5 “No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the State or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this part.”; 6 NYCRR 608.7 (b) The department’s review will determine if the proposed alteration to water resources of the State are consistent with standards contained in section 608.8 of this Part, considering issues such as:(iii) hydrology, including such criteria as water velocity, depth, discharge volume, flooding potential;(iv) (2) the adequacy of design and construction techniques for structures; (6) the safeguarding of life and property; 6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival; 6 NYCRR 701.10 through 701.13 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.14 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife survival.

Statement of condition necessity: Based on the foregoing water quality requirements, this condition is necessary to ensure that culverts are installed in a manner that ensures proper functioning of the waterway and

that the continued use of the culvert over time will not cause or contribute to a contravention of water quality standards. It is also necessary to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

3.b – New Bulkheads or Vertical Walls

Water quality requirements: 6 NYCRR 608.8 Standards "The basis of the issuance or modification of a permit will be a determination that the proposal is in the public interest, in that:… (c) The proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state, including soil, forests, water, fish, shellfish, crustaceans and aquatic and land-related environment."

Statement of condition necessity: This condition is necessary to prevent discharges from new bulkheads, which are generally unreasonable and unnecessary and do not meet the standards of 6 NYCRR 608.8. New bulkheads generally would also cause unreasonable and unnecessary damage (e.g., erosion of adjacent properties, littoral habitat loss) compared to other stabilization measures that are typically feasible (e.g., plantings or rock revetments). Likewise, the placement of new fill that would adversely impact shorelines, such as extension of bulkheads, requires an individual review to examine alternatives and to ensure encroachment is reasonable and necessary.

3.c – Waterward extension of existing bulkheads

Water quality requirements: 6 NYCRR 608.8 Standards "The basis of the issuance or modification of a permit will be a determination that the proposal is in the public interest, in that:… (c) The proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state, including soil, forests, water, fish, shellfish, crustaceans and aquatic and land-related environment."

Statement of condition necessity: This condition is necessary to prevent discharges from modified bulkheads, beyond the restriction identified, without additional review. Modification of such bulkheads generally may cause unreasonable and unnecessary damage (e.g., erosion of adjacent properties, littoral habitat loss) compared to other stabilization measures that are typically feasible (e.g., plantings or rock revetments). Likewise, the placement of new fill that would adversely impact shorelines, such as extension of bulkheads, requires an individual review to examine alternatives and to ensure encroachment is reasonable and necessary.

3.d – Maintenance of Water Levels

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the project does not violate water quality standards related to flow. This condition also ensures that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival. Activities

authorized under NWP 27 have the inherent potential to alter flow but are presumed to have a long-term beneficial effect on the attainment of best usages.

3.e – Endangered or Threatened Species

Water quality requirements: 6 NYCRR 182 Regulations prohibiting the take of state-listed endangered or threatened species; 6 NYCRR 703.2 Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances; 6 NYCRR 701 Classification of surface waters and identification of best usages.

Statement of condition necessity: This condition is necessary to ensure that turbid conditions in the vicinity of these populations are addressed prior to construction so that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival. This condition is necessary to ensure that any activities authorized by these NWPs do not "take" any aquatic or aquatic-dependent state listed endangered or threatened species or its habitat.

3.f – Rare Mollusks

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances. 6 NYCRR Part 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: Rare and sensitive mussel populations are highly susceptible to acute changes in turbidity and affect the food web upon which fish and other taxa rely. This condition ensures that turbid conditions in the vicinity of these populations are addressed prior to construction so that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.g – Significant Coastal Fish and Wildlife Habitats

Water quality requirements: 6 NYCRR Part 701: Classification of surface waters and identification of best usages. 6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival; 6 NYCRR 701.10 through 701.13 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.14 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife survival. 19 NYCRR § 602.5 Significant Coastal Fish and Wildlife Habitats designated under 19 NYCRR Part 602 are those habitat areas identified and recommended by DEC which exhibit to a substantial degree one or more of the following characteristics: (i) the habitat is essential to the survival of a large portion of a particular fish or wildlife population (e.g., feeding grounds, nursery areas), (ii) the habitat supports a species which is either

endangered, threatened or of special concern as those terms are defined at 6 NYCRR Part 182, (iii)the habitat supports fish or wildlife populations having significant commercial, recreational or educational value; or (iv) the habitat is of a type which is not commonly found in the State or a coastal region of the State; Such designations are made under the authority granted to New York State to implement elements of the federal Coastal Zone Management Act of 1972 through its participation in the National Coastal Zone Management Program. The New York Coastal Management Program was approved by NOAA in 1982. The Executive Law Article 42, Waterfront Revitalization of Coastal Areas and Inland Waterways, provides the state with the authority to establish a coastal program, develop coastal policies, define the coastal boundaries, and establish state consistency requirements.
Statement of condition necessity: This condition is necessary to ensure that activities undertaken within designated significant coastal fish and wildlife habitats fully identify the natural resources within the project area and develop site-specific plans and methods for the minimization and control of discharges affecting water quality and wildlife. The condition is necessary to ensure that discharges do not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.h – Coastal Erosion Hazard Areas

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards for turbidity, toxic materials, and other deleterious substances. 6 NYCRR Part 701: Classification of surface waters and identification of best usages. ECL Article 34 and implementing regulations at 6 NYCRR Part 505 identifies Coastal Erosion Hazard Areas (CEHAs) in locations with Natural Protective Feature Areas (NPFAs) and in areas of high erosion vulnerability. 6 NYCRR § 505.8 Prohibits excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore areas.
Statement of condition necessity: This condition is necessary to ensure that activities conducted in these vulnerable erosion hazard areas over the thresholds identified are required to develop detailed and site specific plans and pollution control methods to ensure that discharges do no contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.i – Federal Energy Regulatory Commission

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary due to the large scope of FERC-regulated projects, the need to identify all potential impacts to waters of the United States, and the need to develop detailed

and site-specific pollution control methods to ensure that discharges do no contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.j – Hydroelectric Generation Projects

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary due to the direct in-water effects of hydroelectric projects, the need to identify all potential impacts to waters of the United States, and the need to develop detailed and site-specific pollution control methods to ensure that discharges do no contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.k – Certain Utility Generation and Transmission Projects

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary due to the large scope utility projects, the need to identify all potential impacts to waters of the United States, and the need to develop detailed and site-specific pollution control methods to ensure that discharges do no contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.l – NWP 14, Linear Transportation Projects

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances. 6 NYCRR 502.4(a)(17) Floodplain management criteria for State projects in flood hazard areas: "(a)…any State agency proposing to commence any project within a flood hazard area in that city, town or village shall do so only if it determines such project is in compliance with the following criteria: …(17) In order to prevent potential flood damage to certain facilities that would result in serious danger to life and health, or widespread social or economic dislocation, none of the following new projects shall be undertaken within any flood hazard area:…";
Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities. This condition is also necessary to ensure that water quality requirements

related to designated floodplains are met.

3.m – NWP 19, Minor Dredging

Water quality requirements: 6 NYCRR 661, ECL 25-0401, 6 NYCRR 703.3 State regulations allow only those uses of tidal wetlands and areas adjacent thereto that are compatible with the preservation, protection and enhancement of the present and potential values of tidal wetlands (including but not limited to their value for marine food production, wildlife habitat, flood and hurricane and storm control, recreation, cleansing ecosystems, absorption of silt and organic material, education and research, and open space and aesthetic appreciation), that will protect the public health and welfare, and that will be consistent with the reasonable economic and social development of the State. (Part 661.1). 6 NYCRR 703.3 establishes numeric water quality standards for saline waters for pH and dissolved oxygen (DO). Due to the nature of dredge, fill, and excavation activities, and the likely chronic and acute impacts to submerged aquatic vegetation and sediments in tidal wetlands and marine waters, these standards are likely to be exceeded in the course of dredging activities undertaken under NWP 19.

Statement of condition necessity: This condition is necessary to ensure that site-specific plans are prepared to adequately prevent contravention of water quality standards during dredging, to maintain best usages, and to ensure that marine waters remain suitable for fish, shellfish, and wildlife survival and propagation.

3.n – NWP 25, Structural Discharges

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities, and to ensure waters remain suitable for fish, shellfish, and wildlife survival.

3.o – NWP 27, Aquatic Habitat Restoration

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.p – NWP 29, Residential Developments

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water

quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.q – NWP 33, Temporary Construction
Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.r – NWP 39, Commercial and Institutional Developments
Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.s – NWP 40, Agricultural Activities
Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.t – NWP 41, Reshaping Existing Drainage Ditches
Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.u – NWP 43, Stormwater Management Facilities

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

3.v – NWP 48, Commercial Shellfish Mariculture Activities
Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.
Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

4. Non-contamination of Waters

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances

Statement of condition necessity: This condition is necessary to ensure that the permittee undertakes whatever additional measures are necessary, and not otherwise specified in the conditions of this permit, to prevent the contravention of water quality standards during the implementation of the project.

5. Installation and Replacement of Culverts

Water quality requirements: 6 NYCRR 502.4(a)(17) Floodplain management criteria for State projects in flood hazard areas: “(a)…any State agency proposing to commence any project within a flood hazard area in that city, town or village shall do so only if it determines such project is in compliance with the following criteria: …(17) In order to prevent potential flood damage to certain facilities that would result in serious danger to life and health, or widespread social or economic dislocation, none of the following new projects shall be undertaken within any flood hazard area:…”; 6 NYCRR 703.2 Narrative water quality standards for flow: no alteration that will impair the waters for their best usages; 6 NYCRR 608.2(a) “Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.”; 6 NYCRR 608.5 “No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the State or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this part.”; 6 NYCRR 608.7 (b) The department’s review will determine if the proposed alteration to water resources of the State are consistent with standards contained in section

608.8 of this Part, considering issues such as:(iii) hydrology, including such criteria as water velocity, depth, discharge volume, flooding potential;(iv) (2) the adequacy of design and construction techniques for structures; (6) the safeguarding of life and property; 6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival; 6 NYCRR 701.10 through 701.13 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.14 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife survival.

Statement of condition necessity: Based on the foregoing water quality requirements, this condition is necessary to ensure that culverts are installed in a manner that ensures proper functioning of the waterway and that the continued use of the culvert over time will not cause or contribute to a contravention of water quality standards. It is also necessary to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

6. Discharges and Disturbances Limits

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances; 6 NYCRR 608.2(a) “Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.”; 6 NYCRR 608.5 “No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the state or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this Part.”; 6 NYCRR 663.4 Regulated Activity List Item #20 - Filling in freshwater wetlands, including filling for agricultural purposes, is presumed incompatible with wetland functions and benefits. 6 NYCRR 505.8 Restrictions on regulated activities within coastal natural protective features, including the prohibition of excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore areas. 6 NYCRR 661.5(b) Regulated activity list item 30 – Filling in tidal wetlands is presumed incompatible with the preservation, protection or enhancement of the present and potential values of tidal wetlands.

Statement of condition necessity: The increased length of a project along a stream or the increased acreage disturbance of a project within a wetland or other waterbody results in a concomitant increase in impacts to those environmental resources. Impacts include, but are not limited to, increased stream temperature, reduced availability of refugia sites for cold water fish, lack of flood flow retention, less ability to intercept nonpoint source pollutants, reduced transport of nutrients vital to ecosystem productivity, and reduced capacity for aquifer recharge. This condition is necessary to ensure that the scope of authorized activities is limited to those that are reasonable and necessary to achieve the objective of the project and to ensure that those activities will not exceed minimal adverse

environmental impacts. Because the Corps has removed linear foot thresholds for stream disturbances, allowing discharges of up to several thousands of feet under its NWPs, it is also necessary to ensure that waters of the United States in New York remain suitable for fish, shellfish, and wildlife survival.

7. Bulkheads

Water quality requirements: 6 NYCRR 608.8 Standards "The basis of the issuance or modification of a permit will be a determination that the proposal is in the public interest, in that:… (c) The proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state, including soil, forests, water, fish, shellfish, crustaceans and aquatic and land-related environment."

Statement of condition necessity: This condition is necessary to prevent excessive placement of new toe stone protection fill that could adversely impact shorelines. New toe stone fill beyond the restriction requires an individual review to examine alternatives and to ensure encroachment is reasonable and necessary.

8. Dewatering

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances; 6 NYCRR 703.2 Narrative water quality standards requiring no alteration that will impair the waters for their best usages. Best usages for all state water classifications include fishing. All classifications indicate that waters shall be maintained suitable for fish, shellfish and wildlife survival.

Statement of condition necessity: This condition is necessary to ensure that dewatering does not contravene state water quality standards, that the best usages are maintained, and that waters remain suitable for fish, shellfish, and wildlife survival.

9. Horizontal and Directional Drilling

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to prevent the contravention of water quality standards when horizontal or directional drilling is used as an installation method.

10. Prohibition Period for In-water Work

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, toxic materials, and other deleterious substances. 6 NYCRR 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not adversely impact water quality during sensitive fish spawning periods and contravene water quality standards or impair the waters best usages for fishing. This condition also ensures that waters remain suitable for fish, shellfish, and wildlife survival and propagation.

11. Preventing the Spread of Aquatic Invasive Species

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances. 6 NYCRR Part 575 Prohibited and Regulated Invasive Species. 6 NYCRR Part 576 Aquatic Invasive Species Spread Prevention.

Statement of condition necessity: This condition is necessary to ensure that equipment used will not contribute to a contravention of water quality standards, that best usages are maintained, and to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

12. Utility Lines

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: Prohibitions on appurtenant structures and uncontrolled spoilage ensure narrative water quality standards and best usages will be met, and ensure that waters remain suitable for fish, shellfish, and wildlife survival.

13. NWP 14. Linear Transportation Projects

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances. 6 NYCRR 502.4(a)(17) Floodplain management criteria for State projects in flood hazard areas: “(a)…any State agency proposing to commence any project within a flood hazard area in that city, town or village shall do so only if it determines such project is in compliance with the following criteria: …(17) In order to prevent potential flood damage to certain facilities that would result in serious danger to life and health, or widespread social or economic dislocation, none of the following new projects shall be undertaken within any flood hazard area:…”;

Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities. This condition is also necessary to ensure that water quality requirements related to designated floodplains are met.

14. NWP 41. Reshaping Existing Drainage Ditches

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife

survival.

15. NWP 43. Stormwater Management Facilities

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

16. NWP 53. Low-Head Dam Removal

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities. This condition is necessary to ensure that work will not contravene water quality standards, and to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

17. NWPs 57 and 58 Utility Line Activities

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities. This condition is necessary to ensure that work will not contravene water quality standards, and to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

ENCLOSURE 8

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August 28, 2025

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Re: **F-2025-0388 (DA)**
U.S. Army Corps of Engineers – Proposed 2026 New York, Buffalo and New England Districts' Regional Conditions, the Reissuance and Modification of the Nationwide Permit Program, the issuance of one new Nationwide Permit. Statewide Coastal Areas and Geographical Location Descriptions

Dear Sirs and Madam:

The Department of State (DOS) has completed its review of the U.S. Army Corps of Engineers (Corps) consistency determination indicating that the proposed reissuance and modification of its nationwide permits (NWPs) and issuance of one (1) new NWP and proposed regional conditions, pursuant to 33 CFR Part 330 is and will be conducted in a manner consistent to the maximum extent practicable[1] with the New York State Coastal Management Program.

Based upon the regional conditions published by the New York, Buffalo, and New England Districts of the Corps on June 18, 2025, DOS issues the following decisions:

[1] See 15 CFR 930.32 for the requirement that federal agency actions be consistent with the state's enforceable coastal policies to the maximum extent practicable.

I. Pursuant to 15 CFR § 930.41, DOS concurs with the Corps consistency determination for the following NWPs anywhere in the New York State coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154 (Interstate Consistency Review)[i] and § 930.53(1) (Geographic Location Description [GLD])[ii]:

1. Aids to Navigation
4. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities
10. Mooring Buoys
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil and Hazardous Substances
22. Removal of Vessels
24. Indian Tribe or State Administered Section 404 Programs
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
34. Cranberry Production Activities
37. Emergency Watershed Protection and Rehabilitation
41. Reshaping Existing Drainage Ditches and Irrigation Ditches
46. Discharges in Ditches
53. Removal of Low-Head Dams

II. Pursuant to 15 CFR § 930.41 and § 930.43, DOS conditionally concurs with the Corps' consistency determination for the following NWPs in the New York State coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154[i] and § 930.53(1)[ii], <u>subject to the following conditions</u>:

3. Maintenance
NWP 3 shall only apply to projects located in non-tidal waters where the activities to be authorized primarily involve the repair/replacement in-place or landward of a lawful structure or fill, with no waterward expansion or increase in footprint, unless:

- the projects are proposed solely within the artificial canals identified by DOS at: https://www.stone-env.net/opdgig-coastal-atlas/; or
- the projects would be authorized by the New York State Department of Environmental Conservation under the Great Lakes Erosion Control General Permit.

6. Survey Activities
NWP 6 shall only apply where the activities to be authorized would be limited to sample plots or transects for wetland delineations and historic resources surveys.

11. Temporary Recreational Structures
NWP 11 shall only apply where the activities to be authorized are for structures that are in place for no more than 30 days in a given calendar year and are for non-residential purposes.

13. Bank Stabilization
NWP 13 shall only apply where the activities would be authorized by New York State Department of Environmental Conservation under the Great Lakes Erosion Control General Permit or would occur within the artificial canals identified by DOS at: https://www.stone-env.net/opdgig-coastal-atlas/.

35. Maintenance Dredging of Existing Basins
NWP 35 shall only apply in tidal waters that are located outside of the New York City Waterfront Revitalization Program.

III. Pursuant to 15 CFR § 930.41 and § 930.43, DOS conditionally concurs with the Corps' consistency determination for the following NWPs in the New York State coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154[i] and § 930.53(1),[ii] with the exception and condition that these NWPs would not apply where the activities would occur within or affect the New York City Waterfront Revitalization Program:

2. Structures in Artificial Canals
28. Modifications of Existing Marinas
35. Maintenance Dredging of Existing Basins (see additional condition in Section II above)
36. Boat Ramps
38. Cleanup of Hazardous and Toxic Waste

IV. Pursuant to 15 CFR § 930.41 and § 930.43 DOS objects to the Corps' consistency determination for the following NWPs anywhere in the New York coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154[i] and § 930.53(1)[ii]:

5. Scientific Measuring Devices
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
12. Oil or Natural Gas Pipeline Activities
14. Linear Transportation Projects
21 Surface Coal Mining Activities
23. Approved Categorical Exclusions
25. Structural Discharges
27. Aquatic Ecosystem Restoration, Enhancement and Establishment Activities
29. Residential Developments
32. Completed Enforcement Activities
33. Temporary Construction, Access, and Dewatering
39. Commercial and Institutional Developments
40. Agricultural Activities

42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
54. Living Shorelines
55. Seaweed Mariculture Activities
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
A. [NEW] Activities To Improve Passage of Fish and Other Aquatic Organisms

Basis for Decision
The nationwide permits listed in **II** and **III** that do not meet the conditions as listed above for those permits**, and** all of the permits listed in **IV** above, would authorize activities which would not be consistent with one or more of the State's CMP policies and federally approved amendments to the CMP.

First, in **II**, where the listed conditions are not complied with, the activities should not be subject to a nationwide permit and if so conducted, would be inconsistent with the CMP. These activities would affect the State's CMP policies pertaining to water dependent uses (Policies #1, #2, #3, #4, #20, #21); appropriate development in appropriate areas and expediting permits for that development (Policies #1, #2, #5, #6); the protection, preservation, and where practicable restoration of State designated significant coastal fish and wild life habitats (Policy #7); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #8, #31, #34, #35, #36, #38, #40); flooding and erosion hazards (Policies #11, #12, #13, # 14, # 15, # 16, # 17); infringements on the public use of coastal waters and water related recreational uses (Policies #19, #20, #21 , #22); preventing the impairment of scenic resources (Policies #24 and #25); the conservation of agricultural lands (Policies #26, #35); the preservation and protection of freshwater and tidal wetlands and the benefits derived from them (Policy #44); and the protection of the quality of coastal waters (Policies #30, #31, #33, #34, #35, #36, #39). These activities would also affect these policies as they are reflected in the Long Island Sound Regional Coastal Management Program and federally approved Local Waterfront Revitalization Programs.

Next, in **II and III**, where the activities would be located within the CMP special management area New York City Waterfront Revitalization Program (NYC WRP), the activities should not be subject to a nationwide or regional permit and if so conducted, would be inconsistent with the CMP. These activities would affect the NYC WRP policies pertaining to: water dependent uses (Policies #1, #2, #3, and #8); appropriate development in appropriate areas (Policies #1, #2, #3, #8, #9, and #10); the protection, preservation, and where practicable restoration of designated significant coastal fish and wildlife habitats (Policy #4); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #4, #5, and #7); flooding and erosion hazards and increasing climate resilience (Policy #6); infringements on the public use of coastal waters and water related recreational uses (Policies #3, and #8); preventing the impairment of scenic resources (Policy #9); the preservation and protection of

freshwater and tidal wetlands and the benefits derived from them (Policies #4, and #5); and the protection of the quality of coastal waters (Policies #4, #5, and #7).

Further, in **IV**, the activities should not be subject to a nationwide or regional permit and if so conducted, would be inconsistent with the CMP. These activities would affect the State's CMP policies pertaining to: water dependent uses (Policies #1, #2, #3, #4, #20, #21); appropriate development in appropriate areas and expediting permits for that development (Policies #1, #2, #5, #6); the protection, preservation, and where practicable restoration of State designated significant coastal fish and wild life habitats (Policy #7); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #8, #31, #34, #35, #36, #38, #40); flooding and erosion hazards (Policies #11 , #12, #13, # 14, # 15, # 16, # 17); infringements on the public use of coastal waters and water related recreational uses (Policies #19, #20, #21 , #22); preventing the impairment of scenic resources (Policies 24 and 25); the conservation of agricultural lands (Policies #26, #35); the preservation and protection of freshwater and tidal wetlands and the benefits derived from them (Policy #44); and the protection of the quality of coastal waters (Policies #30, #31, #33, #34, #35, #36, #39). These activities would also affect these policies as they are reflected in the Long Island Sound Regional Coastal Management Program and federally approved Local Waterfront Revitalization Programs.

Finally, the NWPs listed in **II**, where the listed conditions are not complied with, **II and III**, where the activities would be located within the NYC Waterfront Revitalization Program, and **IV** above were determined not to be consistent to the maximum extent practicable with the State CMP policies for several reasons: 1) the specific nature of the authorized activity is unknown (e.g. structures in fleeting and anchorage areas, residential developments, approved categorical exclusions, completed enforcement actions); 2) the size, extent and duration of the authorized activity is limitless (e.g. utility line backfill and bedding, structural discharges, maintenance dredging of existing basins); 3) the established thresholds for an activity are excessive (e.g. bank stabilization, headwaters and isolated waters discharges, 1/2 acre loss of waters); 4) the provisions of the permits do not reflect the existing conditions of the geographic areas in which the authorized activity would occur; 5) coordinated review of authorized activities will be limited and expedited review by the Corps would exclude valuable local knowledge of on- site conditions and potential effects on local resources (e.g. water-based renewable energy); 6) the mitigation condition does not advocate "avoidance" and viable alternatives or advocating activities that would advance relevant CMP policies as the principal means of minimizing adverse effects on coastal waters, habitats, wetlands, scenic areas, special aquatic sites (mitigation banks vs. on-site mitigation) ; and 7) the authorized activities could be inconsistent with locally adopted and State and federally approved plans as expressed in federally approved amendments to the CMP.

Alternative Measures - Regional Conditions

Pursuant to 15 CFR § 930.43(a)(3), DOS should describe alternative measures which, if adopted by the Corps, would allow the Corps to proceed with the reissuance, modification, and issuance of new NWPs in a manner consistent to the maximum extent practicable with the CMP. According to 33 CFR § 330.4(d)(2), the Division or District Engineers may establish regional conditions for NWPs that would make them consistent with the CMP and as such, DOS has reviewed the proposed regional conditions for the New York, Buffalo and New England Districts.

To ensure that the Corps' NWPs and activities authorized by them would be consistent with the CMP and approved LWRPs, the following condition applies to:
l) the NWPs listed in **II** above that do not meet the stated conditions and

2) the NWPs listed in **II and III** when the activity to be authorized would occur within the NYC Waterfront Revitalization Program
And
3.) the NWPs listed in **IV** above

Activities authorized pursuant to these Nationwide Permits shall be submitted to DOS for review by the applicant. DOS will review the proposed activities pursuant to 15 CFR Part 930 Subparts D and I where applicable. DOS concurrence with an applicant's consistency certification shall not be presumed unless DOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of DOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63.

Submissions should be submitted to:

Consistency Review Unit
Office of Planning, Development and Community Infrastructure
New York State Department of State
99 Washington Avenue
One Commerce Plaza, Suite 1010
Albany, NY 12231

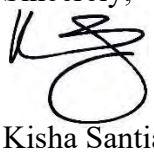
Electronic submissions should be emailed to:

CR@dos.ny.gov

The submission shall include the necessary data and information pursuant to the New York Coastal Management Program and 15 CFR § 930.58[iii]:

Should you have any questions regarding this consistency decision please contact Jennifer Street (jennifer.street@dos.ny.gov).

Sincerely,



Kisha Santiago
Deputy Secretary of State
Office of Planning, Development and Community Infrastructure

KSM/dn
cc: OCM – Jeffery L. Payne – via e-mail
OCM – Kerry Kehoe, David Kaiser – via e-mail
COE/HQ – Katherine McCafferty – via e-mail
COE/Buffalo District – Bridget Brown – via e-mail
COE/New York District – Christopher Mink – via e-mail
COE/New England District – Birdie Budnik – via e-mail

NYSDEC/Central Office – Scott Sheeley – via e-mail
NYSOGS – Ralph Hill – via e-mail
NYS DPS – Sarah Crowell & Chase Chaskey – via e-mail

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[i] All references to 15 CFR 930.154 Interstate Consistency review for New York State refer to New York State's Interstate Consistency Review Authority as described as follows:
New York State Coastal Management Program Part II Section 9 page 24 Table 4: Interstate Activities as approved by the Office of Ocean and Coastal Resource Management on March 28, 2006

In Connecticut State waters:

- Construction of structures (e.g. bulkheads, revetments, groins, jetties, piers, docks, islands, etc.) or conduct of activities such as the mooring of vessels in navigable waters, or obstruction or alteration of navigable waters pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, et. seq.), in the Byram River within 50' of the federal navigation channel in the Byram River or, where there is no federal navigation channel in the Byram River, within the Byram River within 50' of the border of New York and Connecticut upstream to the US Route 1 bridge.
- Discharge of dredged and fill materials and other activities in the waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) in Long Island Sound and Fishers Island Sound waterward of the 20' bathymetric contour closest to the Connecticut shoreline.
- Map of these areas can be found at: https://www.stone-env.net/opdgig-coastal-atlas/

[ii] All reference to 15 CFR 930.53(1) Geographic Location Description review for New York State refer to New York State's Renewable Energy Geographic Location Description. New York State Coastal Management Program Part II Section 9 page 24 Table 5: Renewable Energy Geographic Location Description as approve by the Office of Coastal Management on April 19, 2023, see map at: https://www.stone-env.net/opdgig-coastal-atlas/

In New York State's Offshore Renewable Energy Geographic Location Description for research, siting, construction, operations and maintenance, and decommissioning of offshore renewable energy generation infrastructure, and transmission infrastructure where the activity would be authorized under Section 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

[iii] Necessary data and information as reflected in the New York State Coastal Management Program Part II Section 9 page 12-13

1. Copy of the federal permit, license, etc. application.
2. Copy of the completed Federal Consistency Assessment Form, which includes a signed consistency certification and written analysis of the proposed activity's consistency with the policies of the State's CMP. Form at: https://dos.ny.gov/system/files/documents/2020/09/fcaf_fillable.pdf
3. Copy of all supporting documentation submitted with the federal application, including a detailed description of the proposed activity, its associated facilities and coastal effects, map(s) showing the geographic location of the proposed activity, site map(s) and diagram(s) drawn to scale showing all components of the activity and their location on the site, recent color photographs of the site, written statement on the purpose and need for the activity, identification of the owners of the abutting upland properties and underwater lands, and written analysis of alternatives to the proposed activity considered by the applicant.
4. Copy of the final Environmental Impact Statement, if required by the federal agency or by a state agency having jurisdiction over the proposed activity.
5. Copies of permit, license, etc. applications and related correspondence submitted to involved state agencies (e.g. DEC, OGS, SHPO, NYPA, PSC).
6. For energy facilities subject to Articles VII or 10 of the New York State Public Service Law all documentation submitted to the Siting Board for its consideration through to the conclusion of its public hearing process. Energy facilities undergo an extensive review by the State's Siting Board. DOS will participate in the review process when appropriate and advise the Siting Board of coastal policy concerns applicable to the proposed energy facility. DOS will coordinate its federal consistency review of major energy facilities with the Siting Board and other agencies involved in the Article VII or Article 10 processes.
7. For other necessary data and information see 15 CFR Subpart D.