NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits
625 Broadway, 4th Floor, Albany, New York 12233-1750
P: (518) 402-9167 | F: (518) 402-9168 | deppermitting@dec.ny.gov
www.dec.ny.gov

May 15, 2019

Mr. Joseph Dean
Manager, Environmental Health and Safety
Transcontinental Gas Pipe Line Company, LLC
2800 Post Oak Boulevard (77056)
P.O. Box 1396
Houston, TX 77251-1396

Re: Notice of Denial of Water Quality Certification
Transcontinental Gas Pipe Line Company, LLC
Northeast Supply Enhancement Project
DEC ID: 2-9902-00109/00004 – Water Quality Certification

Dear Mr. Dean:

On May 16, 2018, Transcontinental Gas Pipe Line Company, LLC ("Transco") submitted to the New York State Department of Environmental Conservation ("NYSDEC" or "Department") a Joint Application for Permits ("Joint Application") for the proposed Northeast Supply Enhancement Project ("Project"). As part of the Joint Application, Transco applied for a federal Clean Water Act ("CWA") § 401[1] Water Quality Certification ("WQC") for the Project ("WQC Application").[2] Based on its review of the Joint Application and supplemental information provided by Transco, the record before the Federal Energy Regulatory Commission ("FERC") regarding the Project,[3] and the over 14,000 public comments received on behalf of over 45,000 individuals or organizations during the Department's public comment period, the Department hereby provides notice to Transco that the WQC Application is denied without prejudice.[4] As required by Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 621.10, a statement of the Department's basis for this denial without prejudice is provided below.

---

[1] 33 U.S.C. § 1341.
[2] Transco originally submitted a Joint Application on June 30, 2017, which included applications for Endangered/Threatened Species (Part 182 Incidental Take Permit), Environmental Conservation Law Article 15 Excavation & Fill in Navigable Waters permit, and a WQC. The Department denied the original June 30, 2017 WQC application without prejudice on April 20, 2018. Transco subsequently submitted a new WQC application on May 16, 2018. The Part 182 Incidental Take Permit and Environmental Conservation Law Article 15 Excavation & Fill in Navigable Waters applications remain pending before the Department and are not the subject of this letter.
[3] See FERC Docket No. CP17-101.
[4] Separate from the Joint Application, Transco applied on June 21, 2018 for a State Pollutant Discharge Elimination System ("SPDES") permit to discharge hydrostatic test discharge water into the Atlantic Ocean. The SPDES permit application remains pending before the Department and is not the subject of this letter.

Project Background and FERC Application

Among other components in Pennsylvania and New Jersey, the Project would involve the installation of approximately 17.4 miles of 26-inch diameter natural gas loop pipeline within New York State waters, to be known as the Raritan Bay Loop. The Raritan Bay Loop would be entirely underwater from New Jersey through Richmond and Queens Counties and would connect to the existing Rockaway Delivery Lateral in Queens, New York.

On March 27, 2017, Transco submitted to FERC an application for a Certificate of Public Convenience and Necessity ("Certificate") under Section 7(c) of the Natural Gas Act[5] for construction and operation of the Project.[6] FERC issued a Draft Environmental Impact Statement ("DEIS") on March 23, 2018. The Department submitted comments to FERC regarding the DEIS on May 14, 2018. FERC issued a Final Environmental Impact Statement ("FEIS") for the Project on January 25, 2019. The FEIS outlined some of the numerous environmental impacts FERC anticipates from the construction and operation of the Project and recommended certain conditions to mitigate some of the impacts. On May 3, 2019, FERC issued Transco a Certificate for the Project.[7] FERC issued the Certificate subject to certain environmental conditions recommended in the FEIS. According to FERC, these conditions would mitigate many of the environmental impacts associated with the Project.

WQC Application and Procedural Background

Regardless of FERC's issuance of a Certificate for the Project, prior to commencing construction of the Raritan Bay Loop portion of the Project in New York State, Transco must obtain a WQC from the Department. Pursuant to Section 401 of the CWA,[8] no federal license for a project can be granted until a WQC is issued or waived by the relevant state agency, which in this case is the Department. Likewise, pursuant to Section 401 of the CWA,[9] no federal license for a project can be granted if a WQC is denied.

For the Project, the Certificate issued by FERC notes the need for a WQC from the Department. For example, to obtain authorization to commence construction of the Project, Transco must provide FERC with "documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof)."[10] The FEIS issued by FERC acknowledges that among such authorizations is a WQC from the Department.[11]

---

[5] 15 U.S.C. § 717f(c).
[6] See FERC Docket No. CP17-101.
[7] FERC Order Issuing Certificate, 167 FERC ¶ 61,110 (May 3, 2019) ("FERC Order").
[8] 33 U.S.C. § 1341.
[9] Id.
[10] FERC Order at 41, Appx. A, Environmental Conditions at ¶ 10.
[11] FEIS at 1-19, Table 1.5-1.

As noted above, on June 30, 2017, Transco originally submitted to the Department a Joint Application for the Project. The Department denied the original June 30, 2017 WQC application without prejudice on April 20, 2018, due to incomplete information and an ongoing environmental review by FERC.[12] On May 16, 2018, Transco submitted to the Department a new WQC Application for the Project that included additional information. This new WQC Application was then supplemented on multiple occasions with further additional information, including in response to requests from NYSDEC.[13]

Pursuant to 6 NYCRR § 621.7, the Department determined the new WQC Application was complete on January 30, 2019 and subsequently issued a Notice of Complete Application/Notice of Public Comment Hearing/Notice of Public Comment Period.[14] Pursuant to this combined notice, the public comment period initially would have closed on March 1, 2019. On February 13, 2019, the Department issued a Notice of Supplemental Public Comment Hearing and Extension of Public Comments, which extended the public comment period until March 15, 2019. Pursuant to 6 NYCRR § 621.8, legislative public comment hearings were held on February 26, 2019 in Brooklyn, and March 6, 2019 in Rockaway Park.

Approximately 167 oral public comments were received at the public comment hearings and over 14,000 written public comments were received via email and letter on behalf of over 45,000 individuals or organizations prior to the end of the public comment period on March 15, 2019. The vast majority of the public comments received on the WQC Application opposed the issuance of a WQC for the Project, including because of the anticipated water quality and other impacts that would result from the construction and operation of the Project. In fact, of the over 45,000 individuals or organizations that submitted comments to the Department regarding the WQC Application, well over 90 percent opposed the Department's issuance of a WQC.

Based on the Department's review of the WQC Application for the Raritan Bay Loop portion of the Project, including all supplemental materials, review of the over 14,000 oral and written public comments received on the WQC Application for the Project, and review of the FEIS and other record materials associated with the Project, the Department has determined that, as presently conceived, the construction of the Project would likely have significant water quality impacts in New York State. This

---

[12] See Notice of Denial/Notice of Incomplete Application, April 20, 2018 ("2018 WQC Denial"), available at https://www.dec.ny.gov/docs/water_pdf/transcodenial42018.pdf. As stated in the 2018 WQC Denial, FERC's environmental review of the Project, conducted pursuant to the National Environmental Policy Act ("NEPA"), takes the place of an environmental review that would otherwise be conducted under the State Environmental Quality Review Act (Environmental Conservation Law Article 8). FERC's NEPA review of the Project was incomplete at the time of the 2018 WQC Denial. As mentioned above, notwithstanding the sufficiency or lack thereof of FERC's environmental review, FERC has since issued an FEIS for the Project and issued the Certificate for the Project.

[13] See, e.g., Supplemental Information Filing #A-1, dated May 31, 2018 and Supplemental Filing #A-2, dated October 24, 2018.

[14] Even once the Department determines that an application is complete, it may still request, at any time, additional information necessary to review an application. 6 NYCRR § 621.4. See also 6 NYCRR §§ 621.6(d) and 621.14(b).

includes significant water quality impacts from the resuspension of sediments and other contaminants, including mercury and copper. In addition, as currently proposed, the Project would cause impacts to habitats due to the disturbance of shellfish beds and other benthic resources.

To obtain a WQC from the Department, an applicant must, among other requirements, demonstrate compliance with State water quality standards. See 6 NYCRR § 608.9. As explained further below, based on the information currently available, the Department is unable to determine that Transco has demonstrated that construction and operation of the Project would comply with applicable water quality standards. Therefore, as explained further below, the Department denies the WQC Application without prejudice.

Basis for Denial

The Department denies the WQC Application without prejudice based on Transco's inability to demonstrate the Project's compliance with all applicable water quality standards. Because the Department does not have reasonable assurances that construction and operation of the Project would meet all applicable water quality standards, it is denying the WQC Application without prejudice. Most notably, according to Transco's own submissions and as acknowledged by FERC, water quality standards for both mercury and copper are projected to be exceeded in certain areas in New York State waters.[15] In addition, at this time, due in part to the Department's ongoing consideration of public comments received on the WQC Application and of the Project's water quality impacts, Transco and the Department have not finalized appropriate requirements to mitigate for impacts to water quality, shellfish beds, other benthic resources, and other relevant environmental impacts. Should Transco ultimately provide sufficient documentation to give the Department reasonable assurances that construction and operation of the Project would meet all applicable water quality standards, the Department would first need to conclude that mitigation of these impacts is possible, and, if so, that such mitigation is sufficient.

Statutory and Regulatory Basis

The Department, in accordance with CWA § 401,[16] is required to certify that a facility meets State water quality standards prior to a federal agency issuing a federal license or permit in conjunction with its proposed operation. An applicant for a WQC must provide the Department sufficient information to demonstrate compliance with the State's water quality regulations found at 6 NYCRR § 608.9 (Water Quality Certifications). Pursuant to this regulation, an applicant must demonstrate compliance

[15] See FERC Order at 19 ¶ 49 ("For some of the modeled scenarios, water quality standards for mercury and copper would not be met at the edge of the mixing zone."); FEIS at ES-12, and 4-122-4-123, Table 4.5.2-8; and "Responses to NYSDEC Request for Information dated September 14, 2018" (Supplemental Informational Filing #A-2), Table 3-3 "Summary of Addendum A Contaminant Modeling Results – October 2018."

[16] 33 U.S.C. § 1341.

with §§ 301, 302, 303, 306 and 307 of the CWA, as implemented by applicable water quality standards set forth in 6 NYCRR §§ 701,702,703, 704 and 750, and State statutes, regulations and criteria otherwise applicable to such activities. Denial of a WQC may occur, for example, when an application fails to contain sufficient information to demonstrate compliance with the above-stated State water quality standards and other applicable State statutes and regulations, or when an application contains information that projects construction and operation of a project may violate or exceed an applicable water quality standard.

Applicable Water Quality Standards

As described above, pursuant to 6 NYCRR § 608.9, Transco must demonstrate that the Project will comply with all applicable water quality standards in order for the Department to be able to issue a WQC for the Project. Among these water quality standards are both narrative and numerical standards, which in turn depend on the regulatory classification of the particular waterbody or waterbodies at issue. See generally 6 NYCRR Part 703. The waters that would be crossed by the Project are primarily classified by the Department as either Class SA or Class SB saline surface waters. See 6 NYCRR § 890.6.[17] The best usages of Class SA saline surface waters "are shellfishing for market purposes, primary and secondary contract recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival." 6 NYCRR § 701.10.[18] The best usages of Class SB saline surface waters "are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival." 6 NYCRR § 701.11.[19]

Numerical water quality standards are established by the Department for particular substances and waterbody classifications. For copper, the aquatic chronic standard for SA and SB waters is 3.4 ug/L except in the New York/New Jersey harbor where it is 5.6 ug/L. 6 NYCRR § 703.5, Table 1. For mercury, the regulatory health fish consumption (H(FC)) water quality standard is 0.70 ng/L (7X10-4 ug/L) dissolved. Id. The applicable standard for mercury relevant to the Project, however, is higher and is based on a multiple discharge variance ("MDV") procedure developed according to 6 NYCRR § 702.17(h).[20] The resulting mercury water quality standard variance concentration is 50 ng/L or 0.05 ug/L total mercury. Along with other applicable water standards, the construction and operation of the Project must comply with these numerical standards for copper and mercury.

Copper is a critical contaminant that is closely regulated in the environment due to its potential to have drastic and immediate effect on aquatic life. Currently, Raritan Bay supports a healthy abundance of diverse resident and migratory marine species.

---

[17] See also FEIS at 4-50.
[18] See also id.
[19] See also id.
[20] See NYSDEC Technical & Operation Guidance Series (TOGS) 1.3.10 Mercury - available at https://www.dec.ny.gov/docs/water_pdf/togs1310final.pdf.

Suspending copper laden sediments will harm, inhibit reproduction, or kill aquatic life in the bay resulting in an impaired fishing use in Raritan Bay.

Similarly, mercury is a metal that contaminates the environment from human activities and resuspension of mercury in a fishery could lead to public health impacts. Mercury accumulates in fish with highest levels found in fish that live longer and eat other fish. Mercury can cause effects on the nervous system with exposure for children and unborn babies being the most concerning because their nervous systems are still developing. Studies have shown that people who ate fish that contained large amounts of mercury had permanent damage to the brain, kidneys and fetus. Some research on populations that eat a large amount of fish finds that mercury can affect children's memory, attention and language development.

Water Quality Standard Exceedances for Mercury and Copper

Transco conducted contaminant modeling for various compounds, including copper and mercury. This modeling projected concentrations of compounds at the edge of a 500-foot mixing zone at various locations. As acknowledged by FERC in both the FEIS and the FERC Order, based on a review of the modeling information submitted by Transco itself, "[f]or some of the modeled scenarios, water quality standards for mercury and copper would not be met at the edge of the mixing zone."[21]

In particular, exceedances of the numerical water quality standard variance concentration for mercury are projected by Transco to occur at the edge of a 500-foot mixing zone within the hard clam Special Permit Harvest Area bed area at Vibracore Sites VC 6, VC16, and VC17.[22] Within this Special Permit Harvest Area, the highest projected concentration for mercury is 0.1 ug/L, which is double the variance-based water quality standard of 0.05 ug/L.[23] In addition, VC37 and VC38 are also located in an area with hard clam beds and also show exceedances to the variance based water quality standard for mercury. Overall, the modeling conducted by Transco projects exceedances for mercury by as much as more than double the variance-based water quality standard of 0.05 ug/L, with a maximum projected concentration of 0.12 ug/L.[24] This maximum projected mercury concentration of 0.12 ug/L at site VC 37 is already based on a slower assumed dredging rate than that assumed for the other sites.[25] Moreover, as described above, the variance concentration is already significantly higher than the regulatory water quality standards for mercury in 6 NYCRR § 703.5.

Similarly, exceedances of the numerical water quality standards for copper are projected by Transco to occur at the edge of a 500-foot mixing zone within the hard

---

[21] FEIS at ES-12; FERC Order at 19, ¶ 49.
[22] Supplemental Informational Filing #A-2, Table 3-3 "Summary of Addendum A Contaminant Modeling Results – October 2018." See also FEIS at ES-12, 4-122 to 4-123, Table 4.5.2-8; FERC Order at 19, ¶ 49.
[23] Id.
[24] Id.
[25] FEIS at 4-122.

clam bed area at Vibracore Sites VC 7 and VC16.[26] The modeling conducted by Transco projects exceedances of the copper water quality standard of 5.6 ug/L, with a maximum projected concentration of 8.0 ug/L.[27]

Use of 500-foot Mixing Zone

All of the water quality standard exceedances projected by Transco are based on the use of a 500-foot mixing zone. In other words, Transco's own modeling projects that construction of the Project would lead to violations of numerical water quality standards at certain locations, even at the edge of a 500-foot mixing zone. While 500-feet may be the default size of a mixing zone, the Department has discretion to reduce the size of the relevant mixing zone, including based on case-specific factors such as the nature of sediment contamination, the proximity of sensitive habitats, and important biological resources.[28] The Project is proposed to be located in an important area for shellfish propagation and survival. In particular, Raritan Bay is one of last known highly productive hard clam beds in the State, and its benthic habitat is particularly critical and sensitive. Thus, the Department could assign a mixing zone less than 500-feet. This would likely lead to additional and greater exceedances of mercury and copper water quality standards and may also lead to exceedances of other applicable standards. None of the material submitted by Transco to the Department or to FERC appears to address the possibility of a smaller mixing zone. In any case, while a reduced mixing zone based on the sensitive habitat in Raritan Bay would likely lead to even more exceedances, Transco projects exceedances for copper and mercury even using the default 500-foot mixing zone size.

Use of Monitoring and Reduced Dredging Rates to Demonstrate Compliance

Apparently recognizing the fact that its own modeling projects violations of certain water quality standards, as part of its application and FERC process, Transco proposes to take certain actions to address the issue. In particular, Transco and FERC both emphasize that the projected exceedances are based on conservative modeling assumptions, including conservative rates of continuous dredging. In areas where Transco's modeling projects violations of water quality standards, "Transco would use dredging rates slower than 7,500 cubic feet per hour as necessary, based on field monitoring, to help ensure compliance with the water quality standards for copper and for mercury."[29] In addition, as part of the FERC Order, FERC presupposes that the Department will issue a WQC for the Project that includes conditions to provide additional assurances that water quality standards will be met. According to FERC, the Department "will require, and Transco has committed to, monitoring of the water column

---

[26] FEIS at 4-123, Table 4.5.2-8; Supplemental Informational Filing #A-2, Table 3-3 "Summary of Addendum A Contaminant Modeling Results – October 2018."
[27] Id.
[28] See TOGS 5.1.9 9 In-Water and Riparian Management of Sediment and Dredged Material, available at: https://www.dec.ny.gov/docs/water_pdf/togs519.pdf.
[29] FEIS at ES-12; Supplemental Informational Filing #A-2 at 16.

for chemical contaminants in New York State waters to ensure compliance with state water quality standards as part of the project's [NYSDEC WQC]."[30]

But this does not provide the Department with reasonable assurances that water quality standards will be met. First, Transco appears to rely on after-the-fact corrective action taken to slow the rate of dredging, once a water quality violation has already been identified through monitoring. Second, there has not been sufficient modeling supplied to the Department regarding dredging rates slower than 7,500 cubic feet per hour. As a result, Transco has not demonstrated that slowing the rate of dredging will actually ensure no exceedances of all applicable water quality standards, including those for mercury and copper. Third, while Transco did provide some limited information regarding a modeling scenario for VC 37 and VC64. using a slower dredging rate of 7,500 cubic feet per hour, even this limited modeling scenario still projected exceedances for mercury at VC 37.[31] In short, Transco's and FERC's method of ensuring compliance with applicable water quality standards will not necessarily ensure such compliance.

Finally, Transco would also be subject to various construction work windows for the Project, including to protect certain threatened and endangered species such as Atlantic Sturgeon and Winter Flounder.[32] Applicable work windows in locations that would be crossed by the Project already result in a relatively tight construction schedule due to the presence of these and other species. As part of the Joint Application, Transco applied for a Part 182 Incidental Take Permit from the Department. As an example of an applicable construction work window, if Transco cannot comply with the following conditions for milepost ("MP") 30 to MP 35.5, then an incidental take of Atlantic Sturgeon may occur:

- No work May 1st through June 30th and no work October 1st through November 30th, with the exception of limited low-impact activities (hand jetting, spool installation, hydrotesting and drying), only.
- From March 1st through April 30th, work can occur provided that no sturgeon are present. Absence of sturgeon must be confirmed with acoustic monitoring prior to work being conducted.

There do not appear to be any buffers provided in Transco's construction schedule. As a result, even if a reduced construction rate would ensure compliance with water quality standards, it may not be possible for Transco to employ such a reduced rate while still complying with applicable construction work windows. Thus, Transco has not provided sufficient documentation to the Department that any reduction in the rate of dredging to

---

[30] FERC Order at 19 ¶ 49.

[31] Supplemental Informational Filing #A-2 at 16, 3-21-3-22 and Table 3-4 Comparison of Addendum A Modeling Results with Previous Contaminant Modeling Results.

[32] See Species-related Time-of-year (TOYR) Flexibility Requests – revised December 14, 2018 Northeast Supply Enhancement Project. See also FERC Order at 42, Appx. A Environmental Conditions, ¶ 14 (addressing requirement for Transco to provide, prior to commencing construction of the Raritan Bay Loop portion of the Project, documentation of timing restriction commitments and allowable work within these periods).

comply with water quality standards would be possible within applicable species protection work windows.

Background Information for Mercury and Copper

As part of its review of the WQC Application, the Department also considered the historical background contaminant concentrations in the area proposed to be crossed by the Project, including for mercury and copper. In particular, NYSDEC asked Transco for ambient water column concentration information.[33] Transco supplied historical water column monitoring data, including historical background contaminant concentrations in the water column.[34] Based on the information provided by Transco, the Department expects that the background concentrations for mercury and copper will be well below the water quality standards. Consequently, construction of the Project will exceed both background levels and applicable water quality standards. Furthermore, it is the Project construction activities that are projected to cause the exceedances for mercury and copper.

Additional Impacts and Need for Mitigation

In addition to the water quality standard exceedances for mercury and copper projected to be caused by the construction of the Project and that are the basis for this denial, the construction and operation of the Project would cause numerous other significant adverse environmental impacts. This includes impacts to shellfish propagation and survival, as well as impacts to other important aquatic species.

According to FERC, "the primary impacts associated with construction of the Raritan Bay Loop would be the potential adverse effects on aquatic species due to sediment disturbance, increased turbidity and sediment redeposition (including contaminated sediments)."[35] In particular, seabed disturbance from the construction of the Project would have direct impacts including "mortality, injury, or temporary displacement of the organisms living on, in, or near the 87.8 acres of seafloor directly affected by the Project."[36] Moreover, indirect impacts from construction of the Project " would include suspension of sediments in the water column, which could clog fish gills and obscure visual stimuli, and the redistribution of sediments that fall out of suspension, which could bury benthic and demersal species, resulting in mortality of eggs and other life stages. Benthic invertebrates and demersal (bottom-dwelling) fish species in or near areas directly impacted by construction would be most affected."[37]

For example, within the area proposed to be crossed by the Raritan Bay Loop portion of the Project, hard clam beds are located between MP 14.0 to 19.7 (Special

---

[33] See Supplemental Informational Filing #A-2, at 12.
[34] See id. at 14-15.
[35] FEIS at ES-10.
[36] FEIS at ES-11. See also FERC Order at 17-18, ¶ 46.
[37] FEIS at ES-11.

Permit Harvest Area) and MP 19.7 to the Chapel Hill Channel at MP 25.0.[38] Transco estimated that the hard clam density in this area is approximately 69.6 individuals per square foot. The majority (approximately 74 percent) of hard clam individuals collected in this area were less than 1 inch (25 millimeters) in size.[39] The Project would traverse one of the most productive hard clam area in New York State waters. Part of this area is currently an uncertified shellfish area, meaning that shellfish harvest is currently prohibited except pursuant to a Department-managed transplant program. Due in large part to high-quality habitat with no current harvest, there is currently a thriving hard clam population in these areas. According to FERC, "Sessile benthic organisms in the excavation areas would be destroyed and... [a]s discussed in section 4.5.2.8 [of the FEIS], benthic communities disturbed by dredging or smothering would be expected to recolonize through natural succession within 1 to 3 years."[40]

Overall, the construction of the Project would likely have significant adverse impacts to shellfish propagation.[41] In partial recognition of this, as well as the fact that the recovery of benthic species from impacts due to Project construction is uncertain, the Certificate requires Transco to prepare a 5-year post-construction benthic sampling and monitoring plan prior to construction.[42] In addition, the Department would require a mitigation plan to offset impacts to benthic resources.

As described above and as acknowledged by both Transco and FERC, if construction of the Raritan Bay Loop portion of the Project is ultimately allowed to proceed, there would be various environmental impacts, including to water quality, shellfish beds, and other benthic resources. Moreover, the Project would result in greenhouse gas ("GHG") emissions, which cause climate change and thus indirectly impact water and coastal resources, including from the construction and operation of the Project, and from reasonably foreseeable upstream and downstream GHG emissions.[43] Because of these and other impacts from the construction and operation of the Project, mitigation would be required and should adequately address these and other impacts. Indeed, pursuant to the FERC Order, prior to commencing construction of the Raritan Bay Loop, Transco must provide FERC with "documentation of

---

[38] Joint Application dated May 16, 2018, at 5, 2-69.
[39] FEIS at 4-101 to 4-102.
[40] FEIS at 4-366.
[41] As mentioned above, pursuant to 6 NYCRR § 701.10, the best usages of Class SA saline surface waters are shellfishing for market purposes, primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival. And pursuant to 6 NYCRR § 701.11, the best usages of Class SB saline surface waters are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival.
[42] FERC Order at 42, Appx. A, Environmental Conditions, ¶ 15 ("Prior to construction of the Raritan Bay Loop, Transco shall file with the Secretary a 5-year post-construction benthic sampling and monitoring plan, prepared in consultation with the NMFS, for review and written approval of the Director of OEP. The plan shall identify the timing of sampling surveys, success criteria for assessing recovery of benthic species, and reporting requirements.")
[43] See FERC Order at 33-34, ¶ 90; Opinion of LaFleur, Commissioner, Concurring; and Opinion of Glick, Commissioner, Dissenting in Part.

consultation with [the Department and other agencies] regarding its final proposed mitigation for fisheries and aquatic resources."[44]

Conclusion

For the reasons described above, the Department denies the WQC Application without prejudice. Transco may choose to submit a new WQC application for the Project.

In considering any subsequent new WQC application for the Project, the Department will take into account all relevant environmental impacts and all applicable water quality standards. This may include issues beyond those addressed in this letter. The Department reserves the right to base any future determination regarding the Project on factors not addressed herein.

In order for the Department to consider issuing a WQC for the Project, any new WQC application must provide reasonable assurances that construction of the Project will meet all applicable water quality standards, including at a minimum those related to copper and mercury. This must include sufficient documentation that a proposed method to ensure compliance will actually achieve its objective. Any plans to slow or otherwise modify the construction schedule in an attempt to demonstrate compliance with applicable water quality standards must also recognize relevant construction windows to protect threatened and endangered species, including the Atlantic Sturgeon. Finally, any new WQC application should also provide additional details regarding Transco's proposal to provide mitigation for impacts to water quality, shellfish beds, and other benthic resources.

Pursuant to 6 NYCRR § 621.10(a)(2), Transco has the right to an adjudicatory hearing regarding this denial of the WQC Application. Any such request for a hearing must be made in writing to me within 30 days of the date of this letter.

If you have any questions regarding this letter or any subsequent new WQC application for the Project, you may contact me, Karen Gaidasz in my office, or Jonathan Binder in the Office of General Counsel.

Sincerely,

Daniel Whitehead
Director, Division of Environmental Permits

[44] FERC Order at 42, Appx. A Environmental Conditions, ¶ 14.

cc: FERC (Docket No. CP17-101)

T. Berkman, NYSDEC Deputy Commissioner and General Counsel
J. Binder, NYSDEC OGC
K. Gaidasz, NYSDEC DEP