

DRAFT – July 14, 2014

May 29, 2012

Water Quality Certificate # 2001-001.1

Todd Selig, Town Administrator
Town of Durham
15 Newmarket Road
Durham, NH 03824

RE: Amended Section 401 Water Quality Certification for Town of Durham withdrawal at Lamprey River, Durham, New Hampshire, Water Quality Certificate File # 2001-001.1, Wetlands Bureau Permit #2000-00506.

A. INTRODUCTION

The above-referenced project (the Project) at Durham consists of modifications to an existing pump station and installation of new force main piping for transfer of water from the Lamprey River in the Wiswall Dam impoundment to the Durham public water system. The purpose of the Project is to improve the operation of the existing raw water supply system from the Lamprey River to the Durham Water Treatment Plant by adding a direct connection to the plant. The addition of a direct connection eliminates the current practice of discharging raw water from the Lamprey River to the Oyster River approximately eight thousand feet above the water treatment plant intake. This will allow more efficient use of the available water resources, especially during drought conditions. In addition to constructing the pipe connection between the Lamprey River and the water treatment plant, the recently prepared Water Resources Management Plan will be implemented to improve management of the available water sources for Durham public water supply. A significant component of the Plan will be the management of water supply demand during periods of limited surface water availability due to drought conditions. The Project is further described in the NHDES Wetlands Bureau file #2000-00506 and the Town of Durham/ University of New Hampshire Water Resources Management Plan dated March, 2000 - Revised July, 2000, approved August, 2013, on file with the NHDES Water Supply Engineering Bureau.

The Town of Durham (the Applicant) was granted a Wetlands permit under State of New Hampshire Wetland Rule.

The Water Quality Certificate # 2001-001 for the Town of Durham withdrawal at Lamprey River was signed on April 3, 2001. The document herein amends and replaces Water Quality Certificate #2001-001.

B. STATEMENT OF FACTS AND LAW

1. The Corps of Engineers has issued a State of New Hampshire Programmatic General Permit under under Section 404 of the federal Clean Water Act (The Act) (33 U.S.C. 1344) that allows permits issued under State of New Hampshire Wetland to serve as a federal permit under Section 404.

2. Section 401 of the Act requires state certification that construction and operation of the Project will comply with Water Quality Standards before a federal permit may be issued for all projects that may result in a discharge to waters of the United States. DES implements this provision of the Act under the authority of RSA 485-A:12, III.

3. Env-Wq 1700, Surface Water Quality Regulations fulfills the requirements of Section 401 of the Act that New Hampshire adopt water quality standards consistent with the provisions of the Act.

4. Env-Wq 1702.18 defines discharge as:

| ~~(a)~~ The addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters, either directly or indirectly through the groundwater, whether done intentionally, unintentionally, negligently, or otherwise; or

| ~~(b)~~ The placing of a pollutant in a location where the pollutant is likely to enter surface waters.

5. Env-Wq 1702.46 defines surface waters of the state as perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial and waters of the United States as defined in 40 CFR 122.2. The term includes wetlands.

6. Env-Wq 1701.02 provides that the water quality standards “shall apply to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who undertakes any other activity that affects the beneficial uses of the level of water quality of surface waters.”

7. Env-Wq 1703.01, Water use Classifications, provides that:

(b) All surface waters shall be restored to meet the water quality criteria for their designated classification including existing and designated uses, and to maintain the chemical, physical, and biological integrity of surface waters

(c) All surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters.

(d) Unless the flows are caused by naturally occurring conditions, surface water quantity shall be maintained at levels adequate to protect existing and designated uses.

8. Env-Wq 1703.19, Biological and Aquatic Community Integrity, provides that:

| ~~“(a) The surface waters shall support and maintain a balanced, integrated and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region.~~

| (b) Differences from naturally occurring conditions shall be limited to non-detrimental differences in community structure and function.”

9. The wetlands adjacent to the Project, including the wetlands subject to dredge and fill, are surface waters of the state under Env-Wq 1702.46.

10. Construction activity in a wetland constitutes a discharge under the definitions of Env-Wq 1702.18(b).

C. FINDINGS

1. Construction and operation of the Project requires Water Quality Certification under Section 401 of the act.

2. The dredge and fill activities associated with the project must meet the requirements set forth in Wetlands Bureau Permit #2000-00506 in order to meet water quality standards.

| 3. On ~~month/day/2012~~ August 30, 2013, the Department adopted the Lamprey River Water Management Plan, which sets forth how the protected instream flows established under Env-Wq 1905 shall be maintained. According to Env-Wq 1907.02, “Protected instream flows established by the commissioner shall serve as water quality criteria for the purpose of administration of water quality standards by the department under the federal Clean Water Act.”

D. WATER QUALITY CERTIFICATION CONDITIONS

1. The project shall conform to the requirements set forth in Wetlands Bureau Permit #2000-00506.

E. WATER QUALITY CERTIFICATION APPROVAL

Based on the above determinations and conditions, construction and operation of the Project will not violate surface water quality standards, and DES hereby issues Water Quality Certification under Section 401 of the Act for the Project, subject to the above conditions.

F. APPEAL

If you are aggrieved by this decision, you may appeal the decision to the Water Council. Any appeal must be filed within 30 days of the date of this decision, and must conform to the requirements of Env-Wc 200. Inquires regarding appeal procedures should be directed to Paula Scott, DES Council Appeals Clerk, 6 Hazen Drive, PO Box 95, Concord, NH 03302-0095; telephone (603) 271-6072.

| ~~Harry T. Stewart~~ Eugene Forbes, Director
DES Water Division

cc: Ted Diers, DES
Bob Mann, DES
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