



June 28, 2012

New Hampshire Department of Environmental Services
Response to Comments and List of Substantive Changes for
Section 401 WQC # 2012-404I-002

Activity Name: Improvement Dredging of Hampton Harbor
Activity Location: Seabrook and Hampton, New Hampshire
Affected Surface Waters: Hampton Harbor
Owner / Applicant: U.S. Army Corps of Engineers

On June 7, 2012, the New Hampshire Department of Environmental Services (DES) released a draft water quality certification (WQC # 2012-404I-002) for public comment regarding proposed improvement dredging of Hampton Harbor by the U.S. Army Corps of Engineers. The public comment period ended on June 27, 2012. Two comments were received. DES' response to comments and list of substantive changes made to the final certification (as compared to the draft) are provided below. In most cases, comments have been paraphrased. A copy of the original comments may be obtained from DES upon request (contact Owen David at Owen.David@des.nh.gov).

RESPONSE TO COMMENTS

A. Comments received from Duncan Mellor, PE, Waterfront Engineers LLC

Comment A.1: Please provide documentation that DES has a consistent policy with regard to dredging turbidity. Please clarify why municipal & private dredging projects are apparently held to a higher standard than state/federal dredging projects in NH.

DES Response: Section 401 Water Quality Certifications (WQC) are required in accordance with RSA 485-A:12, III and Section 401 of the federal Clean Water Act. In general, prior to construction or operation of any activity that requires a federal permit or license which may involve a discharge into navigable waters, the applicant for the federal license or permit must obtain a 401 WQC from DES which certifies that such discharge(s) will comply with state water quality standards (see <http://des.nh.gov/organization/divisions/water/wmb/section401/index.htm> for more details). As part of the certifications, DES may include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide assurance that the proposed discharge complies with applicable surface water quality standards. For more details and links to the applicable laws and regulations, see <http://des.nh.gov/organization/divisions/water/wmb/section401/index.htm>.

Each application for 401 WQC is evaluated to determine if the project is expected to meet water quality standards. Numeric surface water quality standards for turbidity are included in Env-Wq 1703.11 of the

NH Surface Water Quality Regulations. The turbidity standards do not specify or require BMPs or specific monitoring requirements. When 401 WQCs are required for dredging projects, DES considers several factors when making decisions regarding turbidity related conditions. These include, but are not limited to, the purpose, location, duration and timing of the project; the gradation (fine vs. sandy or coarse grade), quality (clean or contaminated), and quantity of the dredged material; the extent and potential impact to any sensitive resources in the area; the method of dredging and disposal of dredged material; and information provided by other resource/regulatory agencies. Consideration is also given to any other permits which may be required and conditions that they will include. Regardless of the type of project (private, municipal, state or federal), DES does its best to make such decisions regarding 401 WQC turbidity related conditions in a consistent and reasonable manner that is protective of water quality.

Lastly, it is worth noting that as a result of public comment received at the 2011 triennial review of New Hampshire's surface water quality standards, DES is considering possible changes to the turbidity criteria. This includes consideration of how long aquatic organisms can tolerate various levels of turbidity (i.e., the duration of exposure). These discussions are being held through the Water Quality Standards Advisory Committee (WQSAC) which meets approximately four times per year at DES. The meetings are open to the public. For more information, please see <http://des.nh.gov/organization/divisions/water/wmb/wqs/index.htm>.

Comment A.2: Why is turbidity monitoring not being required in the Hampton Harbor dredging? Why are turbidity BMP's not being required?

DES Response: DES based its decision on the information provided with the 401 WQC application which included an Environmental Assessment (EA). For example, section 5.2 of the EA reports that, sediments consist of clean sand with less than one (1) percent fines. The method of dredging is proposed to be hydraulic pipeline which uses suction pumps to loosen and remove the sediment from the bottom. Given the sandy nature of the dredged material, and the proposed dredging method, the turbidity effects are expected to be relatively short term and localized in the dredging area (section 6.2 of the EA).

With regards to quality, the sediments are considered relatively clean based on the low level of fines (less than 1 percent) and the site is not located near any significant sources of contaminants (section 5.2 of the EA). In general sandy sediments with less than 15 percent fines are much less likely to contain any significant levels of contaminants (section 5.2 of the EA).

Based primarily on the above and, since no comments on the draft 401 WQC were received from other resource agencies including the NH Fish and Game Department, the US Fish and Wildlife Service (USFWS), the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (USEPA), DES did not include any project specific conditions relative to the control and monitoring of turbidity in the draft WQC.

Should turbidity unexpectedly become a significant issue, DES has the authority to require the Applicant to implement measures necessary to control turbidity.

Comment A.3: Why was turbidity creation not acknowledged on the Simplex Shoal dredging project at the point of dredging using a trailing hopper suction dredge with turbidity overflow on the hopper dredge?

DES Response: Most dredge and fill operations require a federal section 404 permit from the Army Corps of Engineers (see DES Response to Comment A.1 for more detail). However, per Title 33 §323.2d of the Clean Water Act, maintenance dredging, such as that proposed for the Simplex Shoal dredging

project on the Piscataqua River, did not require a federal Section 404 permit for the dredging operation. It did, however, require a section 404 permit for the disposal of the dredged material. Because the disposal site is in Maine, a 401 WQC was required from Maine DEP (which they received) and not from New Hampshire. Consequently, since DES did not have the authority to issue a 401 WQC for the proposed project, turbidity related conditions could not be included in a 401 WQC.

Comment A.4: Why is the proposed dredging not within the standard NH dredge window?

DES Response: The dredge window for the Hampton Harbor project differs from the state's standard dredge window (Nov. 15 – March 15) due to concerns regarding potential impacts to winter flounder which is a resident in the Hampton Harbor estuary during that period of the year. The proposed dredge window for this project, which was agreed upon by the NH Fish and Game Department and the National Marine Fisheries Service, is meant to minimize potential adverse impacts to winter flounder.

B. Comments received from the Town of Hampton Board of Selectmen

Comment B.1: The disposal plan for distribution of dredged materials calls for deposition of dredged materials on Seabrook Beach, Middle Ground in the Seabrook Harbor and Hampton Beach State Park. The plan apparently does not include the Hampton Town Beach known as Sun Valley which has experienced erosion due to continuing wave and storm action. This has narrowed the Atlantic facing beach and reduced the area available for Piping Plovers (an endangered species) to nest and reproduce. The Board requests that the disposition plan for distribution of dredging materials be changed so that Sun Valley's Atlantic facing beach can be replenished to protect properties and provide re-established habitat for local endangered species.

DES Response: This comment was forwarded to the U.S. Army Corps of Engineers (applicant for the 401 Water Quality Certification) for consideration.

LIST OF SUBSTANTIVE CHANGES

The following is a list of substantive changes made to the draft certification issued for public comment. These revisions are included in the final certification.

1. Revised the front page, and sections C-23 and E-4 to reflect that DES Wetlands Bureau # 2012-01073 has been issued.
2. Updated section C-25 regarding the public notification process and that DES' response to comments may be found on the DES Water Quality Certification website.
3. Updated assessment unit tables in sections D-5 and D-7.
4. Added the following to section D-10: " This method of dredging uses suction pumps to loosen and remove the sediment from the bottom. Given the sandy nature of the dredged material (see D-8), and the proposed dredging method, the turbidity effects are expected to be relatively short term and localized in the dredging area. Should turbidity unexpectedly become a significant issue, DES has the authority to require the Applicant to implement measures necessary to control turbidity."