August 15, 2025

Via email to DEPEnergy@dec.ny.gov

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625 Broadway, 4th Floor
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Re: Comments on the Water Quality Certification Application of the Northeast Supply Enhancement (NESE) Project, ID No. 2-9902-00109/00009

Dear Ms. Sandrow and Ms. Gaidasz:

Thank you for the opportunity to comment on Transcontinental Gas Pipeline Company, LLC's ("Transco")[1] May 30, 2025, application for a Water Quality Certification ("WQC") for the Northeast Supply Enhancement Project ("NESE" or the "Project"). These comments are submitted on behalf of the Natural Resources Defense Council, the Sierra Club, Surfrider Foundation, Food & Water Watch, and the NYNJ Baykeeper. Commenters write to insist that the New York State Department of Environmental Conservation ("DEC," or the "Department") deny the WQC to the NESE pipeline, as it has twice before, because the applicant has failed to demonstrate compliance with New York state water quality standards as required by 6 NYCRR 608.9.

What the application does show is that construction of the Project will violate numerical standards for copper, mercury, and other contaminants. The massive disturbances construction will cause will result in water quality violations for total suspended solids and turbidity. In addition, it will harm sensitive areas critical to shellfish propagation and interfere with the best usages of the designated waters. The application fails to account for the important species protection required under state and federal law and demonstrates the applicant's disregard for the significant issues raised in the prior denials regarding mixing zones, modeling and assumptions. DEC must deny the WQC because Transco cannot demonstrate that the Project will not violate the state's water quality standards. DEC also has an obligation under the NY Constitution to ensure every person's right to clean water and a healthful environment.[1] DEC would be abdicating its duties if it reversed its prior science- and law-based denials of the Project.

The comments that follow are divided into four parts. Part I describes the proposed pipeline and the ecology of the area impacted by its construction ("Project Area"). Part II describes the procedural history of the NESE application. Part III sets forth the statutory framework for New York State's water quality certification decision. Finally, Part IV explains

[1] New York Constitution Article I, Section 19: "Each person shall have a right to clean air and water, and a healthful environment."

the many ways in which the proposed project would violate New York State water quality standards.

I. The Proposed Pipeline and the Ecology of the Project Area

A. Transco Has Proposed Building More Than 17 Miles of Underwater Pipeline Across New York Waterways.

NESE is an expansion of the Transco Pipeline, a natural gas pipeline that runs from Texas to New York City. The project is owned by Williams, one of the largest natural gas pipeline companies in the United States. The proposed pipeline facilities are divided into three sections—one of which, the Raritan Bay Loop, would cross through New York State for 17.3 miles. The entire New York portion of the pipeline would be sited offshore in Queens and Richmond Counties, just south of Staten Island, Coney Island, and the Rockaways, in three connected waterbodies— Raritan Bay, Lower New York Bay, and the New York Bight section of the Atlantic Ocean.[2] NESE would then connect to an existing offshore pipeline, the Rockaway Delivery Lateral, at a location known as the Rockaway Transfer Point in Queens, New York.

To construct pipelines that cross waterbodies, projects either cut a trench along the bottom of the watercourse ("trenching") or they tunnel under the waterbody, which is known as Horizontal Directional Drilling ("HDD"). Seabed trenching uses either clamshell dredge or jet trencher, and the pipeline is laid into the cut. For projects using HDD, a tunnel is drilled under the sea floor and the pipe is then routed through it.

While each method has the potential to degrade water quality, trenching is generally understood to be more harmful to waterbodies.[3] Trenching can result in 100 percent loss of sea floor habitat within the right-of-way for the duration of construction. This process directly tears up part of the sea floor, destroying habitats, increasing turbidity and sedimentation (i.e., the depositing of soil and silt into water).[4] Trenching also will resuspend contaminants including mercury and copper. Sixteen of the seventeen miles of the pipeline would be installed in a trench created by either a clamshell dredge (approximately 2 miles) or jet trencher (approximately 13 miles), and less than 1 mile of the pipeline would be dug using the HDD Method.[5] The width of the construction right-of-way for the offshore segment of the Raritan Bay Loop would be 5,000 feet wide,[6] affecting over 14,523 acres of land.[7]

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[2] Northeast Supply Enhancement Project - Final Environmental Impact Statement, FERC Docket No. CP17-101-000, at 4-50 (2019) [hereinafter "EIS"].
[3] *See* U.S. Army Corps Eng'rs, *Sediment and Erosion Control Guidelines for Pipeline Projects* 2, https://www.swl.usace.army.mil/Portals/50/docs/regulatory/Sedimenatation-Erosion%20Control.pdf (last visited Aug. 5, 2025).
[4] Lucie M. Lévesque & Monique G. Dubé, *Review of the Effects of In-Stream Pipeline Crossing Construction on Aquatic Ecosystem*s, 132 Env't Monitoring & Assessment 395, 396–98 (2007), https://doi.org/10.1007/s10661-006-9542-9; Scott Reid & Paul Anderson, *Effects of Sediment Released During Open-Cut Pipeline Water Crossing,* 24 Can. Water Res. J. 235, 240 (1999), https://doi.org/10.4296/cwrj2403235.
[5] EIS at 2-35, tbl. 2.3.3-1.
[6] *Id.* at 2-11.
[7] *Id* at 2-9.

B. The Project Area Supports Important Habitat and Recreational Uses.

NESE would cross three important waterbodies in New York—Raritan Bay, Lower New York Bay, and the New York Bight. Both Raritan Bay and the Lower New York Bay are part of the New York-New Jersey Harbor Estuary, which opens onto the New York Bight in the Atlantic Ocean to the southeast. Collectively, these bodies of water provide important ecological services, host endangered and threatened species, and support a wide variety of recreational activities.[8]

Since the beginning of the nineteenth century, pollution, sewage, solid waste and, eventually, industrial chemical contamination increasingly debilitated the health of New York Harbor.[9] In the past 50 years, however, the health of the Harbor has improved tremendously as a result of significant investment from the City of New York, local non-profit organizations, and citizen involvement.[10] Thanks to these efforts, New York Harbor is the healthiest it has been in over a century.[11]

Although the overall abundance of fish has declined in the past 400 years due to historic contamination and commercial fishing depletion issues, New York Harbor is still home to a diverse collection of aquatic species.[12] Seasonal nutritional upwellings in the estuary support a high volume of algae, phytoplankton, and zooplankton, which in turn support a high variety of aquatic species, including the blue crab,[13] ribbed mussel,[14] shortnose sturgeon,[15] bottlenose dolphin,[16] and the harbor seal.[17] Because the Raritan Bay is home to such a diverse array of habitats that support regionally rare and important marine, estuarine, and anadromous species, the U.S. Fish and Wildlife Service designated parts of the Bay as the Raritan Bay-Sandy Hook Bay Significant Habitat Complex.[18] The pipeline would cross eight miles of this ecologically significant area.[19]

According to a study by the NY-NJ Harbor & Estuary Program, the estuary now supports more than 200 fish species.[20] These species include diadromous (fish that migrate between fresh

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[8] Judith M. O'Neil et al., *New York Harbor: Resilience in the Face of Four Centuries of Development*, 8 Reg'l Stud. Marine Sci. 274 (2016), https://doi.org/10.1016/j.rsma.2016.06.004.
[9] *Id.* at 276.
[10] *Id.* at 278, 281, 283.
[11] Press Release, New York City Office of the Mayor, *New York Harbor: Healthier Than It's Been in More Than a Century* (Dec. 7, 2017), https://www1.nyc.gov/office-of-the-mayor/news/753-17/new-york-harbor-healthier-it-s- been-more-century.
[12] O'Neil, *supra* note 8, at 282.
[13] NOAA, Significant Habitats and Habitat Complexes of the New York Bight Watershed – Lower Hudson River Estuary (2011), https://www.nodc.noaa.gov/archive/arc0034/0071981/1.1/data/0-data/disc_contents/web_link/text/low_hud.htm#Lower%20Hudson%20River%20Estuary.
[14] New York-New Jersey Harbor & Estuary Program, *Hudson-Raritan Estuary Comprehensive Restoration Plan* 37, 82 (2016), https://www.hudsonriver.org/wp-content/uploads/2017/08/Hudson-raritan-0616.pdf.
[15] *Id.*
[16] D. F. Squires & J. S. Barclay, New York-New Jersey Harbor & Estuary Program, *Nearshore Wildlife Habitats and Populations in the New York/New Jersey Estuary* 92 (1990), https://www.hudsonriver.org/wp-content/uploads/2018/10/NearshoreWildlife1990.pdf.
[17] *Id.*
[18] EIS at 4-98.
[19] *Id.*
[20] New York-New Jersey Harbor & Estuary Program, *The State of the Estuary 2018*, at 3 (2018),

and salt water) and marine finfish species of ecological, commercial, and recreational importance.[21] The New York Bight also serves as spawning grounds for many economically important species and as nursery grounds for their early development stages.[22]

Of these over 200 fish species, the National Oceanic and Atmospheric Administration's ("NOAA") National Marine Fisheries Service designated the project area essential fish habitat ("EFH") for 33 species under the Magnuson-Steven Fisheries Conservation Act. Four fish species (Atlantic sturgeon, shortnose sturgeon, cusk, oceanic whitetip shark) are federally or state-listed as threatened or endangered,[23] and eight species (alewife, blueback herring, rainbow smelt, warsaw grouper, cusk, Atlantic bluefin tuna, dusky shark, and sand tiger shark) are listed as "species of concern" by the National Marine Fisheries Service. Three of these species of concern (Atlantic bluefin tuna, dusky shark, and sand tiger shark) have designated essential fish habitat within or near the Project Area.[24]

Sixteen species of marine mammals, consisting of 13 species of cetaceans (i.e., whales, dolphins, and porpoises), and 3 species of pinnipeds (i.e., seals) may also use the Project Area during the year. Of these species, six (blue whale, sei whale, sperm whale, North Atlantic right whale, fin whale)[25] are federally or state-listed as threatened or endangered.[26]

In addition, five species of sea turtles have the potential to occur within the Project Area, all protected under the Endangered Species Act. These include the green, Kemp's ridley, leatherback, loggerhead, and hawksbill sea turtles.[27]

The New York Harbor Estuary also supports benthic species such as clams, oysters, and mollusks that provide important ecosystem services such as water filtration, three-dimensional habitats for other species like fish and anemones, stabilize shorelines from erosion, and absorb large waves.[28] In particular, the hard clam area in Raritan Bay is both a "sensitive habitat"[29] and a "critical resource area."[30]

Improvements in water quality, increased diversity of marine life, and enhanced access to the shoreline have all contributed to a revitalization of recreational activities in the New York Harbor.[31] Between 2009 and 2014, over 500 acres of the waterfront were opened to the public in

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https://www.hudsonriver.org/NYNJHEPStateoftheEstuary.pdf.

[21] EIS at 4-98–4-99

[22] *Id.*

[23] *Id.* at 4-162.

[24] *Id.* at 4-103.

[25] *Id.* at 4-162.

[26] *Id.* at 4-104.

[27] *Id.* at 4-106.

[28] *State of the Estuary*, *supra* note 20*,* at 31.

[29] Technical & Operational Guidance Series ("TOGS") 5.1.9, Water and Riparian Management of Sediment and Dredged Material (2004), https://extapps.dec.ny.gov/docs/water_pdf/togs519.pdf.

[30] EPA Office of Water, EPA 820-B-14-004, Water Quality Standards Handbook Chapter 5: General Policies (2014), https://www.epa.gov/sites/default/files/2014-09/documents/handbook-chapter5.pdf.

[31] New York-New Jersey Harbor & Estuary Program, *Connecting with Our Waterways: Public Access and its Stewardship in the New York-New Jersey Harbor Estuary* ii (2016), https://www.hudsonriver.org/wp-content/uploads/2017/10/PublicAccess-Draft_Print-Full_smallerfile.pdf.

the form of parks or public spaces,[32] and by 2016, approximately 37 percent of the Harbor shoreline was estimated to serve as parks or public waterfront spaces, totaling 41,078 acres.[33] A majority of the shoreline on the southern shore of Staten Island, the southwestern shore of Brooklyn, and the western shore of the Rockaway neighborhood in Queens is designated public open space.[34] In 2023, National Park sites in New York Harbor alone received over 17 million visitors who spent $700 million in communities near the parks.[35]

The Harbor itself serves as a recreation area for public and private boating activities, such as rowing, kayaking, canoeing, and sailing. Recreational and sport fishing and sailing are also[36] popular recreational activities in the Project Area.[37] The pipeline's workspace would cross through three New Jersey Department of Environmental Protection-designated sport ocean fishing grounds in New York: the Gong Grounds, Tin Can Grounds, and Ambrose Channel Grounds.[38] In 2015, 3.2 million saltwater recreational angler trips took place off the shores of New York.[39] Whale watching and scuba diving also take place within the Project Area.[40]

II. Procedural History

A. DEC Denied Transco's 2017 Application.

On March 27, 2017, Transco submitted an application for a Certificate of Public Convenience and Necessity (the "Certificate") to the Federal Energy Regulatory Commission ("FERC"), to permit Transco to construct and operate the NESE.[41] In connection with this application, on June 30, 2017, Transco submitted a Joint Permit Application to the Department seeking, among other permits, a Water Quality Certificate under section 401 of the Clean Water Act and related state regulations.[42] On April 20, 2018, the Department issued a denial of the WQC application without prejudice, citing "incomplete information and the ongoing environmental review by FERC" relating to the certificate application.[43]

B. DEC Denied Transco's 2018 Application.

Following the April 2018 denial, Transco submitted a new WQC application to the

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[32] *Id.*
[33] O'Neil, *supra* note 8.
[34] *Connecting with Our Waterways*, *supra* note 31, at ii.
[35] Visitor and spending data aggregated from Nat'l Park Serv., *Visitor Spending Effects* (last updated Sept. 10, 2024), https://www.nps.gov/subjects/socialscience/vse.htm.
[36] O'Neil, *supra* note 8.
[37] EIS at 4-265.
[38] *Id.* at 4-100, 4-265–4-266.
[39] *Id.* at 4-265.
[40] *Id.*
[41] *See* FERC Docket No. CP17-101 (pursuant to section 7(c) of the Natural Gas Act).
[42] Letter from Daniel Whitehead, Director, Division of Environmental Permits, DEC, to Joseph Dean, Manager, Environmental Health and Safety, Transco, at 2 (May 15, 2019) [hereinafter "2019 Denial"]. In addition to the WQC, Transco applied for an Endangered/Threatened Species Part 182 Incidental Take Permit and an ECL Article 15 Excavation and Fill in Navigable Waters Permit. *See id.*
[43] *Id*. at 3 (citing DEC Notice of Denial/Notice of Incomplete Application (April 20, 2018)).

Department on May 16, 2018 ("2018 Application").[44] The application was supplemented on multiple occasions, including with responses to requests for information by the Department following the initial denial.[45] While the Department reviewed the 2018 Application, on January 25, 2019, FERC issued a completed, final environmental impact statement for the NESE Project, in which FERC anticipated numerous environmental impacts from the construction and operation of the NESE Project. The Department noticed the 2018 Application as complete on January 30, 2019, opening a public comment period[46] during which environmental groups, advocates, and interested parties filed thousands of comments to the 2018 application.[47]

Shortly after the close of the public comment period on the 2018 Application, on May 3, 2019, FERC issued Transco the Certificate.[48] However, on May 15, 2019, the Department denied the 2018 Application for a WQC without prejudice.[49] The Department based its denial on a determination that, in its 2018 Application, Transco was unable to demonstrate compliance with all applicable state water quality standards and that the Department lacked reasonable assurance that the NESE Project would be able to meet all applicable water quality standards.[50] Furthermore, the Department stated that it had "determined that . . . the construction of the [NESE project] would likely have significant water quality impacts in New York State"—particularly due to the resuspension of sediments and other contaminants, including mercury and copper—and a finding that, as proposed, the NESE project would "cause impacts to habitats due to the disturbance of shellfish beds and other benthic resources."[51]

C. DEC Denied Transco's 2019 Application and Transco Abandoned the Project.

Transco submitted another WQC application to the Department ("2019 Application") two days later.[52] In this application, Transco stated that it was re-submitting all of the materials from its first and second WQC applications, including all attachments and supplements.[53] The only additional materials included in the 2019 Application were new contaminant modeling data, an updated mitigation plan, and documentation explaining the greenhouse gas emissions impacts of the NESE project.[54]

Once again, Commenters and thousands of other interested parties submitted comments on the 2019 Application.[55] Following the public comment period, on May 15, 2020, the

[44] *See* Letter from Jospeh Dean, Transco, to Karen M. Gaidasz, DEC, re: Northeast Supply Enhancement Project – Application for Permits Under Article 15, Title 5 and Article 11, Title 5 of the ECL and Water Quality Certification under Section 401 of the Clean Air Act (May 16, 2018) (on file with authors).
[45] 2019 Denial at 3.
[46] *See id*.
[47] *Id*.
[48] Order Issuing Certificate, 167 FERC ¶ 61,110 (May 3, 2019).
[49] *See* 2019 Denial.
[50] *Id*. at 4.
[51] *Id*. at 3–4.
[52] *See* Letter from Jospeh Dean, Transco, to Karen M. Gaidasz, DEC, re: Northeast Supply Enhancement Project – Application for Permits Under Article 15, Title 5 and Article 11, Title 5 of the ECL and Water Quality Certification under Section 401 of the Clean Air Act (May 17, 2019) (on file with author).
[53] *Id*. at 2.
[54] *Id*.
[55] See Letter from Daniel Whitehead, DEC, to Joseph Dean, Transco, at 4 (May 15, 2020) [hereinafter "2020 Denial"].

Department denied Transco's 2019 application for a WQC certificate without prejudice.[56] The Department based its third denial on Transco's failure to demonstrate that the NESE project would comply with all applicable water quality standards.[57] The Department stated that it had again "determined that the construction of the [NESE] project would have adverse water quality impacts in New York State," again citing its concerns regarding resuspension of sediments and contaminants and adverse impacts to various habitats. It observed as well that the project "would cause numerous other significant adverse environmental impacts."[58] Specifically, the Department found that the use of a 500-foot mixing zone was not appropriate and as such "lack[ed] reasonable assurances that the Project would comply with applicable water quality standards, particularly without the use of a default 500-foot mixing zone for mercury and copper."[59] Transco did not appeal the denial. After this third denial, Transco withdrew its additional state permit applications, and the Certificate issued to Transco by FERC lapsed.[60] In June of 2024, FERC officially vacated the Certificate.[61]

D. Transco Is Now Asking DEC to Approve a Pipeline Project Identical to One It Denied in 2019 and 2020 Based on Water Quality Impacts.

On May 29, 2025, more than eight years after its initial application, Transco submitted a Petition for Expedited Reissuance of Certificate authority to FERC, requesting that the Certificate be reissued, permitting Transco to construct and operate the NESE project.[62] On May 30, 2025, Transco submitted a Joint Permit Application to the Department seeking, among other items, a WQC under section 401 of the Clean Water Act ("2025 Application").[63] In its cover letter, Transco stated that it "believes that the Denial incorrectly rejected the need for the Project, which resulted in a decision that did not consider how the Project could be feasibly constructed and meet the standards for the issuance."[64] In fact, the Department did not base its 2020 or 2019 Denial on its assessment of need for the Project. The prior denials were based squarely on Transco's failure to demonstrate that the Project would comply with water quality standards.[65]

The application was supplemented multiple times.[66] On July 2, 2025, the Department

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[56] *See id.*
[57] *Id*. at 3.
[58] *Id*. at 4, 13.
[59] *Id.* at 3–4.
[60] *See* Petition of Transcontinental Gas Pipeline Company, LLC for Expedited Reissuance of Certificate Authority (Northeast Supply Enhancement Project), Docket Nos. CP17-101- & CP20-49-, at 6 (filed May 29, 2025) (on file with author).
[61] Order Vacating Certificate and Dismissing Rehearing, 187 FERC ¶ 61,145 (2024).
[62] *See* 2025 FERC Petition, *supra* note 60.
[63] *See* Letter from Jospeh Dean, Transco, to Karen M. Gaidasz, DEC, re: Northeast Supply Enhancement Project – Application for permits under Article 15, Title 5, Article 11, Title 5 and Article 17 of the Envir. Cons. L. and Water Quality Cert. under Section 401 of the Clean Air Act (May 30, 2025) (on file with author) [hereinafter "2025 Application"]. In addition to the WQC, Transco is also seeking an Excavation and Fill Permit and an Industrial State Pollution Discharge Elimination System Permit. *See id.*
[64] *Id.* at 3.
[65] 2020 Denial at 4 ("[T]he Department has determined that the construction of the Project would have adverse water quality impacts in New York State.")
[66] *See* Letter from Jospeh Dean, Transco, to Karen M. Gaidasz, DEC (June 9, 2025) (providing the NESE Proposed Project GHG Emissions Analysis); Letter from Jospeh Dean, Transco, to Karen M. Gaidasz, DEC (June 12, 2025)

issued public notice of the completed 2025 Application and announced a 30-day public comment period.[67] On July 23, 2025, after demands from numerous stakeholders, the Department issued public notice that it was extending the comment deadline to Saturday, August 16, 2025.[68]

Importantly, the 2025 Application is nearly identical to the 2019 Application. In fact, in its cover letter to the 2025 Application, Transco stated "*Transco is now resubmitting its application as it existed at the time of the [2020] denial with substantially the same information*."[69] Upon further review of the 2025 Application, and a comparison to the 2019 application, not only are the written applications themselves nearly identical, but the appendices, addendums, and attachments thereto have nearly all been submitted to the Department previously, in either the 2018 Application or the 2019 Application. The few materials that do not appear in prior applications—specifically, some of the drawings included in Appendix A, two of the plans included within the construction plan at Appendix I, and two modeling sampling results included in Appendix L—are all still dated as completed between 2017 and 2019. The only items submitted by Transco with its 2025 Application that are truly "new" materials are an updated greenhouse gas emissions analysis for the NESE project and a letter detailing the NESE project's likely non-compliance with the state's Climate Leadership and Community Protection Act.[70]

III. Statutory Framework

A. Clean Water Act, Section 401

Under section 401 of the Clean Water Act, an applicant for a federal license or permit for activity that "may result in any discharge into the navigable waters"—such as an applicant for a section 404 dredge-and-fill permit or for a certificate of public convenience and necessity under the Natural Gas Act where the project may affect water quality—must apply for a water quality certification. A water quality certification is a determination by the state (or other certifying authority) that "any such discharge will comply with the applicable provisions of sections [301–303 and 306–307 of the Clean Water Act]."[71] EPA regulations specify that a water quality certification must include "[a] statement that the activity will comply with water quality requirements."[72] The New York State regulations implementing section 401 similarly provide that "[a]ny applicant for a Federal license or permit to conduct any activity, including but not

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(submitting a Climate Leadership and Community Protection Act (CLCPA) Section 7(2) Analysis) (both on file with author).

[67] *Notice of Complete Application: Queens and Richmond Country – Northeast Supply Enhancement Project*, DEC (July 2, 2025) https://dec.ny.gov/news/environmental-notice-bulletin/2025-07-02/public-notice/queens-and-richmond-county-northeast-supply-enhancement-project.

[68] *Queens and Richmond Counties - Extension of Public Comments for the Northeast Supply Enhancement Project SPDES, Article 15 Permit, and Water Quality Certification Applications*, DEC (July 23, 2025), https://dec.ny.gov/news/environmental-notice-bulletin/2025-07-23/public-notice/queens-and-richmond-counties-extension-of-public-comments-for-the-northeast-supply-enhancement-project-spdes-article-15-permit-and-water-quality-certification-applications.

[69] 2025 Application at 3 (emphasis added).

[70] *See supra* note 66.

[71] 33 U.S.C. § 1341(a)(1). These sections of the Clean Water Act include provisions relating to standards, limitations, and prohibitions for point source discharges, as well as state-promulgated water quality standards. *See id.* §§ 1311–13, 1316–17.

[72] 40 C.F.R. § 121.7(c).

limited to the construction or operation of facilities that may result in any discharge into navigable waters . . . , must apply for and obtain a water quality certification from [DEC]. The applicant must demonstrate compliance with sections 301–303, 306 and 307 of the [Clean Water Act]."[73]

Additionally section 401(d) of the Clean Water Act provides that states shall attach conditions to water quality certifications in the form of "effluent limitations and other limitations, and monitoring requirements" necessary to assure compliance with the applicable requirements of sections 301–303 and 306–307 of the Clean Water Act, "and with any other appropriate requirement of State law set forth in [the water quality certification]."[74] Where such conditions are included in the certification, EPA regulations require a statement explaining why each of the included conditions is necessary to assure that the activity will comply with water quality requirements.[75]

B. New York State WQS Protect Designated Uses and Require Compliance with Numeric Water Quality Criteria and Narrative Water Quality Standards.

In determining whether to issue a water quality certification, the Department must evaluate whether the proposed project will "demonstrate compliance" with sections 301–303 and 306–307 of the Clean Water Act, as implemented by specified New York water quality regulations. NESE must therefore demonstrate compliance with "water quality standards and thermal discharge criteria set forth in Parts 701, 702, 703 and 704 of [the DEC regulations]," and "state statutes, regulations and criteria otherwise applicable to such activities." [76] Parts 701 and 703 of the regulations are the most relevant here.

1. New York regulations protect waters in the proposed Project Area for shellfishing, primary and secondary contact recreation, fishing, and wildlife propagation.

In accordance with Part 701 of the DEC regulations, all waterbodies in New York State are assigned a letter classification that designates their best uses. Best uses include drinking water, swimming, and fish propagation, among other uses. They also establish the broad standard that waste discharges "shall not cause impairment of the best usages of the receiving water as specified by the water classifications" at affected locations.[77]

Raritan Bay, Lower New York Bay, and the New York Bight—the waterbodies impacted

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[73] 6 NYCRR 608.9(a).
[74] 33 U.S.C. § 1341(d).
[75] 40 C.F.R. § 121.7(d).
[76] 6 NYCRR608.9(a). Subdivision (6) serves as a catch-all certification requirement of compliance with "state statutes, regulations and criteria otherwise applicable."
[77] *Id.* § 701.1. "Wastes" to which these regulations apply are broadly defined, and include: "industrial waste," which is any "liquid, gaseous, solid or waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources, that may cause or might reasonably be expected to cause pollution of the waters of the State"; and "other wastes," which are "garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, leachate, sludge, salt and all other discarded matter not sewage or industrial waste that may cause or might reasonably be expected to cause pollution of the waters of the State." *Id.* § 700.1(a)(26), (40).

by the proposed project—all are designated as either Class SA or SB.[78] Under Part 701 of the DEC regulations, the best uses of Class SA waters are for shellfishing for market purposes, primary and secondary contact recreation, and fishing. The best uses of Class SB water are primary and secondary contact recreation and fishing. Both SA and SB waters must also be suitable for fish, shellfish, and wildlife propagation and survival.

2. New York regulations protect water quality through numeric and narrative standards.

6 NYCRR Part 703 establishes the physical water quality standards applicable to SA and SB water classifications.[79] Part 703 includes numeric criteria by waterbody class for pH range, dissolved oxygen, dissolved solids, and coliforms;[80] and numeric criteria for the class's best usages by specific substance, such as copper and mercury.[81] In addition, Part 703 includes narrative water quality criteria, generally in the form that a particular substance or impairment "shall not result" in a specified impact.[82] These include narrative criteria by waterbody class for taste-, color-, and odor-producing toxic and other deleterious substances; turbidity; suspended, colloidal and settleable solids; oil and floating substances; phosphorus and nitrogen; flow impairment; and radioactivity.[83] Specifically relevant to NESE, Part 703 prohibits any increase in turbidity "that will cause a substantial visible contrast to natural conditions."[84] Likewise, any suspended, colloidal, or settleable solids must not cause "deposition or impair the waters for their best usages.[85]

In making its determination whether to issue a water quality certification for relevant federally permitted authority, the Department must consider not only parts 701 to 704—it also must consider "statutes, regulations and criteria otherwise applicable" to the permitted activity that may bear on compliance with water quality standards.[86]

IV. New York Must Deny the NESE Water Quality Certification

DEC must deny the WQC because the proposed pipeline construction will violate New York's water quality standards. As demonstrated by Transco's water quality certification application, the EIS, and DEC's own findings in its denial of Transco's prior, identical application, construction of the NESE pipeline will resuspend mercury and copper in excess of numeric standards and exceed New York State water quality standards for Total Suspended Solids and other contaminants.[87] The project would increase turbidity to an extent that there would be a substantial visible contrast to natural conditions, in violation of 6 NYCRR 703.2. Additionally, construction would pollute the water so that its best usages, such as fishing, recreation, and wildlife propagation, are impaired, in violation of 6 NYCRR 701.1.

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[78] 6 NYCRR 890.6.
[79] *Id.* §§ 703.1–703.8. See also ECL 17-0301(4)–(6) (providing for DEC adoption of water quality standards).
[80] 6 NYCRR 703.3–703.4.
[81] *Id.* § 703.5, tbl. 1.
[82] *Id.* § 703.2.
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] 6 NYCRR 608.9(a)(6).
[87] *See* 6 NYCRR 703.5; 2020 Denial; EIS at ES-12; *see also* 167 FERC ¶ 61,110 at P 49.

A. Construction of the Project Will Resuspend Contaminants in Violation of Water Quality Standards.

DEC cannot issue the WQC to NESE without knowing, as it does not, that the Project will not resuspend copper and mercury from the sediments and violate New York's water quality standards. The sediment sampling in the Project Area had identified both mercury and copper as well as a number of other contaminants buried in the Project Area sediment. Both mercury and copper have significant adverse impacts including copper's potential for drastic and immediate effects on aquatic life and the bioaccumulative effect of mercury.[88]

As explained earlier, New York State water quality standards include numeric criteria for specific contaminants.[89] For example, copper, lead, mercury, nickel, and zinc all have numerical water quality standards applicable to SA and SB-designated bodies of water.[90] Transco acknowledges in its application that resuspension of these substances in the water will exceed the numerical standards for at least two contaminants—mercury and copper. According to the Environmental Impact Statement, in every sample taken in the Project Area, levels of at least one contaminant were so high that New York State would classify the sample as "Class C" sediment, meaning that "there is a high potential for the sediments to be toxic to aquatic life."[91]

The Final Environmental Impact Statement FERC issued in 2019 for the Project confirms that resuspension of certain contaminants into the water column likely would occur at concentrations in excess of New York State water quality standards. For example, in the majority of modeled scenarios, the maximum total mercury concentrations predicted exceed the mercury concentration standard of 0.05 µg/L.[92] Copper concentrations would also be expected to exceed New York State water quality standards—in two of the modeled scenarios, the predicted maximum concentrations for copper exceeded the chronic toxicity standard of 3.4 µg/L.[93] Approximately 83 percent of the sample sites contained concentrations of a metal at levels that exceeded Class C thresholds. Harmful levels of heavy metals (e.g., copper, lead, zinc, mercury), were detected at multiple locations—for mercury at one site; lead and mercury at one site; lead, zinc, and mercury at two sites; and copper, lead, and mercury at one site.[94]

In its 2020 Denial, DEC "determined that the construction of the Project would have adverse water quality impacts in New York State." Transco has provided no new modeling or data to suggest that these exceedances are no longer predicted. DEC must reject the WQC because the application demonstrates that it will violate water quality standards for mercury and copper.

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[88] Bioaccumulation is particularly a concern in areas designated as Class SA waterbodies where shellfishing is a best use. *See* 2020 Denial at 9.
[89] 6 NYCRR 703.5, tbl. 1.
[90] *Id.*
[91] *See* DEC, Screening and Assessment of Contaminated Sediment 11 (2014), https://www.dec.ny.gov/docs/fish_marine_pdf/screenasssedfin.pdf.
[92] EIS at 4-122.
[93] *Id.*; *see also* 6 NYCRR 703.5(f).
[94] EIS at 4-121.

B. The Proposed Project Construction Will Violate Water Quality Standards for Turbidity.

The Department must reject the WQC because the Project construction will violate turbidity water quality standards. New York water quality standards prohibit turbidity that causes "substantial visible contrast to natural conditions."[95] Turbidity is the measure of relative clarity of a liquid. High levels of turbidity in a waterbody indicate that there are high levels of particulate matter suspended in the water, making it cloudy or opaque. Transco's application acknowledges that the Project's disturbance of the seabed and the turbidity and sedimentation that result will adversely impact marine organisms and their habitat.[96]

Pipeline construction activities would violate turbidity standards along significant portions of the Project Area. The act of dredging and filling, like the kind undertaken to construct an offshore pipeline, can temporarily suspend sediments in the water column, increasing turbidity there.[97] As proposed, the majority of NESE's sediment-disturbance activities will occur during construction, which is expected to last up to 9 months.[98] Within that timeframe, construction activities may vary but excavation along any particular section could last as long as a few weeks.[99] The environmental impact statement acknowledges that pipeline construction will increase turbidity in the surrounding waters—indeed, an area larger than Central Park, about 945 acres of seafloor, would experience an increase in turbidity.[100]

Several activities required to construct the pipeline will lead to increased turbidity. Specifically, activities required to dig the pipeline trench, like clamshell dredging activities, jet trenching, and use of a hand jet and submersible pump, would create turbidity plumes. Clamshell dredging activities would generate sediment plumes exceeding ambient concentrations of total suspended solids ("TSS") by 100 parts per million (ppm) up to 3,150 feet from the source of the activity.[101] Jet trenching would generate sediment plumes with TSS concentrations exceeding the ambient conditions by 100 ppm that would extend between 262 feet to 1,345 feet from the source, and use of the hand jet and submersible pump would generate sediment plumes with TSS concentrations exceeding the ambient conditions by 100 ppm that would extend between 197 feet to 1,378 feet from the source.[102]

Activities required to bury the pipeline, such as backfill placement activities, would also increase turbidity. Backfill placement activities would generate sediment plumes with TSS concentrations exceeding the ambient conditions by 100 ppm would extend between 591 and 5,151 feet from the source.[103] Accidental release of drilling fluid during HDD drilling could also lead to turbidity and sedimentation after drilling fluid becomes entrained in the water column and

[95] 6 NYCRR 703.2 .
[96] *See* 2025 Application at App. F, 2-17.
[97] *See* 40 CFR § 230.21(a).
[98] *See* 2025 Application at App. F, tbl. 1-2.
[99] *Id.*
[100] EIS at 2-11.
[101] *Id.* at 4-109.
[102] *Id.*
[103] *Id.*

transported to other locations.[104]

Part 703 of DEC regulations prohibits any increase in turbidity "that will cause a substantial visible contrast to natural conditions." It also prohibits any suspended, colloidal, or settleable solids from causing "deposition or impair[ing] the waters for their best usages."

Under Part 701 of the DEC regulations, increased turbidity must not cause impairment of the best usages of a waterbody.[105] As proposed, the Project will impair many of the best usages for the water body designations such as shellfish harvesting; fishing; fish, shellfish, and wildlife propagation and survival; and recreation. According to DEC, "construction of the Project would likely have significant adverse impacts to shellfish propagation and survival."[106] While turbidity naturally occurs in the Project Area, artificially high levels of turbidity can impair uses of the water—it can lower the rate of photosynthesis and the primary productivity of an aquatic area, damaging the surrounding ecosystem.[107] Increased turbidity can harm aquatic animals: "Sight-dependent species may suffer reduced feeding ability leading to limited growth and lowered resistance to disease if high levels of suspended particulates persist."[108] It can also "disrupt the respiration and feeding of certain aquatic wildlife and food chain organisms"[109] by clogging fish gills and obscuring visual stimuli.[110] Finally, increased turbidity can make water too cloudy for mobile aquatic species to migrate. The destructive impacts of pipeline construction on fish and other aquatic species have been well-documented.[111]

At least one study has observed that turbidity has adverse effects on hard clams, a species that dwells throughout the Project Area.[112] In a 2003 study, hard clam adults experienced reduced growth after 2 days of exposure to suspended sediment concentrations of 100 ppm. Hard clam larvae experienced 10 percent mortality after 10 days of exposure to suspended sediment concentrations of 750 ppm.[113] According to the environmental impact statement FERC conducted for the Project in 2019, pelagic species (fish that inhabit the water column, as opposed to dwelling near the bottom or the shore) are even more sensitive to turbidity,[114] as are fish eggs and larvae.[115]

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[104] *Id.* at 4-126.
[105] 6 NYCRR 701.1.
[106] 2020 Denial at 10. *See also id.* ("[T]he primary impacts associated with construction of the Raritan Bay Loop would be the potential adverse effects on aquatic species due to sediment disturbance, increased turbidity and sediment redeposition (including contaminated sediments." (quoting EIS at ES-10)).
[107] 40 CFR § 230.21(b).
[108] *Id.*
[109] *Id.* § 230.32(b).
[110] *See, e.g.*, EPA, 841F21007D, Factsheet on Water Quality Parameters – Turbidity (2021), https://www.epa.gov/system/files/documents/2021-07/parameter-factsheet_turbidity.pdf.
[111] Reid, *supra* note 4, at 245.
[112] EIS at 4-116.
[113] *Id.* (citing Walter Berry et al., EPA, The Biological Effects of Suspended and Bedded Sediment in Aquatic Systems: A Review (2003), https://archive.epa.gov/epa/sites/production/files/2015-10/documents/sediment-appendix1.pdf).
[114] *Id.*
[115] Michael E. Kjelland et al., *A Review of the Potential Effects of Suspended Sediment on Fishes: Potential Dredging-Related Physiological, Behavioral, and Transgenerational Implications*, 35 Env't Systems & Decisions 334 (2015), https://doi.org/10.1007/s10669-015-9557-2.

Because Transco's modeling predicts an increase in turbidity that will cause a substantial visible contrast to natural conditions, and an increase in suspended solids that will cause deposition and impair the waters for their best usages, the Department should deny water quality certification.

C. The Project Will Resuspend Other Toxic Contaminants.

The Project will also violate other water quality standards. The contamination of New York Harbor and the surrounding waterbodies by heavy metals, PCBs, dioxins, pesticides, and other contaminants is well-known.[116] In particular, about one third of sample sites contained concentrations of organic contaminants, like PCBs, at levels that exceeded Class C thresholds.[117] Sediment from New York Harbor is so contaminated that most dredged material from New York/New Jersey Harbor is unacceptable for ocean disposal.[118]

The resuspension of these contaminants can significantly harm aquatic ecosystems, impeding the best usages of the waterbody. Toxic metals, toxic organics, pathogens, and viruses can absorb or adsorb to fine-grained particulates, and through this process become biologically available to organisms living in the water.[119] Furthermore, certain suspended material may react with the dissolved oxygen in the water, which can result in oxygen depletion,[120] which, in turn, can cause losses in biodiversity, ecosystem function, and services such as fisheries and aquaculture.

The EIS acknowledges that seafloor-disturbing construction activities, such as the ones undertaken for NESE, could re-suspend contaminants into the water, potentially exposing biota to contaminants via ingestion with food, membrane-facilitated transport, or passive diffusion, making organisms sick and even killing them.[121] And once contaminants enter an organism, they could move up the food chain, potentially harming and killing organisms that were not directly exposed to the contaminant in the environment.[122] For example, PCBs have a "high potential for bio-uptake and bio-transfer within marine food chains."[123]

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[116] Kirk Johnson, *The Problem Is Deep, and Its Name Is Mud; Before New York Harbor Is Dredged, Toxic Sediments Must Be Mapped*, N.Y. Times (June 3, 2002), https://www.nytimes.com/2002/06/03/nyregion/problem- deep-its-name-mud-before-new-york-harbor-dredged-toxic-sediments-must-be.html.
[117] EIS at 4-121.
[118] *See* DEC, Contaminant Assessment and Reduction Project: NY/NJ Harbor Sediment Report 1998-2001, at 1 (2003), http://www.hudsonriver.org/CARP/Appendicies/A-1/NYNJ%20Harbor%20Sediment%20Report%20(NYSDEC).pdf.
[119] EIS at 4-121.
[120] 40 CFR § 230.21(b).
[121] EIS at 4-121.
[122] *Id.*
[123] *Id.*at 4-124.

D. DEC Must Reject the Use of a Mixing Zone to Determine Compliance with Water Quality Standards.

1. DEC must reject a mixing zone where toxic pollutants will impair the water body's designated uses.

The Project will violate water quality standards for toxic pollutants. Where toxic pollutants violate the designated uses of a waterbody, a mixing zone is not appropriate. According to EPA, "[i]n authorizing and establishing mixing zones for dredge and fill activities, the state's… primary consideration should be achieving and protecting the designated uses of the waterbody pursuant to 40 CFR 131.10.[124] Moreover, mixing zones should not be permitted for bioaccumulative pollutants.[125]

Even if a mixing zone were appropriate, the Department already has concluded that Transco cannot base its modeling for mercury and copper on a 500-foot mixing zone. The resuspension of highly contaminated sediment in the Project Area, the presence of sensitive habitats and the proximity of important biological resources in sensitive life stages, requires the Department, as it has previously, to prohibit the use of the default 500-foot mixing zone. The requisite analysis of the project's compliance with water quality standards must carefully account for each of these factors and the potential for significant adverse effects.

A "mixing zone" is "an area in a water body, defined by DEC, within which the Division of Water will accept temporary exceedances of water quality standards resulting from short-term disruptions to the water body caused by dredging."[126] DEC specifically highlights the need to minimize resuspension of contaminated sediment during dredging, and directs permit writers to limit the size and shape of mixing zones to protect water quality.[127] DEC also calls out the need to avoid impairment to critical resource areas in determining the limits of a mixing zone. In fact, the Department's directive is clear: "The Divisions may assign a default mixing zone of 500 feet (*unless there is a critical water use area or sensitive habitat located closer than 500 feet*)."[128] Because the Project Area is essential fish habitat for 33 species, proximate to sensitive habitat for hard clam, and the contaminants involved are toxic, DEC should reject any mixing zone and certainly anything even approaching the 500-foot zone Transco has modeled.

In its modeling submitted with its 2018 application, Transco assumed a 500-foot mixing zone. The modeling still showed violations of water quality standards at the edge of the mixing zone. In its 2019 denial, DEC alerted Transco that the Department would be fully within its discretion to reduce the size of a mixing zone based on the factors described above.[129] It concluded "[t]he Project is proposed to be located in an important area for shellfish propagation and survival. In particular, Raritan Bay is one of the last known highly productive hard clam beds in the State, and its benthic habitat is particularly critical and sensitive."[130] The Denial then

[124] EPA WQS Handbook Chapter 5, *supra* note 30.
[125] *See id.*
[126] TOGS 5.1.9 at 35–36.
[127] *Id.*
[128] *Id.* at 36–37 (emphasis added).
[129] 2019 Denial at 7.
[130] *Id.*

recognized that if Transco modeled exceedances in the smaller mixing zone the results would show the true extent to which the Project would violate standards for mercury, copper, and other contaminants. Ultimately, DEC concluded that that even with the 500-foot mixing zone, the Project would violate water quality standards for copper and mercury.

Transco did not then or at any time later submit modeling based on anything more limited than the 500-foot mixing zone. In its 2020 Denial, the Department reiterated its concerns and referenced the need to determine an appropriately limited mixing zone on a case-by-case basis where contaminated sediment threatens water quality.[131] It assessed each factor and unequivocally rejected the use of the 500-foot mixing zone for the Project.

The 2020 Denial also addressed project impacts on the hard clam habitat in the Project Area: "Given the severity of the potential adverse impact to the unique natural resource of the hard clam critical resource area, Transco's proposed use of a default 500-foot mixing zone is not appropriate in this location."[132]

There is nothing new here. Transco has not provided any information that would undermine the determination that a 500-foot mixing zone is inappropriate or to show that it can comply with New York's water quality standards without relying on the impermissible mixing zone.[133]

2. DEC must reject Transco's request for multiple mixing zones for Total Suspended Solids.

In its current application, Transco concedes that it cannot meet water quality standards for Total Suspended Solids ("TSS").[134] The Project will violate water quality standards well beyond the default 500-foot mixing zone. Transco's proposed solution is to triple the size of the default mixing zone so that it can meet the standards at the mixing zone edge. This approach is inconsistent with DEC's own guidance and cannot be permitted. DEC must reject the request and the WQC.

Transco's sediment modeling indicates that turbidity and sedimentation will occur at unacceptable levels along the pipeline's path. In all three scenarios modeled,[135] TSS plumes exceeding DEC's value for TSS of 50 mg/L would extend beyond a 500-ft mixing zone, and in Scenarios E-2 and E-3, TSS plumes exceeding 100 mg/L would extend beyond a 500-ft mixing zone. In Scenario E-2, where the backfill rate has been slowed to 7,500 ft^3/hr, TSS of 100 mg/L are predicted to extend as much as 919 feet from the source. And even under scenario E-3, where backfill rate was slowed to 4,250 ft^3/hr, concentrations of 100 mg/L are still predicted to extend 656 feet from the source, and sediment deposition at or above .4 inches (1 centimeter) is predicted to extend up to 728 feet from source, and cover 76.7 acres of seabed.[136] Transco has provided no new information to show that the Project would not exceed TSS standards.

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[131] 2020 Denial at 8.
[132] *Id.* at 11.
[133] It is worth noting of course that there were exceedances even at the edge of the 500-foot mixing zone.
[134] 2025 Application Front Matter at 1-70.
[135] *See* 2025 Application Front Matter at 1-104 to 1-106.
[136] *Id.*

E. DEC Must Reject the WQC Because the Application Fails to Provide Sufficient Information.

1. DEC must reject Transco's supplemental modeling.

The Department must deny the WQC because Transco's modeling cannot demonstrate that it will not violate water quality standards. In its 2020 Denial, DEC identified a number of concerns with Transco's modeling that have not been addressed. DEC reviewed the data from Transco's modeling submitted with its 2018 application and highlighted that it projected mercury and copper exceedances at the edge of the assumed 500-foot modeling.[137] DEC then reviewed the updated pollution dispersion modeling submitted with the 2019 Application and observed that in its new model, Transco assumed both a modified dredging rate and a slack tide pause—effectively manipulating the data to reduce the exceedances. But the modeling still depended on the 500-foot mixing zone which DEC unequivocally rejected,[138] and as discussed below, Transco failed to demonstrate the slack tide pause and modified dredging rates could actually be achieved given the proposed construction schedule . Transco has not submitted any new information that would justify DEC reaching a different conclusion. In fact, Transco's proposed construction and in-service schedule[139] make it exceedingly unlikely that they can implement these measures in a manner that both adheres to required construction windows and ensures compliance with water quality standards.

DEC also rejected Transco's modeled sediment loss rate. It identified discrepancies in the jet trencher dispersion rates that Transco submitted. In addition, it found Transco's rates to vary significantly from the rates assumed in other jetting installation activities. DEC concluded that it could not verify the loss rate Transco used, which, unless correct, would impact the water quality projections. An accurate assessment of the loss rate likely would demonstrate even further exceedances of the water quality standards. Transco has not submitted any additional data or modeling to either verify the assumed sediment loss rate or adjust the rate to conform to other similar projections.[140]

2. Transco Failed to Assess the Impacts at the Required Burial Depth.

In its 2019 Application Transco proposed burying the pipeline at a depth of four feet below the surface.[141] DEC determined that the NESE pipeline must be buried at a minimum depth of six feet and that in the absence of any evaluation of burial at a six-foot depth, it could not make a determination regarding water quality. Transco did not then or in its 2025 Application include any evaluation of a deeper burial depth. As DEC concluded in 2020, it cannot make a determination as to the Project's ability to comply with water quality standards without that assessment.

[137] 2020 Denial at 6.
[138] *Id*. at 7–8.
[139] 2025 Application, App. F at 1-3, tbl.1-2.
[140] 2020 Denial at 6.
[141] *Id*. at 13.

3. Construction Schedule and Work Windows

As noted above, in its modeling for its 2019 Application, Transco proposed slowing its dredging rate and pausing for slack tide. It did not then or in its 2025 Application address how the slower rate might affect its construction schedule. Nor did it address then or now how it would impact the construction windows imposed to protect endangered species. In its 2020 Denial, DEC observed this contradiction:

> Transco's construction schedule does not appear to provide any buffers to avoid impacts to or take of important biological species. As a result, even if a reduced construction rate would ensure compliance with water quality standards, it may not be possible for Transco to employ such a reduced rate while still complying with applicable construction work windows to protect species. Thus, Transco has not provided sufficient documentation to the Department that any identified need to reduce the rate of dredging to comply with water quality standards would be possible within applicable work windows to protect important biological species.[142]

Transco has failed to provide sufficient information to ensure that it can comply with water quality standards, much less do so while adequately protecting species.

V. CONCLUSION

Transco's 2025 Application again fails to demonstrate that the NESE project will comply with New York's water quality standards. Despite Transco's assertions in its filing letter accompanying the application, President Trump's Executive Order declaring a national energy emergency does not alter the reality that the NESE Project does not comply with New York's water quality standards and, therefore, cannot be approved under section 401 of the Clean Water Act. Nor does any political "agreement" Governor Hochul may have reached with the Trump administration[143] supersede the unequivocal requirements that Transco demonstrate that the Project will comply with water quality standards. Twice already, the Department has made a fact- and science-based determination that Transco cannot assure compliance with water quality standards. There is nothing new in the application nor any change in the law to justify a different determination here.

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[142] *Id.* at 12.

[143] *See, e.g.*, Jordan Blum, *How Trump and Williams Reviving the Constitution Pipeline May Result in Another New York Gas Project Proceeding Instead*, Fortune (May 30, 2025), https://fortune.com/2025/05/30/how-trump-williams-reviving-constitution-result-another-new-york-gas-pipeline/.

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