

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits & Pollution Prevention

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October 15, 2021

Via Email and US Mail

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New York District, U.S. Army Corps of Engineers
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26 Federal Plaza
New York, NY 10278-0090

Steven Metivier, Chief
Regulatory Branch
Buffalo District, U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

**Re: Revised Section 401 Water Quality Certification Decision
United States Army Corps of Engineers Nationwide Permits**

Dear Mr. Ryba and Mr. Metivier,

The New York State Department of Environmental Conservation (DEC) has reviewed the U.S. Army Corps of Engineers' (Corps) letter dated August 19, 2021. The letter extended the reasonable period of time until October 15, 2021 for DEC to revise or reconsider its Section 401 Water Quality Certification (WQC) decisions on 41 Nationwide Permits (NWP) that have not been reissued.

The 41 proposed NWP were the subject of the Corps' September 15, 2020 notice in the Federal Register (Vol. 85, No. 179) announcing its proposal to reissue and modify its Nationwide Permits issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act NWP. According to the Corps' letter dated August 19, 2021, there are no material changes to the 41 proposed NWP that would trigger a need for the Corps to submit a new WQC request for the 41 proposed NWP. DEC concurs with that determination and is providing this revised WQC for the remaining 41 NWP based on the Corps' original WQC request.



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DEC's prior WQC decision dated December 18, 2020 contained four attachments. Attachment 1 contained a list of NWP's where WQC was not necessary, and Attachment 2 identified NWP's where WQC was denied. Attachment 3 of DEC's 2020 WQC decision provided a list of NWP's where conditional blanket WQC was granted, along with the applicable conditions. Attachment 4 provided the applicable water quality requirements and rationale for each condition contained in Attachment 3.

DEC is re-affirming its lack of WQC jurisdiction for the NWP's listed in Attachment 1. DEC is also re-affirming its prior denial of blanket WQC for the NWP's listed in Attachment 2. As a result, Attachments 1 and 2 are included in this WQC decision without revision.

Attachment 3 of DEC's December 18, 2020 WQC decision has been revised to include only those NWP's that were finalized on January 13, 2021. The conditions pertaining to those NWP's also remain unchanged with the following exceptions. Where a previously provided condition only applied to a single NWP, and that NWP was not finalized, the condition has been removed from Attachment 3. In addition, the list of NWP's included in condition No. 3 has been revised to remove those NWP's that were not finalized. Accordingly, Attachment 4 also provides the water quality requirements and rationale cited previously for the conditions included in Attachment 3.

Attachments 5 and 6 are being added to this WQC decision to address the remaining NWP's that were not finalized January 13, 2021. These attachments are structured in the same manner as Attachments 3 and 4. Attachment 5 provides the list of NWP's where conditional blanket WQC is granted, along with the applicable conditions. Attachment 6 provides the applicable water quality requirements and rationale for each condition contained in Attachment 5.

Individual Water Quality Certifications will be required for those activities where Water Quality Certification has been denied, or that do not meet the applicable conditions of the blanket Water Quality Certification where granted. An individual certification request must, at a minimum, follow the requirements outlined in 40 CFR §121.5 of the Clean Water Act §401 Certification Rule, effective September 11, 2020, along with DEC's regulatory requirements in 6 NYCRR § 608.9 and Part 621.

On March 7, 2017 DEC issued its last Water Quality Certification decision on the Nationwide Permits, effective from March 19, 2017 through March 18, 2022. Unless and until the remaining 41 proposed Nationwide Permits are finalized, the 2017 Nationwide Permits remain in effect, along with DEC's 2017 Water Quality Certification decisions. Otherwise, the effective date and expiration date of this Water Quality Certification decision will be concurrent with the effective date and expiration date of any final Nationwide Permits.

Mr. Ryba and Mr. Metivier; October 15, 2021
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We await the Corps' final decision on the remaining 41 proposed Nationwide Permits. In the meantime, if you have any questions, please feel free to contact me at 518-402-2125 or Scott.Sheeley@dec.ny.gov .

Sincerely,



Scott E. Sheeley
Chief Permit Administrator
New York State Department of Environmental Conservation

Attachments:

- Attachment 1 – Nationwide Permits Not Requiring Water Quality Certification
- Attachment 2 – Nationwide Permits Denied Water Quality Certification
- Attachment 3 – January 13, 2021 Final Nationwide Permits Granted Conditional Blanket Water Quality Certification
- Attachment 4 – Water Quality Requirements and Statements of Necessity for DEC Conditions pertaining to Nationwide Permits listed in Attachment 3
- Attachment 5 – Remaining Nationwide Permits Granted Conditional Blanket Water Quality Certification
- Attachment 6 – Water Quality Requirements and Statements of Necessity for DEC Conditions pertaining to Nationwide Permits listed in Attachment 5

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ATTACHMENT 1

The following Nationwide Permits require no Section 401 Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Act of 1899:

- NWP 1. Aids to Navigation
- NWP 2. Structures in Artificial Canals
- NWP 8. Oil and Gas Structures on the Outer Continental Shelf
- NWP 9. Structures in Fleeting and Anchorage Areas
- NWP 10. Mooring Buoys
- NWP 11. Temporary Recreational Structures
- NWP 24. Indian Tribe or State Administered Section 404 Programs
- NWP 28. Modifications of Existing Marinas
- NWP 35. Maintenance Dredging of Existing Basins
- NWP 55(A*). Seaweed Mariculture Activities
- NWP 56(B*). Finfish Mariculture Activities

- * Letter used here corresponds to the Corps' 2020 NWP public notice and DEC's December 18, 2020 blanket Water Quality Certification decision.

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ATTACHMENT 2

The New York State Department of Environmental Conservation (DEC) hereby denies Section 401 Water Quality Certification (Water Quality Certification) for activities undertaken pursuant to the Nationwide Permits listed below. Any party conducting activities authorized by these Nationwide Permits, where DEC is the certifying authority, must apply for and obtain an individual Water Quality Certification from DEC in accordance with procedures at 40 CFR § 121, 6 NYCRR § 608.9, and the New York State Uniform Procedures Act regulations (6 NYCRR Part 621). For more information on the application process, applicants may visit the DEC website at <https://www.dec.ny.gov/permits/6546.html>.

- NWP 12. Oil or Natural Gas Pipeline Activities
- NWP 16. Return Water From Upland Contained Disposal Areas
- NWP 17. Hydropower Projects
- NWP 21. Surface Coal Mining Activities
- NWP 26. (Reserved)
- NWP 38. Cleanup of Hazardous and Toxic Waste
- NWP 44. Mining Activities
- NWP 47. (Reserved)
- NWP 49. Coal Re-mining Activities
- NWP 50. Underground Coal Mining Activities
- NWP 52. Water-Based Renewable Energy Generation Pilot Projects
- NWP 53. Low-Head Dam Removal
- NWP 54. Living Shorelines

DEC Basis for Selective Denial of Water Quality Certification

In accordance with 40 CFR § 121.7(e)(2)(i-iii), DEC's selective denial of Water Quality Certification is based on the following:

1. State water quality standards for Water Quality Certification found in Sections 301-303, 306 and 307 of the Federal Water Pollution Control Act, as implemented in New York State by the following provisions:
 - a. effluent limitations and water quality-related effluent limitations set forth in section 750-1.11 of Title 6 of New York Codes Rules and Regulations (6 NYCRR);
 - b. water quality standards and thermal discharge criteria set forth in 6 NYCRR Parts 701, 702, 703 and 704;
 - c. standards of performance for new sources set forth in 6 NYCRR § 750-1.11;
 - d. effluent limitations, effluent prohibitions and pretreatment standards set forth in 6 NYCRR § 750-1.11;

- e. prohibited discharges set forth in 6 NYCRR § 750-1.3; and
 - f. State statutes, regulations and criteria otherwise applicable to such activities. These would include, but are not limited to, 6 NYCRR Parts 182 (Endangered and Threatened Species of Fish and Wildlife...), 505 (Coastal Erosion Management), 575 (Aquatic Invasive Species Spread Prevention), 608 (Use & Protection Waters), 661 (Tidal Wetlands), and 663 (Freshwater Wetlands).
2. The activities included in some of the Nationwide Permits identified in this Attachment involve discharges that either potentially contain toxic and other deleterious substances that do not meet water quality standards or are likely to be of a scope and nature that exceed minimal adverse environmental impacts. Examples of potentially toxic discharges to waters of the United States include, but are not limited to, petroleum products, acidic and metal-laden discharges as a result of mining activities, hazardous and toxic waste from environmental cleanup activities, and discharge of legacy pollutants such as DDT or PCBs that are within sediments that would be released as a result of low-head dam removal activities. Examples of activities that are likely to be of a scope and nature that would likely exceed minimal adverse environmental impacts include, but are not limited to, the disturbance of soils, vegetation, and hydrology at multiple crossings of a stream that cumulatively impose a watershed-level disruption of the functional benefits of the stream.
 3. DEC denial of certification for prospective discharges from the activities authorized by the Nationwide Permits above is also based on insufficient information to determine if such discharges will comply with water quality requirements. Many projects and activities included in some of the Nationwide Permits identified in this Attachment may be significant in scope and, depending on case-specific circumstances, could result in numerous adverse impacts to water quality. Without evaluating necessary project- and activity-specific information, DEC cannot currently determine that such projects and activities would comply with applicable water quality standards.

The necessary information would need to be identified in the review of an individual Water Quality Certification request, which would involve a review of the entire scope of any proposed project and/or associated pollutants and the identification of resources of concern on an individual, site-specific basis. To ensure that the range of discharges from potential projects will comply with water quality requirements, the information DEC would need may include, but is not limited to, the following:

- a. review of impacts at multiple stream crossings on the overall function of the stream to carry water and bedload, and to ensure that the water remains suitable for fish, shellfish and wildlife propagation and survival;
- b. surveys to identify potential endangered and threatened species or their habitats;
- c. review of physical and chemical sediment analysis to evaluate the potential for discharge of toxins in toxic amounts;

- d. review of methods used to ensure that no more than minimal individual and cumulative adverse environmental impacts result from projects. These would include reports or plans for dewatering, pollution containment/treatment, and water flow management; and
- e. review of detailed stormwater management and erosion & sediment control plans, which are required for projects in New York State that result in the disturbance of over one acre of land.
- f. Detailed and site-specific environmental pollution control plans and environmental impact assessments developed for pipeline projects regulated by the Federal Energy Regulatory Commission (FERC). Such projects involve the consideration of potential alternatives, including site location, facility design, control technology and impact avoidance, and development of minimization or mitigation measures, all which are necessary to determine whether proposed discharges comply with state water quality requirements.

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ATTACHMENT 3

The New York State Department of Environmental Conservation (DEC) grants Section 401 blanket Water Quality Certification (Water Quality Certification) for activities undertaken pursuant to the Section 404 Nationwide Permits (Nationwide Permits or NWP) listed below, subject to conditions. Anyone conducting activities authorized by these Nationwide Permits, where DEC is the certifying authority, must meet the blanket Water Quality Certification conditions below, or apply for and obtain an individual Water Quality Certification from DEC in accordance with procedures at 40 CFR 121, 6 NYCRR § 608.9, and the New York State Uniform Procedures Act regulations (6 NYCRR Part 621). For more information on the application process, applicants may visit the DEC website at <https://www.dec.ny.gov/permits/6546.html> .

NWP 29.	Residential Developments
NWP 39.	Commercial and Institutional Developments
NWP 40.	Agricultural Activities
NWP 42.	Recreational Facilities
NWP 43.	Stormwater Management Facilities
NWP 48.	Commercial Shellfish Mariculture Activities
NWP 51.	Land-Based Renewable Energy Generation Facilities
NWP 57(C*).	Electric Utility Line and Telecommunications Activities
NWP 58(D*).	Utility Line Activities for Water and Other Substances

* Letter used here corresponds to the Corps' 2020 NWP public notice and DEC's December 18, 2020 blanket Water Quality Certification decision.

DEC Blanket Water Quality Certification Conditions

The conditions listed below are necessary to ensure that the discharges authorized under the Nationwide Permits listed in this Attachment 3 will comply with state water quality requirements. Where no Nationwide Permit is specified for a condition, the condition applies to all Nationwide Permits for which this blanket Water Quality Certification is granted. Where a specific Nationwide Permit is identified in the condition, the condition applies to activities authorized under the identified Nationwide Permit.

In accordance with 40 CFR § 121.7(d)(2), water quality requirements and statements of necessity for each condition in this Attachment 3 are provided in Attachment 4.

- 1. Non-contamination of Waters** - All necessary precautions shall be taken to preclude contamination of any waters of the United States by suspended solids, resins, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, inadvertent returns of drilling muds ("frac-outs") or any other environmentally deleterious materials associated with the project.

- 2. Installation and Replacement of Culverts** - To be covered under this blanket Water Quality Certification, all the following criteria must be met for culvert installations and replacements:
- a. Culverts shall be designed to pass a storm event with an annual chance of 2% or less (i.e., 50-year storm event or greater) such that the water surface remains below the top of the inlet opening.
 - b. All culverts with closed bottoms and culvert pipes must be appropriately embedded. Round culverts must be installed so that at least 20% of the culvert's vertical height is embedded below the existing stream bed at the outlet end of the culvert.
 - c. Width of the structure must be a minimum of 1.25 times (1.25X) width of the Mean High-Water Channel.
 - d. The slope of the stream bed within or under the culvert shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert must be used.
 - e. This culvert must not be located under a roadway that provide sole access to "Critical Facilities"¹.
 - f. This certification does not authorize culvert rehabilitation projects that involve slip lining, invert paving, or similar treatments.
 - g. This certification does authorize the rehabilitation of culverts utilizing Cure in Place Pipe Lining (CIPP) or concrete spray lining for culverts which currently meet Nationwide Permit General Condition # 2 - Aquatic Life Movements.
- 3. Discharges and Disturbances Limits**- The following discharge and disturbance limits apply to this certification:
- a. For NWPs 29, 39, 40, 42, 48, 51, 57, and non-maintenance activities under NWP 43 the following discharge limits apply:
 - i. Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the United States must not exceed ¼ acre;
 - ii. Temporary or permanent impacts (i.e., loss) to stream beds, lake shorelines, and ocean shorelines must not exceed 300 linear feet; and
 - iii. The discharge area limit under paragraph (a) plus the equivalent stream, lake, or ocean impact area limit under paragraph (b) must not exceed ¼ acre total.
 - b. For maintenance activities under NWP 43, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.

¹ Critical Facilities are defined as facilities designed for bulk storage of chemicals, petrochemicals, hazardous or toxic substances or floatable materials; hospitals, rest homes, correctional facilities, dormitories, patient care facilities; major power generation, transmission or substation facilities, except for hydroelectric facilities; major communications centers, such as civil defense centers; or major emergency service facilities, such as central fire and police stations. (See 6 NYCRR Part 502.4(a)(17).)

- c. If a project requiring coverage under two or more Nationwide Permits results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.
- 4. Bulkheads** – Activities involving bulkheads are restricted as follows:
 - a. This certification does not authorize the construction of new bulkheads or vertical walls.
 - b. This certification does not authorize the waterward extension of existing bulkheads, except where minimally necessary to reface the bulkhead when in-place replacement is not feasible.
 - c. New toe-stone protection may not extend more than 36 inches waterward from the existing bulkhead face.
- 5. Maintenance of Water Levels** - This certification does not authorize any activity that results in a permanent water level alteration in waterbodies, such as draining or impounding, except for activities authorized by NWP 27.
- 6. Dewatering** – Dewatering activities must be conducted in the following manner:
 - a. Authorized dewatering is limited to immediate work areas that are within coffer dams or otherwise isolated from the larger waterbody or waters of the United States.
 - b. Dewatering must be localized and must not drain extensive areas of a waterbody or reduce the water level such that fish and other aquatic organisms are killed, or their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.
 - c. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a waterbody.
 - d. All dewatering structures must be permanently removed, and disturbed areas must be graded and stabilized immediately following completion of work. Return flows from the dewatering structure shall be as visibly clear as the receiving waterbody.
- 7. Horizontal and Directional Drilling** – For projects that involve horizontal or directional drilling, the permittee must prepare and implement a plan that addresses prevention, containment and cleanup of inadvertent drilling fluid returns or “frac-outs”.
- 8. Endangered or Threatened Species** - This certification does not authorize discharges likely to result in the take or taking of any species listed as endangered or threatened in 6 NYCRR Part 182.5 (a) or (b) or discharges likely to destroy or adversely modify the habitat of such listed species. To be eligible for coverage under this certification, applicants must either verify that the activity is outside of the occupied habitat of such species or, if located within the habitat of such species, obtain a determination from the NYS Department of Conservation Regional Office

that the proposed activity is not likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental regional offices, the New York Natural Heritage Program in Albany, New York or on the DEC website at <https://www.dec.ny.gov/animals/38801.html> .

9. Rare Mollusks - This certification does not authorize disturbances or discharges to waters of the United States that support mollusks listed as S-1 or S-2 on the New York State Natural Heritage database, unless DEC staff have determined that the project location does not contain mussels listed as S-1 or S-2 on the Natural Heritage database.

10. Prohibition Period for In-water Work - In-water work is prohibited in cold water trout fisheries (waterbodies classified under Article 15 of New York State Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31.

To determine if the prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate New York State Department of Environmental Conservation regional office. Water classification values can be found on the DEC's Environmental Resource Mapper available on the Department's website at <https://gisservices.dec.ny.gov/gis/erm/>. Work windows may be altered by the Regional Natural Resources Supervisor or their designee.

11. Significant Coastal Fish and Wildlife Habitats - This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602 (NYCRR, Title 19, Chapter XIII, Waterfront Revitalization of Coastal Areas and Inland Waterways). <https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>

12. Coastal Erosion Hazard Areas - This certification does not authorize projects that disturb greater than ¼ acre or 300 linear feet of waters of the United States within mapped Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505. <https://www.dec.ny.gov/lands/86541.html>

13. Wild, Scenic and Recreational Rivers - This certification does not authorize activities in any Wild, Scenic or Recreational River pursuant to 6 NYCRR Part 666 or state designated Wild, Scenic or Recreational River corridors. <https://www.dec.ny.gov/permits/6033.html>

14. Federal Energy Regulatory Commission – This certification does not authorize activities regulated by the United States Federal Energy Regulatory Commission

(FERC). An individual Section 401 Water Quality Certification from DEC is required for all projects regulated by FERC.

15. Preventing the Spread of Aquatic Invasive Species - To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering any approved construction areas within waters of the United States. When using construction equipment, projects authorized under this Certification shall take reasonable precautions to prevent the spread of aquatic invasive species as required under the provisions in ECL § 9-1710.

16. Utility Projects – The following restrictions and conditions apply to activities involving utility projects:

- a. This certification does not authorize maintenance or other activities associated with hydroelectric power generation projects.
- b. This certification does not authorize the construction of substation facilities or permanent access roads in wetlands or within the Federal Emergency Management Agency mapped 100-year floodplain.
- c. Excess materials resulting from trench excavation must be permanently removed from the waters of the United States and contained so that they do not re-enter any waters of the United States.

17. NWP 57 and 58 Utility Line Activities – The following restrictions apply to utility line activities undertaken under NWPs 57 and 58:

- a. Materials resulting from Utility Line trench excavation that are temporarily sidecast into waters of the United States must be used to backfill the trench or removed within 30 days of deposition.
- b. Utility Line activities that cross multiple waterbodies or cross the same waterbody at multiple locations, while viewed as multiple “single and complete” projects for the purposes of the Nationwide Permit program, will be considered by the Department as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.
- c. Buried utility lines that cross under streams must be placed at a depth to prevent future exposure of the line. A site-specific vertical adjustment potential (VAP) analysis, or similar engineering analysis, must be conducted by a licensed engineer to determine the proper depth for all lines except water lines.

18. NWP 29. Residential Developments - This certification does not authorize the construction of new residential development projects in wetlands located within a FEMA designated 100-year floodplain.

19. NWP 39. Commercial and Institutional Developments – This certification does not authorize construction of new commercial and institutional developments in wetlands located within a FEMA-designated 100-year floodplain.

20. NWP 40. Agricultural Activities – The following restrictions apply to agricultural activities:

- a. This certification does not authorize any discharge of dredged or fill material into streams. Alteration of natural stream courses is not authorized by this certification.
- b. This certification authorizes only buildings necessary for the agricultural productivity of farmland.
- c. This certification does not authorize non-agricultural buildings on farms such as roadside stands.
- d. This certification does not authorize construction of ponds in wetlands.

21. NWP 43. Stormwater Management Facilities – The following restrictions and conditions apply to stormwater management facilities:

- a. This certification does not authorize the construction of new stormwater management facilities located within waters of the United States, except for outfall structures and emergency spillways.
- b. This certification authorizes the maintenance of existing storm water management facilities.

22. NWP 48. Commercial Shellfish Mariculture Activities - This certification does not authorize the expansion of aquaculture activities into new areas of a project.

ATTACHMENT 4

In accordance with the requirements of 40 CFR § 121.7(d)(2), DEC is providing the relevant water quality requirements and statements explaining why each condition in Attachment 3 is necessary to ensure that any discharge will comply with water quality requirements.

DEC implements the state water quality standards for Water Quality Certification found in 301-303, 306 and 307 of the Federal Water Pollution Control Act, as implemented in New York State by the following provisions:

- a. effluent limitations and water quality-related effluent limitations set forth in section 750-1.11 of Title 6 of New York Codes Rules and Regulations (6 NYCRR);
- b. water quality standards and thermal discharge criteria set forth in 6 NYCRR Parts 701, 702, 703 and 704;
- c. standards of performance for new sources set forth in section 6 NYCRR § 750-1.11;
- d. effluent limitations, effluent prohibitions and pretreatment standards set forth in 6 NYCRR § 750-1.11;
- e. prohibited discharges set forth in 6 NYCRR § 750-1.3; and
- f. State statutes, regulations and criteria otherwise applicable to such activities. These would include, but are not limited to, 6 NYCRR Parts 182 (Endangered and Threatened Species of Fish and Wildlife...), 505 (Coastal Erosion Management), 575 (Aquatic Invasive Species Spread Prevention), 608 (Use & Protection Waters), 661 (Tidal Wetlands), and 663 (Freshwater Wetlands). In addition, portions of the New York State Environmental Conservation Law (ECL) are applicable to such activities.

In accordance with 40 CFR § 121.7(d)(2), water quality requirements and statements of necessity for each condition in Attachment 3 are provided below, numbered and titled to correspond to the conditions contained in Attachment 3.

1. Non-Contamination of Waters

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances

Statement of condition necessity: This condition is necessary to ensure that the permittee undertakes whatever additional measures are necessary, and not otherwise specified in the conditions of this permit, to prevent the contravention of water quality standards during the implementation of the project.

2. Installation and Replacement of Culverts

Water quality requirements: 6 NYCRR 502.4(a)(17) Floodplain management criteria

for State projects in flood hazard areas: “(a)...any State agency proposing to commence any project within a flood hazard area in that city, town or village shall do so only if it determines such project is in compliance with the following criteria: ... (17) In order to prevent potential flood damage to certain facilities that would result in serious danger to life and health, or widespread social or economic dislocation, none of the following new projects shall be undertaken within any flood hazard area:...”; 6 NYCRR 703.2 Narrative water quality standards for flow: no alteration that will impair the waters for their best usages; 6 NYCRR 608.2(a) “Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.”; 6 NYCRR 608.5 “No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the State or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this part.”; 6 NYCRR 608.7 (b) The department’s review will determine if the proposed alteration to water resources of the State are consistent with standards contained in section 608.8 of this Part, considering issues such as:(iii) hydrology, including such criteria as water velocity, depth, discharge volume, flooding potential;(iv) (2) the adequacy of design and construction techniques for structures; (6) the safeguarding of life and property; 6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival; 6 NYCRR 701.10 through 701.13 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.14 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife survival.

Statement of condition necessity: Based on the foregoing water quality requirements, this condition is necessary to ensure that culverts are installed in a manner that ensures proper functioning of the waterway and that the continued use of the culvert over time will not cause or contribute to a contravention of water quality standards. It is also necessary to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

3. Discharges and Disturbances Limits

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances; 6 NYCRR 608.2(a) “Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.”; 6 NYCRR 608.5 “No person, local public

corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the state or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this Part.”; 6 NYCRR 663.4 Regulated Activity List Item #20 - Filling in freshwater wetlands, including filling for agricultural purposes, is presumed incompatible with wetland functions and benefits. 6 NYCRR 505.8 Restrictions on regulated activities within coastal natural protective features, including the prohibition of excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore areas. 6 NYCRR 661.5(b) Regulated activity list item 30 – Filling in tidal wetlands is presumed incompatible with the preservation, protection or enhancement of the present and potential values of tidal wetlands.

Statement of condition necessity: The increased length of a project along a stream or the increased acreage disturbance of a project within a wetland or other waterbody results in a concomitant increase in impacts to those environmental resources. Impacts include, but are not limited to, increased stream temperature, reduced availability of refugia sites for cold water fish, lack of flood flow retention, less ability to intercept nonpoint source pollutants, reduced transport of nutrients vital to ecosystem productivity, and reduced capacity for aquifer recharge. This condition is necessary to ensure that the scope of authorized activities is limited to those that are reasonable and necessary to achieve the objective of the project and to ensure that those activities will not exceed minimal adverse environmental impacts. Because the Corps has removed linear foot thresholds for stream disturbances, allowing discharges of up to several thousands of feet under its NWP, it is also necessary to ensure that waters of the United States in New York remain suitable for fish, shellfish, and wildlife survival.

4. Bulkheads

Water quality requirements: 6 NYCRR 608.8 Standards “The basis of the issuance or modification of a permit will be a determination that the proposal is in the public interest, in that:… (c) The proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state, including soil, forests, water, fish, shellfish, crustaceans and aquatic and land-related environment.”

Statement of condition necessity: This condition is necessary to prevent discharges from new bulkheads, which are generally unreasonable and unnecessary and do not meet the standards of 6 NYCRR 608.8. New bulkheads generally would also cause unreasonable and unnecessary damage (e.g., erosion of adjacent properties, littoral habitat loss) compared to other stabilization measures that are typically feasible (e.g., plantings or rock revetments). Likewise, the placement of new fill that would adversely impact shorelines, such as extension of bulkheads, requires an individual review to examine alternatives and to ensure encroachment is reasonable and necessary.

5. Maintenance of Water Levels

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the project does not violate water quality standards related to flow. This condition also ensures that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival. Activities authorized under NWP 27 have the inherent potential to alter flow but are presumed to have a long-term beneficial effect on the attainment of best usages.

6. Dewatering

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances; 6 NYCRR 703.2 Narrative water quality standards requiring no alteration that will impair the waters for their best usages. Best usages for all state water classifications include fishing. All classifications indicate that waters shall be maintained suitable for fish, shellfish and wildlife survival.

Statement of condition necessity: This condition is necessary to ensure that dewatering does not contravene state water quality standards, that the best usages are maintained, and that waters remain suitable for fish, shellfish, and wildlife survival.

7. Horizontal and Directional Drilling

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to prevent the contravention of water quality standards when horizontal or directional drilling is used as an installation method.

8. Endangered or Threatened Species

Water quality requirements: 6 NYCRR 182 Regulations prohibiting the take of state-listed endangered or threatened species; 6 NYCRR 703.2 Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances; 6 NYCRR 701 Classification of surface waters and identification of best usages.

Statement of condition necessity: This condition is necessary to ensure that turbid conditions in the vicinity of these populations are addressed prior to construction so that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival. This condition is necessary to ensure that any activities

authorized by these NWP's do not "take" any aquatic or aquatic-dependent state listed endangered or threatened species or its habitat.

9. Rare Mollusks

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances. 6 NYCRR Part 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: Rare and sensitive mussel populations are highly susceptible to acute changes in turbidity and affect the food web upon which fish and other taxa rely. This condition ensures that turbid conditions in the vicinity of these populations are addressed prior to construction so that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

10. Prohibition Period for In-water Work

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, toxic materials, and other deleterious substances. 6 NYCRR 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not adversely impact water quality during sensitive fish spawning periods and contravene water quality standards or impair the waters best usages for fishing. This condition also ensures that waters remain suitable for fish, shellfish, and wildlife survival and propagation.

11. Significant Coastal Fish and Wildlife Habitats

Water quality requirements: 6 NYCRR Part 701: Classification of surface waters and identification of best usages. 6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival; 6 NYCRR 701.10 through 701.13 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.14 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife survival. 19 NYCRR § 602.5 Significant Coastal Fish and Wildlife Habitats designated under 19 NYCRR Part 602 are those habitat areas identified and recommended by DEC which exhibit to a substantial degree one or more of the following characteristics: (i) the habitat is essential to the survival of a large portion of a particular fish or wildlife population (e.g., feeding grounds, nursery areas), (ii) the habitat supports a species which is either endangered, threatened or of special concern as those terms are defined at 6 NYCRR Part 182, (iii) the habitat supports fish or wildlife populations having significant commercial, recreational or educational value; or (iv) the habitat is of a type which is not commonly found in the State or a coastal region of the State; Such designations are made under the authority granted to New York State to implement elements

of the federal Coastal Zone Management Act of 1972 through its participation in the National Coastal Zone Management Program. The New York Coastal Management Program was approved by NOAA in 1982. The Executive Law Article 42, Waterfront Revitalization of Coastal Areas and Inland Waterways, provides the state with the authority to establish a coastal program, develop coastal policies, define the coastal boundaries, and establish state consistency requirements.

Statement of condition necessity: This condition is necessary to ensure that activities undertaken within designated significant coastal fish and wildlife habitats fully identify the natural resources within the project area and develop site-specific plans and methods for the minimization and control of discharges affecting water quality and wildlife. The condition is necessary to ensure that discharges do not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

12. Coastal Erosion Hazard Areas

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards for turbidity, toxic materials, and other deleterious substances. 6 NYCRR Part 701: Classification of surface waters and identification of best usages. ECL Article 34 and implementing regulations at 6 NYCRR Part 505 identifies Coastal Erosion Hazard Areas (CEHAs) in locations with Natural Protective Feature Areas (NPFAs) and in areas of high erosion vulnerability. 6 NYCRR § 505.8 Prohibits excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore areas.

Statement of condition necessity: This condition is necessary to ensure that activities conducted in these vulnerable erosion hazard areas over the thresholds identified are required to develop detailed and site specific plans and pollution control methods to ensure that discharges do not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

13. Wild, Scenic and Recreational Rivers

Water quality requirements 6 NYCRR Part 701: Classification of surface waters and identification of best usages, including fishing and contact recreation. 6 NYCRR Part 666. Use guidelines for this group of waterways are found in 6 NYCRR Part 666.13. The guidelines indicate that several activities are presumed incompatible with state regulations as found in 6 NYCRR Part 666 or are prohibited. Among those incompatible or prohibited uses that would overlap with activities authorized by NFPs are: Modification of the waterway by impoundment, diversion, rip-rap, bulkheads, structures or improvements impeding or altering the natural flow of water or free-flowing condition of the river. (See Part 666.11(a) & Note). Several other activities that would require a review from NYS to ensure that a proposed activity is compatible with regulations at 6 NYCRR Part 666 include utility crossings, road development, forest management

activities along riverbanks, residential structures and non-residential structures - all of which are within the scope of the NWP.

Statement of condition necessity This condition is necessary to ensure that a detailed identification of impacts and detailed pollution control methods are developed to prevent discharges incompatible with the preservation and protection water quality, flows and best usages in designated wild, scenic, and recreational rivers.

14. Federal Energy Regulatory Commission

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary due to the large scope of FERC-regulated project and the need to identify all potential impacts to waters of the United States, and the need to develop detailed and site-specific pollution control methods to ensure that discharges do not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

15. Preventing the Spread of Aquatic Invasive Species

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances. 6 NYCRR Part 575 Prohibited and Regulated Invasive Species. 6 NYCRR Part 576 Aquatic Invasive Species Spread Prevention.

Statement of condition necessity: This condition is necessary to ensure that equipment used will not contribute to a contravention of water quality standards, that best usages are maintained, and to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

16. Utility Projects -

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: Prohibitions on appurtenant structures and uncontrolled spoilage ensure narrative water quality standards and best usages will be met, and ensure that waters remain suitable for fish, shellfish, and wildlife survival.

17. NWPs 57 and 58 Utility Line Activities

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards

related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities. This condition is necessary to ensure that work will not contravene water quality standards, and to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

18.NWP 29. Residential Developments

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

19.NWP 39. Commercial and Institutional Developments

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

20.NWP 40. Agricultural Activities

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

21.NWP 43. Stormwater Management Facilities

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the

discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

22. NWP 48. Commercial Shellfish Mariculture Activities

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

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ATTACHMENT 5

The New York State Department of Environmental Conservation (DEC) grants Section 401 blanket Water Quality Certification (Water Quality Certification) for activities undertaken pursuant to the Section 404 Nationwide Permits (Nationwide Permits or NWP) listed below, subject to conditions. Anyone conducting activities authorized by these Nationwide Permits, where DEC is the certifying authority, must meet the applicable blanket Water Quality Certification conditions below, or apply for and obtain an individual Water Quality Certification from DEC in accordance with procedures at 40 CFR 121, 6 NYCRR § 608.9, and the New York State Uniform Procedures Act regulations (6 NYCRR Part 621). For more information on the application process, applicants may visit the DEC website at <https://www.dec.ny.gov/permits/6546.html> .

- NWP 3. Maintenance
- NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5. Scientific Measurement Devices
- NWP 6. Survey Activities
- NWP 7. Outfall Structures and Associated Intake Structures
- NWP 13. Bank Stabilization
- NWP 14. Linear Transportation Projects
- NWP 15. U.S. Coast Guard Approved Bridges
- NWP 18. Minor Discharges
- NWP 19. Minor Dredging
- NWP 20. Response Operations for Oil or Hazardous Substances
- NWP 22. Removal of Vessels
- NWP 23. Approved Categorical Exclusions
- NWP 25. Structural Discharges
- NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 30. Moist Soil Management for Wildlife
- NWP 31. Maintenance of Existing Flood Control Facilities
- NWP 32. Completed Enforcement Actions
- NWP 33. Temporary Construction, Access, and Dewatering
- NWP 34. Cranberry Production Activities
- NWP 36. Boat Ramps
- NWP 37. Emergency Watershed Protection and Rehabilitation
- NWP 41. Reshaping Existing Drainage Ditches
- NWP 45. Repair of Uplands Damaged by Discrete Events
- NWP 46. Discharges in Ditches
- NWP 59(E*). Water Reclamation and Reuse Facilities

* Letter used here corresponds to the Corps' 2020 NWP public notice and DEC's December 18, 2020 blanket Water Quality Certification decision.

DEC Blanket Water Quality Certification Conditions

The conditions listed below are necessary to ensure that the discharges authorized under the Nationwide Permits listed in this Attachment 5 will comply with state water quality requirements. Where no Nationwide Permit is specified for a condition, the condition applies to all Nationwide Permits for which this blanket Water Quality Certification is granted unless otherwise indicated. Where a specific Nationwide Permit is identified in the condition, the condition applies to activities authorized under the identified Nationwide Permit.

In accordance with 40 CFR § 121.7(d)(2), water quality requirements and statements of necessity for each condition in this Attachment 5 are provided in Attachment 6.

- 1. Non-contamination of Waters** - All necessary precautions shall be taken to preclude contamination of any waters of the United States by suspended solids, resins, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, inadvertent returns of drilling muds (“frac-outs”) or any other environmentally deleterious materials associated with the project.
- 2. Installation and Replacement of Culverts** - To be covered under this blanket Water Quality Certification, all the following criteria must be met for culvert installations and replacements:
 - a. Culverts shall be designed to pass a storm event with an annual chance of 2% or less (i.e., 50-year storm event or greater) such that the water surface remains below the top of the inlet opening.
 - b. All culverts with closed bottoms and culvert pipes must be appropriately embedded. Round culverts must be installed so that at least 20% of the culvert’s vertical height is embedded below the existing stream bed at the outlet end of the culvert.
 - c. Width of the structure must be a minimum of 1.25 times (1.25X) width of the Mean High-Water Channel.
 - d. The slope of the stream bed within or under the culvert shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert must be used.
 - e. This culvert must not be located under a roadway that provide sole access to “Critical Facilities”².

² Critical Facilities are defined as facilities designed for bulk storage of chemicals, petrochemicals, hazardous or toxic substances or floatable materials; hospitals, rest homes, correctional facilities, dormitories, patient care facilities; major power generation, transmission or substation facilities, except for hydroelectric facilities; major communications centers, such as civil defense centers; or major emergency service facilities, such as central fire and police stations. (See 6 NYCRR Part 502.4(a)(17).)

- f. This certification does not authorize culvert rehabilitation projects that involve slip lining, invert paving, or similar treatments.
- g. This certification does authorize the rehabilitation of culverts utilizing Cure in Place Pipe Lining (CIPP) or concrete spray lining for culverts which currently meet Nationwide Permit General Condition # 2 - Aquatic Life Movements.

3. Discharges and Disturbances Limits- The following discharge and disturbance limits apply to this certification:

- a. For NWPs 5, 7, 13, 14, 15, 18, 19, 23, 25, 32, 34, 36, 37, 45, and 46, the following discharge limits apply:
 - i. Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the United States must not exceed $\frac{1}{4}$ acre;
 - ii. Temporary or permanent impacts (i.e., loss) to stream beds, lake shorelines, and ocean shorelines must not exceed 300 linear feet; and
 - iii. The discharge area limit under paragraph (a) plus the equivalent stream, lake, or ocean impact area limit under paragraph (b) must not exceed $\frac{1}{4}$ acre total.
- b. For NWPs 3, 4, 6, 20, 22, 27, 30, 31, 33, and 41, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.
- c. If a project requiring coverage under two or more Nationwide Permits results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.

4. Bulkheads – Activities involving bulkheads are restricted as follows:

- a. This certification does not authorize the construction of new bulkheads or vertical walls.
- b. This certification does not authorize the waterward extension of existing bulkheads, except where minimally necessary to reface the bulkhead when in-place replacement is not feasible.
- c. New toe-stone protection may not extend more than 36 inches waterward from the existing bulkhead face.

5. Maintenance of Water Levels - This certification does not authorize any activity that results in a permanent water level alteration in waterbodies, such as draining or impounding, except for activities authorized by NWP 27.

6. Dewatering – Dewatering activities must be conducted in the following manner:

- a. Authorized dewatering is limited to immediate work areas that are within coffer dams or otherwise isolated from the larger waterbody or waters of the United States.
- b. Dewatering must be localized and must not drain extensive areas of a waterbody or reduce the water level such that fish and other aquatic organisms are killed, or

their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.

- c. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a waterbody.
- d. All dewatering structures must be permanently removed, and disturbed areas must be graded and stabilized immediately following completion of work. Return flows from the dewatering structure shall be as visibly clear as the receiving waterbody.

7. Horizontal and Directional Drilling – For projects that involve horizontal or directional drilling, the permittee must prepare and implement a plan that addresses prevention, containment and cleanup of inadvertent drilling fluid returns or “frac-outs”.

8. Endangered or Threatened Species - This certification does not authorize discharges likely to result in the take or taking of any species listed as endangered or threatened in 6 NYCRR Part 182.5 (a) or (b) or discharges likely to destroy or adversely modify the habitat of such listed species. To be eligible for coverage under this certification, applicants must either verify that the activity is outside of the occupied habitat of such species or, if located within the habitat of such species, obtain a determination from the NYS Department of Conservation Regional Office that the proposed activity is not likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental regional offices, the New York Natural Heritage Program in Albany, New York or on the DEC website at <https://www.dec.ny.gov/animals/38801.html> .

9. Rare Mollusks - This certification does not authorize disturbances or discharges to waters of the United States that support mollusks listed as S-1 or S-2 on the New York State Natural Heritage database, unless DEC staff have determined that the project location does not contain mussels listed as S-1 or S-2 on the Natural Heritage database.

10. Prohibition Period for In-water Work - In-water work is prohibited in cold water trout fisheries (waterbodies classified under Article 15 of New York State Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31.

Water classification values can be found on the DEC’s Environmental Resource Mapper available on the Department’s website at <https://gisservices.dec.ny.gov/gis/erm/>. Applicants may also contact the Regional Fisheries Manager in the appropriate New York State Department of Environmental

Conservation regional office to determine the classification of the water body and whether the prohibition period applies.

- 11. Significant Coastal Fish and Wildlife Habitats** - This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602 (NYCRR, Title 19, Chapter XIII, Waterfront Revitalization of Coastal Areas and Inland Waterways).
<https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>
- 12. Coastal Erosion Hazard Areas** - This certification does not authorize projects that disturb greater than ¼ acre or 300 linear feet of waters of the United States within mapped Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505. <https://www.dec.ny.gov/lands/86541.html>
- 13. Federal Energy Regulatory Commission** – This certification does not authorize activities regulated by the United States Federal Energy Regulatory Commission (FERC). An individual Section 401 Water Quality Certification from DEC is required for all projects regulated by FERC.
- 14. Preventing the Spread of Aquatic Invasive Species** - To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation, and other debris before entering any approved construction areas within waters of the United States. When using construction equipment, projects authorized under this Certification shall take reasonable precautions to prevent the spread of aquatic invasive species as required under the provisions in ECL § 9-1710.
- 15. Utility Projects** – The following restrictions and conditions apply to activities involving utility projects:
 - a. This certification does not authorize maintenance or other activities associated with hydroelectric power generation projects.
 - b. This certification does not authorize the construction of substation facilities or permanent access roads in wetlands or within the Federal Emergency Management Agency mapped 100-year floodplain.
 - c. Excess materials resulting from trench excavation must be permanently removed from the waters of the United States and contained so that they do not re-enter any waters of the United States.
- 16. NWP 14. Linear Transportation Projects** – The following restrictions apply to transportation activities:
 - a. Linear transportation activities that cross multiple waterbodies or cross the same waterbody at multiple locations, while viewed as multiple “single and complete” projects for the purposes of the Nationwide Permit program, will be considered

by the Department as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or $\frac{1}{4}$ acre.

- b. This certification does not authorize the construction of new linear transportation facilities (such as new roads or crossings structures in wetlands) located within a FEMA designated 100-year floodplain.

17. NWP 19. Minor Dredging -This certification does not authorize any activities conducted under NWP 19 in tidal wetlands, as defined in Article 25 of New York State Environmental Conservation Law (<https://www.dec.ny.gov/lands/4940.html>), or in the marine and coastal district as described in Article 13 of New York State Environmental Conservation Law (ECL § 13-0103).

18. NWP 25. Structural Discharges – The following restrictions apply to structural discharges:

- a. This certification does not authorize structural discharges for any pile-supported structure with a surface area greater than 4,000 square feet.
- b. This certification does not authorize any structural support member with an area footprint greater than 64 square feet.
- c. This certification does not authorize piles or structural support members with spacing that has the effect of fill or that causes the buildup of bottom sediments due to wave action or shoreline drift.

19. NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement

Activities – The following restrictions and conditions apply to aquatic habitat restoration, establishment, and enhancement activities:

- a. This certification authorizes only restoration projects conducted with oversight by a federal or state natural resource agency, or a County Soil and Water Conservation District.
- b. This certification does not authorize stream restoration projects over 300 feet in length.
- c. This certification does not authorize filling done for shellfish restoration which results in an alteration of existing substrate and benthic habitat.
- d. This certification does not authorize the conversion of one wetland type to another or the conversion of lotic (flowing water) communities to wetland or lentic (standing water) communities.

20. NWP 33. Temporary Construction, Access, and Dewatering - This certification authorizes activities that exist on-site for no more than 180 days from the date of installation.

21. NWP 41. Reshaping Existing Drainage Ditches – The following restrictions and conditions apply to reshaping existing drainage ditches:

- a. Sidecast organic soils may not be stacked deeper than 18 inches or in such a way as to interfere with surface water flow.
- b. This certification does not authorize sidecasting of non-organic soils into wetlands.
- c. This certification does not authorize in-stream channel re-shaping of Waters classified as “AA”, “A”, “B”, or “C” under Article 15 of New York State Environmental Conservation Law.

22. DEC Emergency Authorizations – This certification also applies to any regulated discharges to Waters of the U.S. covered under a NWP listed in Attachment 5 where DEC makes a finding of emergency pursuant to New York State Uniform Procedures Act regulations at 6 NYCRR § 621.12. Such a finding may also, but is not required to, include DEC emergency authorizations under ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), or Article 34 (Coastal Erosion Management). Where such certification is granted, only conditions 1, 4, 5, and 6 contained in Attachment 5 of this certification shall apply.

23. DEC General Permits – This certification also applies to any regulated discharges to Waters of the U.S. covered under a NWP listed in Attachment 5 where DEC issues project authorization under a general permit pursuant to ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), or Article 34 (Coastal Erosion Management). Where such certification is granted, all other conditions contained in Attachment 5 of this certification shall not apply.

24. DEC Individual Permits – This certification also applies to any regulated discharges to Waters of the U.S. covered under a NWP listed in Attachment 5 where DEC issues individual project authorization pursuant to ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), or Article 34 (Coastal Erosion Management). Where such certification is granted, all other conditions contained in Attachment 5 of this certification shall not apply.

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ATTACHMENT 6

In accordance with the requirements of 40 CFR § 121.7(d)(2), DEC is providing the relevant water quality requirements and statements explaining why each condition in Attachment 5 is necessary to ensure that any discharge will comply with water quality requirements.

DEC implements the state water quality standards for Water Quality Certification found in 301-303, 306 and 307 of the Federal Water Pollution Control Act, as implemented in New York State by the following provisions:

- a. effluent limitations and water quality-related effluent limitations set forth in section 750-1.11 of Title 6 of New York Codes Rules and Regulations (6 NYCRR);
- b. water quality standards and thermal discharge criteria set forth in 6 NYCRR Parts 701, 702, 703 and 704;
- c. standards of performance for new sources set forth in section 6 NYCRR § 750-1.11;
- d. effluent limitations, effluent prohibitions and pretreatment standards set forth in 6 NYCRR § 750-1.11;
- e. prohibited discharges set forth in 6 NYCRR § 750-1.3; and
- f. State statutes, regulations, and criteria otherwise applicable to such activities. These would include, but are not limited to, 6 NYCRR Parts 182 (Endangered and Threatened Species of Fish and Wildlife...), 505 (Coastal Erosion Management), 575 (Aquatic Invasive Species Spread Prevention), 608 (Use & Protection Waters), 661 (Tidal Wetlands), and 663 (Freshwater Wetlands). In addition, portions of the New York State Environmental Conservation Law (ECL) are applicable to such activities.

In accordance with 40 CFR § 121.7(d)(2), water quality requirements and statements of necessity for each condition in Attachment 5 are provided below, numbered and titled to correspond to the conditions contained in Attachment 5.

1. Non-Contamination of Waters

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances

Statement of condition necessity: This condition is necessary to ensure that the permittee undertakes whatever additional measures are necessary, and not otherwise specified in the conditions of this permit, to prevent the contravention of water quality standards during the implementation of the project.

2. Installation and Replacement of Culverts

Water quality requirements: 6 NYCRR 502.4(a)(17) Floodplain management criteria for State projects in flood hazard areas: “(a)...any State agency proposing to commence any project within a flood hazard area in that city, town or village shall do so only if it determines such project is in compliance with the following criteria: ... (17) In order to prevent potential flood damage to certain facilities that would result in serious danger to life and health, or widespread social or economic dislocation, none of the following new projects shall be undertaken within any flood hazard area:...”; 6 NYCRR 703.2 Narrative water quality standards for flow: no alteration that will impair the waters for their best usages; 6 NYCRR 608.2(a) “Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.”; 6 NYCRR 608.5 “No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the State or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this part.”; 6 NYCRR 608.7 (b) The department’s review will determine if the proposed alteration to water resources of the State are consistent with standards contained in section 608.8 of this Part, considering issues such as:(iii) hydrology, including such criteria as water velocity, depth, discharge volume, flooding potential;(iv) (2) the adequacy of design and construction techniques for structures; (6) the safeguarding of life and property; 6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival; 6 NYCRR 701.10 through 701.13 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.14 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife survival.

Statement of condition necessity: Based on the foregoing water quality requirements, this condition is necessary to ensure that culverts are installed in a manner that ensures proper functioning of the waterway and that the continued use of the culvert over time will not cause or contribute to a contravention of water quality standards. It is also necessary to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

3. Discharges and Disturbances Limits

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances; 6 NYCRR 608.2(a) “Except as provided in subdivision (b) of this section, no person or local

public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part.”; 6 NYCRR 608.5 “No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the state or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide, without a permit issued pursuant to this Part.”; 6 NYCRR 663.4 Regulated Activity List Item #20 - Filling in freshwater wetlands, including filling for agricultural purposes, is presumed incompatible with wetland functions and benefits. 6 NYCRR 505.8 Restrictions on regulated activities within coastal natural protective features, including the prohibition of excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore areas. 6 NYCRR 661.5(b) Regulated activity list item 30 – Filling in tidal wetlands is presumed incompatible with the preservation, protection or enhancement of the present and potential values of tidal wetlands.

Statement of condition necessity: The increased length of a project along a stream or the increased acreage disturbance of a project within a wetland or other waterbody results in a concomitant increase in impacts to those environmental resources. Impacts include, but are not limited to, increased stream temperature, reduced availability of refugia sites for cold water fish, lack of flood flow retention, less ability to intercept nonpoint source pollutants, reduced transport of nutrients vital to ecosystem productivity, and reduced capacity for aquifer recharge. This condition is necessary to ensure that the scope of authorized activities is limited to those that are reasonable and necessary to achieve the objective of the project and to ensure that those activities will not exceed minimal adverse environmental impacts. Because the Corps has removed linear foot thresholds for stream disturbances, allowing discharges of up to several thousands of feet under its NWP, it is also necessary to ensure that waters of the United States in New York remain suitable for fish, shellfish, and wildlife survival.

4. Bulkheads

Water quality requirements: 6 NYCRR 608.8 Standards “The basis of the issuance or modification of a permit will be a determination that the proposal is in the public interest, in that:… (c) The proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state, including soil, forests, water, fish, shellfish, crustaceans and aquatic and land-related environment.”

Statement of condition necessity: This condition is necessary to prevent discharges from new bulkheads, which are generally unreasonable and unnecessary and do not meet the standards of 6 NYCRR 608.8. New bulkheads generally would also cause unreasonable and unnecessary damage (e.g., erosion of adjacent properties, littoral habitat loss) compared to other stabilization measures that are typically feasible (e.g., plantings or rock revetments). Likewise, the placement of

new fill that would adversely impact shorelines, such as extension of bulkheads, requires an individual review to examine alternatives and to ensure encroachment is reasonable and necessary.

5. Maintenance of Water Levels

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the project does not violate water quality standards related to flow. This condition also ensures that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival. Activities authorized under NWP 27 have the inherent potential to alter flow but are presumed to have a long-term beneficial effect on the attainment of best usages.

6. Dewatering

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances; 6 NYCRR 703.2 Narrative water quality standards requiring no alteration that will impair the waters for their best usages. Best usages for all state water classifications include fishing. All classifications indicate that waters shall be maintained suitable for fish, shellfish and wildlife survival.

Statement of condition necessity: This condition is necessary to ensure that dewatering does not contravene state water quality standards, that the best usages are maintained, and that waters remain suitable for fish, shellfish, and wildlife survival.

7. Horizontal and Directional Drilling

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to prevent the contravention of water quality standards when horizontal or directional drilling is used as an installation method.

8. Endangered or Threatened Species

Water quality requirements: 6 NYCRR 182 Regulations prohibiting the take of state-listed endangered or threatened species; 6 NYCRR 703.2 Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances; 6 NYCRR 701 Classification of surface waters and identification of best usages.

Statement of condition necessity: This condition is necessary to ensure that turbid conditions in the vicinity of these populations are addressed prior to construction

so that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival. This condition is necessary to ensure that any activities authorized by these NWP's do not "take" any aquatic or aquatic-dependent state listed endangered or threatened species or its habitat.

9. Rare Mollusks

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances. 6 NYCRR Part 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: Rare and sensitive mussel populations are highly susceptible to acute changes in turbidity and affect the food web upon which fish and other taxa rely. This condition ensures that turbid conditions in the vicinity of these populations are addressed prior to construction so that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

10. Prohibition Period for In-water Work

Water quality requirements: 6 NYCRR 703.2: Narrative water quality standards for turbidity, toxic materials, and other deleterious substances. 6 NYCRR 701: Classification of surface waters and identification of best usages.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not adversely impact water quality during sensitive fish spawning periods and contravene water quality standards or impair the waters best usages for fishing. This condition also ensures that waters remain suitable for fish, shellfish, and wildlife survival and propagation.

11. Significant Coastal Fish and Wildlife Habitats

Water quality requirements: 6 NYCRR Part 701: Classification of surface waters and identification of best usages. 6 NYCRR 701.2 through 701.8 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.9 states that New York fresh surface waters shall be suitable for fish, shellfish and wildlife survival; 6 NYCRR 701.10 through 701.13 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife propagation and survival; 6 NYCRR 701.14 states that New York saline surface waters shall be suitable for fish, shellfish and wildlife survival. 19 NYCRR § 602.5 Significant Coastal Fish and Wildlife Habitats designated under 19 NYCRR Part 602 are those habitat areas identified and recommended by DEC which exhibit to a substantial degree one or more of the following characteristics: (i) the habitat is essential to the survival of a large portion of a particular fish or wildlife population (e.g., feeding grounds, nursery areas), (ii) the habitat supports a species which is either endangered, threatened or of special concern as those terms are defined at 6 NYCRR Part 182, (iii) the habitat supports fish or wildlife populations having significant commercial,

recreational or educational value; or (iv) the habitat is of a type which is not commonly found in the State or a coastal region of the State; Such designations are made under the authority granted to New York State to implement elements of the federal Coastal Zone Management Act of 1972 through its participation in the National Coastal Zone Management Program. The New York Coastal Management Program was approved by NOAA in 1982. The Executive Law Article 42, Waterfront Revitalization of Coastal Areas and Inland Waterways, provides the state with the authority to establish a coastal program, develop coastal policies, define the coastal boundaries, and establish state consistency requirements.

Statement of condition necessity: This condition is necessary to ensure that activities undertaken within designated significant coastal fish and wildlife habitats fully identify the natural resources within the project area and develop site-specific plans and methods for the minimization and control of discharges affecting water quality and wildlife. The condition is necessary to ensure that discharges do not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

12. Coastal Erosion Hazard Areas

Water quality requirements: 6 NYCRR 703.2 Narrative water quality standards for turbidity, toxic materials, and other deleterious substances. 6 NYCRR Part 701: Classification of surface waters and identification of best usages. ECL Article 34 and implementing regulations at 6 NYCRR Part 505 identifies Coastal Erosion Hazard Areas (CEHAs) in locations with Natural Protective Feature Areas (NPFAs) and in areas of high erosion vulnerability. 6 NYCRR § 505.8 Prohibits excavating, grading, mining or dredging which diminishes the erosion protection afforded by nearshore areas.

Statement of condition necessity: This condition is necessary to ensure that activities conducted in these vulnerable erosion hazard areas over the thresholds identified are required to develop detailed and site specific plans and pollution control methods to ensure that discharges do no contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

13. Federal Energy Regulatory Commission

Water quality requirements: 6 NCYRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary due to the large scope of FERC-regulated project and the need to identify all potential impacts to waters of the United States, and the need to develop detailed and site-specific pollution control methods to ensure that discharges do no contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish,

shellfish, and wildlife survival.

14. Preventing the Spread of Aquatic Invasive Species

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2 Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances. 6 NYCRR Part 575 Prohibited and Regulated Invasive Species. 6 NYCRR Part 576 Aquatic Invasive Species Spread Prevention.

Statement of condition necessity: This condition is necessary to ensure that equipment used will not contribute to a contravention of water quality standards, that best usages are maintained, and to ensure that waters remain suitable for fish, shellfish, and wildlife survival.

15. Utility Projects -

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: Prohibitions on appurtenant structures and uncontrolled spoilage ensure narrative water quality standards and best usages will be met, and ensure that waters remain suitable for fish, shellfish, and wildlife survival.

16. NWP 14. Linear Transportation Projects

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances. 6 NYCRR 502.4(a)(17) Floodplain management criteria for State projects in flood hazard areas: "(a)...any State agency proposing to commence any project within a flood hazard area in that city, town or village shall do so only if it determines such project is in compliance with the following criteria: ... (17) In order to prevent potential flood damage to certain facilities that would result in serious danger to life and health, or widespread social or economic dislocation, none of the following new projects shall be undertaken within any flood hazard area:...";

Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities. This condition is also necessary to ensure that water quality requirements related to designated floodplains are met.

17. NWP 19. Minor Dredging

Water quality requirements: 6 NYCRR 661, ECL 25-0401, 6 NYCRR 703.3 State regulations allow only those uses of tidal wetlands and areas adjacent thereto

that are compatible with the preservation, protection and enhancement of the present and potential values of tidal wetlands (including but not limited to their value for marine food production, wildlife habitat, flood and hurricane and storm control, recreation, cleansing ecosystems, absorption of silt and organic material, education and research, and open space and aesthetic appreciation), that will protect the public health and welfare, and that will be consistent with the reasonable economic and social development of the State. (Part 661.1). 6 NYCRR 703.3 establishes numeric water quality standards for saline waters for pH and dissolved oxygen (DO). Due to the nature of dredge, fill, and excavation activities, and the likely chronic and acute impacts to submerged aquatic vegetation and sediments in tidal wetlands and marine waters, these standards are likely to be exceeded in the course of dredging activities undertaken under NWP 19.

Statement of condition necessity: This condition is necessary to ensure that site-specific plans are prepared to adequately prevent contravention of water quality standards during dredging, to maintain best usages, and to ensure that marine waters remain suitable for fish, shellfish, and wildlife survival and propagation.

18.NWP 25. Structural Discharges

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that no more than minimal adverse environmental impacts related to changes to flow or to increased turbidity result from these activities, and to ensure waters remain suitable for fish, shellfish, and wildlife survival.

19.NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

20.NWP 33. Temporary Construction, Access, and Dewatering

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

21. NWP 41. Reshaping Existing Drainage Ditches

Water quality requirements: 6 NYCRR 701: Classification of surface waters and identification of best usages. 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Statement of condition necessity: This condition is necessary to ensure that the discharge does not contravene state water quality standards, that best usages are maintained, and waters remain suitable for fish, shellfish, and wildlife survival.

22. DEC Emergency Authorizations

Water quality requirements: State statutes applicable to this condition include Environmental Conservation Law (ECL) Articles 15, 24, 25, and 34. State regulations applicable to this condition include 6 NYCRR Parts 505 (Coastal Erosion Management), 608 (Use & Protection Waters), 661 (Tidal Wetlands), 663 (Freshwater Wetlands), and 666 (Wild, Scenic, and Recreational Rivers). In addition to the underlying water quality standards contained in 6 NYCRR Parts 701, 702, 703 and 704, these statutes and regulations impose requirements on a wide range of activities, including discharges of fill, that affect water quality in state regulated streams, rivers, wetlands, and coastal waters.

Statement of condition necessity: This condition is necessary to ensure that blanket WQC granted for projects subject to DEC emergency authorizations also address provisions of the identified regulatory programs that pertain to water quality. To the extent that this condition also cross-references Condition Nos. 1, 4, 5, and 6, the water quality requirements and statements of necessity for each of those conditions are contained above in this Attachment.

23. DEC General Permits

Water quality requirements: State statutes applicable to this condition include Environmental Conservation Law (ECL) Articles 15, 24, 25, and 34. State regulations applicable to this condition include 6 NYCRR Parts 505 (Coastal Erosion Management), 608 (Use & Protection Waters), 661 (Tidal Wetlands), 663 (Freshwater Wetlands), and 666 (Wild, Scenic, and Recreational Rivers). In addition to the underlying water quality standards contained in 6 NYCRR Parts 701, 702, 703 and 704, these statutes and regulations impose requirements on a wide range of activities, including discharges of fill, that affect water quality in state regulated streams, rivers, wetlands, and coastal waters.

Statement of condition necessity: This condition is necessary to ensure that blanket WQC granted for projects authorized under DEC general permits pertains only to specific regulatory programs that contain sufficient provisions to ensure water quality requirements will be met.

24. DEC Individual Permits

Water quality requirements: State statutes applicable to this condition include Environmental Conservation Law (ECL) Articles 15, 24, 25, and 34. State regulations applicable to this condition include 6 NYCRR Parts 505 (Coastal Erosion Management), 608 (Use & Protection Waters), 661 (Tidal Wetlands), 663 (Freshwater Wetlands), and 666 (Wild, Scenic, and Recreational Rivers). In addition to the underlying water quality standards contained in 6 NYCRR Parts 701, 702, 703 and 704, these statutes and regulations impose requirements on a wide range of activities, including discharges of fill, that affect water quality in state regulated streams, rivers, wetlands, and coastal waters.

Statement of condition necessity: This condition is necessary to ensure that blanket WQC granted for projects authorized under DEC individual permits pertains only to specific regulatory programs that contain sufficient provisions to ensure water quality requirements will be met.