

Water Quality Certificate # 2001-001.1

September 5, 2014

Todd Selig, Town Administrator
Town of Durham
15 Newmarket Road
Durham, NH 03824

RE: Amended Section 401 Water Quality Certification for Town of Durham withdrawal at Lamprey River, Durham, New Hampshire, Water Quality Certificate File # 2001-001.1, Wetlands Bureau Permit #2000-00506.

A. INTRODUCTION

The original above-referenced project (the Project) at Durham consisted of modifications to an existing pump station and installation of new force main piping for transfer of water from the Lamprey River in the Wiswall Dam impoundment to the Durham public water system. The purpose of the Project was to improve the operation of the existing raw water supply system from the Lamprey River to the Durham Water Treatment Plant by adding a direct connection to the plant. The addition of a direct connection eliminated the practice of discharging raw water from the Lamprey River to the Oyster River approximately eight thousand feet above the water treatment plant intake. This allows for more efficient use of the available water resources, especially during drought conditions.

In addition to constructing the pipe connection between the Lamprey River and the water treatment plant, the recently prepared Water Management Plan will be implemented to improve management of the available water sources for the Durham public water supply. A significant component of the Plan will be the management of water supply demand during periods of limited surface water availability due to drought conditions. Accordingly, this amendment changes the conditions required under the original Section 401 Water Quality Certificate (# 2001-001).

The Project is further described in the New Hampshire Department of Environmental Services (DES) Wetlands Bureau file #2000-00506.

The Town of Durham (the Applicant) was granted a Wetlands permit under State of New Hampshire Wetland Rule.

The Water Quality Certificate # 2001-001 for the Town of Durham withdrawal at Lamprey River was signed on April 3, 2001. The document herein amends and replaces Water Quality Certificate #2001-001 issued on April 3, 2001.

B. STATEMENT OF FACTS AND LAW

1. The Corps of Engineers has issued a State of New Hampshire Programmatic General Permit under under Section 404 of the federal Clean Water Act (The Act) (33 U.S.C.

- 1344) that allows permits issued under State of New Hampshire Wetland to serve as a federal permit under Section 404.
2. Section 401 of the Act requires state certification that construction and operation of the Project will comply with Water Quality Standards before a federal permit may be issued for all projects that may result in a discharge to waters of the United States. DES implements this provision of the Act under the authority of RSA 485-A:12, III.
 3. Env-Wq 1700, Surface Water Quality Regulations fulfills the requirements of Section 401 of the Act that New Hampshire adopt water quality standards consistent with the provisions of the Act.
 4. Env-Wq 1701.02 provides that the water quality standards “shall apply to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who undertakes any other activity that affects the beneficial uses of the level of water quality of surface waters.”
 5. Env-Wq 1702.18 defines discharge as:
 - (a) The addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters, either directly or indirectly through the groundwater, whether done intentionally, unintentionally, negligently, or otherwise; or
 - (b) The placing of a pollutant in a location where the pollutant is likely to enter surface waters.
 6. Construction activity in a wetland constitutes a discharge under the definitions of Env-Wq 1702.18(b).
 7. Env-Wq 1702.46 defines surface waters of the state as perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial and waters of the United States as defined in 40 CFR 122.2. The term includes wetlands.
 8. The wetlands adjacent to the Project, including the wetlands subject to dredge and fill, are surface waters of the state under Env-Wq 1702.46.
 9. Env-Wq 1703.01, Water use Classifications, provides that:
 - (b) All surface waters shall be restored to meet the water quality criteria for their designated classification including existing and designated uses, and to maintain the chemical, physical, and biological integrity of surface waters

(c) All surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters.

(d) Unless the flows are caused by naturally occurring conditions, surface water quantity shall be maintained at levels adequate to protect existing and designated uses.

10. Env-Wq 1703.19, Biological and Aquatic Community Integrity, provides that:

(a) The surface waters shall support and maintain a balanced, integrated and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region.

(b) Differences from naturally occurring conditions shall be limited to non-detrimental differences in community structure and function.

11. DES issued a draft amended certification for public comment from July 25, 2014 to August 29, 2014. No comments were received.

C. FINDINGS

1. Construction and operation of the Project requires Water Quality Certification under Section 401 of the act.
2. The dredge and fill activities associated with the project must meet the requirements set forth in Wetlands Bureau Permit #2000-00506 in order to meet water quality standards.
3. On August 30, 2013, DES adopted the Lamprey River Water Management Plan, which sets forth how the protected instream flows established under Env-Wq 1905 shall be maintained. According to Env-Wq 1907.02, "Protected instream flows established by the commissioner shall serve as water quality criteria for the purpose of administration of water quality standards by the department under the federal Clean Water Act."

D. WATER QUALITY CERTIFICATION CONDITIONS

1. The project shall conform to the requirements set forth in Wetlands Bureau Permit #2000-00506.

E. WATER QUALITY CERTIFICATION APPROVAL

Based on the above determinations and conditions, construction and operation of the Project will not violate surface water quality standards, and DES hereby issues Water Quality Certification under Section 401 of the Act for the Project, subject to the above conditions.

F. APPEAL

Any person aggrieved by this decision may appeal to the N.H. Water Council (“Council”) by filing an appeal that meets the requirements specified in RSA 21-O:14 and the rules adopted by the Council, Env-WC 100-200. The appeal must be filed directly with the Council within 30 days of the date of this decision and must set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council’s rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/water/index.htm>). Copies of the rules also are available from the DES Public Information Center at (603) 271-2975.

If you have questions regarding this Certification, please contact Owen David at (603) 271-0699 or Owen.David@des.nh.gov.



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cc: Ted Diers, DES
Sarah Pillsbury, DES
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