



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

**NHDES Response to Comments and List of Substantive Changes for
WQC # 2019-404I-002 regarding
I-93, Exit 4A [NH DOT Project ID: Derry-Londonderry, IM-0931 (021), 13065]
May 28, 2020**

Response to Comments

The New Hampshire Department of Environmental Services (NHDES) received two comments for draft Water Quality Certification (WQC) # 2019-404I-002. A copy of the comments and NHDES' response are provided below followed by a list of substantive changes made since the draft WQC was issued for public comment.

A. Comments from Mr. Michael Speltz, a resident of Londonderry:

"The draft WQC refers to a wetland permit and applicant responses to a RFI, but it appears the wetland permit has not yet been issued or released to the public. The wetland permit should include consideration of the vernal pools being impacted. Based on the FEIS those impacts will be mitigated through a payment to the ARM Fund.

However, as outlined in my letter of 6 December 2018 to Peter Stamnas at NH DOT (attached), these vernal pools would be better mitigated by on site protection of a generous buffer around the pools, consistent with CFR 332.3(3) as quoted in the attached letter.

To the extent the draft WQC approves the mitigation approach in the FEIS, it limits the ability of NH DES to include greater protections for the vernal pools in the wetlands permit, when it is issued. Therefore, please consider adding an additional condition to the WQC, beyond the rights DES has reserved to itself to modify a WQC. to make clear that the applicant will be subject to a requirement in the prospective wetlands permit to provide greater buffers for the high quality vernal pools and will not be permitted to fill them."

NHDES Response: Condition E-7 of the Water Quality Certification requires the Applicant to comply with the NHDES Wetlands permit. A letter of approval regarding the wetlands permit for the Project was issued by the NHDES Wetlands Bureau on May 5, 2020. The Wetlands approval letter includes Findings 5, 19 and 20 (see below) which indicate that 1) the selected alternative was determined to have the least natural resource impacts of the alternatives considered that address the purpose of the Project, 2) payment will be made to the Aquatic Resource Mitigation (ARM) Fund, and 3) mitigation compensation is based, in part, on impacts to vernal pools. It should also be noted that the ARM Fund payment will be available for land protection and restoration projects in the watershed and that the vernal pool impacts will be noted in the grant round for applicants to focus efforts on preserving vernal pools and their buffers. Finally, the NH Wetland regulations do not include any buffer requirements for vernal pools.

Finding 5: Based on the information presented in the 2007 Draft Environmental Impact Statement (DEIS); 2018 Supplemental Draft Environmental Impact Statement/Section 4(f) Evaluation (SDEIS); the 2020 Final Environmental Impact Statement (FEIS); all technical reports and supporting documentation incorporated by reference in the DEIS, SDEIS, and FEIS; and

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 TDD Access: Relay NH 1-800-735-2964

consideration of input received from other agencies and the public, the Federal Highway Administration (FHWA) has selected Alternative A for implementation. Overall, Alternative A also was determined to have the least natural resource impacts out of the alternatives that address the purpose of the Project.

Finding 19. The applicant has reviewed on-site options for mitigation and the NHDES has determined that this project is acceptable for payment to the Aquatic Resource Mitigation (ARM) Fund.

Finding 20. Mitigation compensation is for 210,643 square feet of direct wetland impacts, 89,298 square feet of secondary wetland impacts (edge effects), 286,000 square feet of vernal pool loss, 78,000 square feet of vernal pool secondary (indirect) impacts, and 1,703 linear feet of stream mitigation.

B. Comments from Mr. Ray Breslin, a resident of Londonderry, NH:

A copy of Mr. Breslin's handwritten comments are provided in the Attachment at the end of this document. The comment numbers used below refer to the comment numbers in Mr. Breslin's comments.

Comment 1 (paraphrased): The proposed project described in the Water Quality Certification (WQC) has not been shown to meet the intended purpose of reducing highway traffic off Rte 93 entering downtown Derry and promoting public safety.

NHDES Response: The purpose of the Water Quality Certification (WQC) is to ensure that the proposed Activity complies with New Hampshire surface water quality standards (Env-Wq 1700 and RSA 485-A:8). The focus of the comment is on reducing highway traffic and promoting public safety which is beyond the purview of the WQC.

Comment 2 (paraphrased): Approval of the 401 WQC by the New Hampshire Department of Environmental Services (NHDES) should not proceed forward without a thorough and complete finding by the Army Corps of Engineers, MS4 Stormwater Management Plan, public involvement and participation, water quality based effluent limitations, and many other rules and regulations and laws which have been identified and "called out" in the draft application.

NHDES Response: The purpose of the Water Quality Certification (WQC) is to ensure that the proposed Activity complies with New Hampshire surface water quality standards (Env-Wq 1700 and RSA 485-A:8). Based on the facts, findings and conditions in the WQC, NHDES has determined that there is reasonable assurance that the Activity will comply with the State water quality standards. Condition E-7 requires the Applicant (NH Department of Transportation) to comply with all applicable permits and related documents including those listed in Finding D-17 of the WQC. Permits/documents listed in Finding D-17 include the U.S. Army Corps of Engineers (ACOE) §404 permit for the discharge of dredge or fill into Waters of the United States, the EPA MS4 permit mentioned by the Commentor. Permits which have not been obtained, must be

obtained by the Applicant prior to construction. With regards to the ACOE §404 permit, the ACOE cannot issue its permit until NHDES issues the WQC. Once the WQC is issued, the ACOE will issue its decision on the §404 permit in accordance with applicable laws and regulations pertaining to the §404 permit program

Not all permits require public notice, however, those that do (such as a the WQC) are issued for public notice by agency issuing the permit. Finally, the Applicant has constructed many highway / roadway projects and is very familiar with the regulatory requirements. Based on the Applicant's experience, NHDES is confident the Applicant will obtain and comply with all applicable permits and documents as required in Condition E-8 of the WQC., including, but not limited to, any public participation and involvement requirements.

Comment 3 (paraphrased): A project of this magnitude will have a great impact not only on management of vehicular traffic but also public health and safety impact due to pollution from additional traffic burden, added Interstate 93 but also additional environmental impact to wetlands, groundwater, surface waters, and wildlife.

NHDES Response: According to the Federal Highway Administration's Record of Decision¹ the selected alternative represents a balance of the various potential impacts:

“FHWA identified Alternative A as the Selected Alternative based on the results of engineering, environmental, and socioeconomic studies. Alternative A represents a balance of traffic performance, economic development potential, and environmental impact considerations.”

Wetland impacts have been accounted for by the NHDES Wetlands Bureau who issued an “Approval Letter” on May 5, 2020 (see Finding D-14 of the WQC) which includes the Conditions that will be included in the Wetlands Permit, with the associated Findings for the Approval. A Wetlands Permit will be issued once the Aquatic Resource Mitigation (ARM) payment has been submitted.

The impacts of pollution from traffic on stormwater quality will be addressed by treating the vast majority of stormwater from the Activity in treatment practices including, but not limited to, wet extended detention basins which studies have shown are quite efficient at removing pollutants from stormwater runoff².

If the design calls for certain types of discharges to groundwater, the Applicant will need to obtain and comply with NHDES groundwater discharge permit regulations. As stated in Fact C-58 of the WQC, Env-Wq 402 (Groundwater Permits and Registration) implements RSA 485-A:13, I(a) and the permit program for the regulation and remediation of groundwater contamination from previous discharges or disposal of wastewater to groundwater authorized by RSA 485:3, X, by establishing standards, criteria, and

¹ From page ROD-3 of the Record of Decision, FHWA-NH-EIS-07-01-F, Derry-Londonderry, IM-0931(201) 13065, I-93 Exit 4A, Rockingham County, New Hampshire. The Record of Decision is available on the [NHDOT Website](#).

² See Appendix E of the New Hampshire Stormwater Manual, Volume 1, Stormwater and Antidegradation, December 2008 by NHD which is available on the [NHDES Website](#).

procedures for groundwater discharge permits, discharge registrations, and holding tank registrations to prevent pollution and protect groundwater. Wastewater is defined as "...a fluid derived from domestic or non-domestic sources that is no longer used for its original intended purpose".

Comment 4: "Although all of these vital issues have been identified in this application, the actual/real impact cannot be reasonably and responsibly identified when and until all supporting testing studies and permits have been completed and properly filed (please refer to D-13 of DOT Application)."

NHDES Response: Please see NHDES response to Comment 2 above.

C. Substantive Changes Made Since the Draft Water Quality Certification Was Issued for Comment

The following is a list of substantive changes made to the Water Quality Certification since a draft of the Certification was issued for public comment:

C-56 and D-14: Updated to indicate that the NHDES Wetlands Bureau issued an approval letter for the Wetlands permit on May 5, 2020.

D-32: Typed Table 4: Chloride BMPs (from Table 9 in Appendix G of the FEIS) so that it would be compliant with the Americans with Disability Act (ADA). In draft WQC, the table was inserted as an object which is not ADA compliant without a large amount of explanation.

D-34: Added language indicating that the Applicant and NHDES are committed to continue coordination to help ensure the Activity complies with NH surface water quality standards.

E-8: Made the list of Design/Build contract documents, needed by NHDES to review to ensure the project design will comply with NH surface water standards, more specific to better enable the Contractor to provide a cost for this work. The Condition in the draft water quality certification was more general.

E-11 and Attachment A: Revised this Condition, (which references Attachment A at the end of the Certification) to focus on BMP inspections, turbidity monitoring of discharges to sensitive waters, and reporting of results.

E-12: Added a new Condition requiring the Applicant to use an Independent Environmental Monitor (Monitor) to help ensure water quality standards are met.

Attachment
Mr. Ray Breslin's Comments

APRIL 10 2020

SUBJECT: 401 WATER QUALITY CERTIFICATION
DRAFT WQCE # 2019-4011-002
NEW HAMPSHIRE SURFACE WATER
QUALITY STANDARDS, INCLUDING
THE PROVISIONS OF N.H. RSA 485-A:8
AND N.H. CODE OF ADMINISTRATIVE
RULES ENV-Wq 1700

TO: NEW HAMPSHIRE WATER COUNCIL
ATT: THOMAS E. O'DONOVAN P.E.

GREGG COMSTOCK, NHDDES

CC: MICHAEL HICKS, - US ARMY CORPS OF ENGINEERS
BETH ALFAT, - USEPA
CAROL HENDERSON, - NHDGD
DAVID CARON, - DERRY TOWN ADMINISTRATOR
KEVIN SMITH, - LONDONBERRY TOWN MANAGER

FROM: RAY BRESLIN
13 GARY DRIVE
LONDONBERRY NH 03053
EMAIL: SHIRAY50@yahoo.com
603-548-5700

- 1.) THE (PROPOSED) PROJECT (I.E. FACILITY) DESCRIBED IN SECTION 0-1 OF THE ABOVE REFERENCED DOCUMENT (DRAFT WQC # 2019-4041-002) HAS NOT BEEN SHOWN TO MEET THE INTENDED PURPOSE OF REDUCING-HIGHWAY TRAFFIC OFF I-93 ENTERING DOWNTOWN DERRY AND PROMOTING PUBLIC SAFETY.
- 2.) THE 401 CERTIFICATION APPROVAL BY THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES SHOULD NOT PROCEED FORWARD WITHOUT THOROUGH AND COMPLETE FINDING BY ARMY CORPS OF ENGINEERS, MS-4 STORMWATER MANAGEMENT PLAN, PUBLIC INVOLVEMENT AND PARTICIPATION, WATER QUALITY BASED EFFLUENT LIMITATIONS, AND MANY OTHER RULES REGULATIONS AND LAWS WHICH HAVE BEEN IDENTIFIED AND "CALLED OUT" IN THIS DRAFT APPLICATION.
- 3.) A PROJECT OF THIS MAGNITUDE WILL IN FACT HAVE GREAT IMPACT, NOT ONLY THE MANAGEMENT OF VEHICULAR TRAFFIC BUT ALSO, HEALTH AND SAFETY IMPACTS DUE TO POLLUTION FROM ADDITIONAL TRAFFIC BURDEN, ADDED INTERSTATE 93 BUT ALSO ADDITIONAL ENVIRONMENTAL IMPACT TO WETLANDS, GROUNDWATER SURFACE WATERS, AND WILDLIFE.

(EXIT)

4.) ALTHOUGH ALL OF THESE VERY VITAL ISSUES HAD BEEN IDENTIFIED IN THIS APPLICATION THE ACTUAL / REAL IMPACT CAN NOT BE REASONABLY AND RESPONSIBLY IDENTIFIED WHEN AND UNTIL ALL SUPPORTING TESTING - STUDIES AND PERMITS HAVE BEEN COMPLETED AND PROPERLY FILED.

(PLEASE REFER TO D-13 OF DOT APPLICATION)

I THEREFOR BELIEVE THIS APPLICATION BY NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION (DRAFT WOC #2019-404400) DOES NOT JUSTIFY APPROVAL DUE TO ABOVE NOTED STATEMENT.

WE AS CITIZENS AND TAXPAYER OF NEW HAMPSHIRE HAVE THE RESPONSIBILITY AND THE RIGHT TO SPEAK AND BE HEARD REGARDING THIS VERY COSTLY PROPOSED PROJECT.

HERE IN THE TOWN OF LONDONDERRY WE ARE BEING IMPACTED BY MULTIPLE PROJECTS WHICH GREATLY IMPACT OUR MOST VITAL NATURAL RESOURCES.

WE ARE ALSO NOW HAVING - MANAGE OUR DAILY LIVES WITH THE UNPRESIDENTED PANDEMIC.

THE TOWN OF LONDONDEARY IS ATTEMPTING
TO MANAGE AND PROTECT PRECIOUS WATER
RESOURCE BY WORKING ON WATER QUALITY
AND WATER QUANTITY STUDIES,

ALSO WE ARE REQUIRED BY LAW TO
MANAGE STORMWATER DISCHARGE
(AS PER 40CFR 122.36)

LONDONDEARY NOW AND LOOKING FORWARD
IS GOING TO BE FORCED TO ADDRESS VERY
SERIOUS WATER SUPPLY ISSUES.

IN ADDITION THE CITIZENS AND TAXPAYERS
ARE CURRENTLY AND MONTHS AND YEARS
AHEAD MAY UNFORTUNATELY NOT KNOWING
WHERE THEIR NEXT PAYCHECK IS COMING
FROM.

PLEASE BEFORE PROCEEDING WITH THIS
"CERTIFICATION OF APPROVAL" TAKE
FULLY INTO ACCOUNT THE TOTAL
IMPACT OF HEALTH, SAFETY, ENVIRON-
MENTAL AND COST.

IS IT, UNDER TODAY'S CURRENT FINANCIAL
UNKNOWN CONDITIONS REASONABLE TO
PROCEED WITH A PROJECTED
\$96,000,000. MILLION DOLLAR PROJECT
WHICH IS STILL QUESTIONABLE IN REGARDS
TO RESULTING IN A BENEFICIAL AND
POSITIVE RESULTS?

PLEASE INCLUDE AS PART OF PUBLIC RECORD