

New Hampshire Department of Environmental Services
Substantive Changes
for Section 401 Water Quality Certification WQC 2021-404I-004
Isle of Shoals Breakwater Maintenance and Repair Project
April 13, 2022

From March 4, 2022 to April 6, 2022, the New Hampshire Department of Environmental Services (NHDES) posted for public comment the draft water quality certification (WQC or certification) for the Isle of Shoals Breakwater Maintenance and Repair Project (Project). The certification is required under Section 401 of the federal Clean Water Act. NHDES did not receive comments.

On April 13, 2022, NHDES granted with conditions a final certification for the Project (WQC 2021-404I-004). The following is a description of substantive changes that NHDES made to the final certification since the draft certification was issued for public comment. A marked-up version of the draft certification showing all changes to the draft certification is available from NHDES upon request.

On July 13, 2020, the U.S. Environmental Protection Agency (US EPA) published final revisions to Code of Federal Regulations, Title 40, Part 121, titled "State Certification of Activities Requiring a Federal License or Permit" (the 2020 Clean Water Act Section 401 Certification Rule). On October 21, 2021, the U.S. District Court for the Northern District of California issued an order remanding and vacating EPA's 2020 Clean Water Act Section 401 Certification Rule. However, on April 6, 2022, the U.S. Supreme Court reinstated the 2020 Clean Water Act Section 401 Certification Rule. Because the 2020 Clean Water Act Section 401 Certification Rule was reinstated after the draft certification was issued for public comment, NHDES edited section B. Decision and paragraphs C-3, C-4, and C-5 of the certification.

In March 2022, the U.S. Army Corps of Engineers, New England District (the Applicant), informed NHDES that the Project would be conducted in years during which funding is available for the Project and that the Applicant anticipated starting construction of the Project in April 2023. Therefore, NHDES added paragraphs C-53 and C-54, and edited paragraph D-27 of the certification to address this change.

On March 14, 2022, US EPA approved New Hampshire's 2020/2022 Section 303(d) List for impaired waters. For this reason, and because NHDES believed certain editorial changes were needed, NHDES edited paragraphs C-45 and D-15 of the certification to address this change.

Other Differences Between The Final and Draft Certification

In addition to the revisions noted in the above, other changes made to the final certification since the draft certification was issued for public notice are not considered substantive. Examples include minor format revisions, grammatical corrections, replacement of the word "DRAFT" with "FINAL" in the header, changing the "Decision" status on the first page from "Pending" to "Granted with Conditions", adding a date of issuance and signature, updating cross-references to paragraphs due to substantive changes, adding a table of contents, etc.