

New Hampshire Department of Environmental Services  
Substantive Changes  
for Section 401 Water Quality Certification WQC 2021-404I-005  
Hampton Harbor North Jetty Repair and Reconstruction Project  
May 18, 2022

From April 1, 2022 to May 2, 2022, the New Hampshire Department of Environmental Services (NHDES) posted for public comment the draft water quality certification (WQC or Certification) for the Hampton Harbor North Jetty Repair and Reconstruction Project (Project). The certification is required under Section 401 of the federal Clean Water Act. NHDES did not receive comments during the public comment period.

On May 18, 2022, NHDES granted with conditions a final certification No. WQC 2021-404I-005 for the Project. 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) which became effective on September 11, 2020. 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 the following paragraphs of the certification to reflect this change: B. *Decision*, C-3 through C-8, D-6, D-7, D-17 through D-23, and D-25.

**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, removing the word “DRAFT” in the header and watermark, 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.