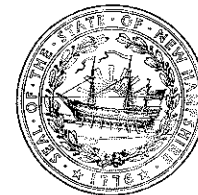




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Mr. Larry VanDessel
University of New Hampshire
c/o Facilities Design & Construction
22 Colovos Road
Durham, NH 03824-3542

RECEIVED

MAY 09 2006

FACILITIES DESIGN
AND CONSTRUCTION

WATER QUALITY CERTIFICATION

In Fulfillment of

Section 401 of the United States Clean Water Act (33 U.S.C 1341)

WQC # 2002-003

Activity Name	Pier Replacement
Activity Location	New Castle, New Hampshire
Affected Surface Waters	Piscataqua River, Atlantic Ocean
Owner/Applicant	University of New Hampshire c/o Facilities Design & Construction 22 Colovos Road Durham, NH 03824-3542
Relevant Permit(s):	U.S. Army Corps of Engineers #200200374 NH DES Wetlands Bureau #2002-00746
DATE OF APPROVAL (subject to Conditions below)	April 28, 2006

A. INTRODUCTION

The University of New Hampshire (Applicant) proposes the construction and operation of a pier in Portsmouth Harbor, New Castle, New Hampshire (Activity). The Activity includes the removal of an existing 500-foot long concrete pier and associated approach trestle and the installation of a 325-foot long pier in the place of the original pier. In addition, the Activity includes the installation of an eight-foot by 350-foot floating dock, a four-foot by 80-foot gangway, a 12-foot by 35-foot breakwater, an under-pier aquaculture area, and appurtenances. The pier will enable centralized berthing for the Applicant's marine program fleet, an ocean mapping vessel, and visiting research vessels.

This 401 Water Quality Certification (Certification) applies to the Activity described in Section C, item C-13, below. This 401 Certification documents laws and regulations, determinations, and 401 Certification conditions relative to the

attainment/maintenance of NH surface water quality standards including NH RSA 485-A:8 II, and NH Code of Administrative Rules Env-Ws 1700.

B. WATER QUALITY CERTIFICATION APPROVAL

Based on the findings and conditions noted below, the New Hampshire Department of Environmental Services (DES) has determined that any discharge associated with the Activity will not violate surface water quality standards, or cause additional degradation in surface waters not presently meeting water quality standards. DES hereby issues this 401 Certification subject to the conditions defined in Section E of this 401 Certification, in accordance with Section 401 of the United States Clean Water Act (33 U.S.C. 1341).

C. STATEMENT OF FACTS AND LAW

- C-1. Section 401 of the United States Clean Water Act (33 U.S.C. 1341) states, in part: "Any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.....No license or permit shall be granted until the certification required by this section has been obtained or has been waived...No license or permit shall be granted if certification has been denied by the State..."
- C-2. RSA 485-A:8 and Env-Ws 1700 (Surface Water Quality Regulations, effective December 3, 1999) together fulfill the requirements of Section 303 of the Clean Water Act that the State of New Hampshire adopt water quality standards consistent with the provisions of the Act.
- C-3. Env-Ws 1701.02, entitled "Applicability", states that:
- "(a) These rules shall apply to all surface waters.
- (b) These rules 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 or the level of water quality of surface waters."
- C-4. Env-Ws 1702.18 defines a 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."
- C-5. Env-Ws 1702.39 defines a pollutant as: "pollutant" as defined in 40 CFR 122.2. This means "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological

materials, (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water."

- C-6. Env-Ws 1702.46 defines surface waters 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."
- C-7. Surface waters are navigable waters for the purposes of certification under Section 401 of the Clean Water Act. Surface waters are jurisdictional wetlands for the purposes of state wetlands permitting under RSA 482-A.
- C-8. Env-Ws 1703.21 (a)(1) states that "Unless naturally occurring or allowed under part Env-Ws 1707, all surface waters shall be free from toxic substances or chemical constituents in concentrations or combinations that injure or are inimical to plants, animals, humans or aquatic life."
- C-9. The Activity reviewed for this 401 Certification requires a federal wetlands permit under the federal Clean Water Act Section 404. The U.S. Army Corps of Engineers (USACE) provided public notice for the Activity on May 14, 2002.
- C-10. The Applicant is responsible for the Activity, which includes construction and operation.
- C-11. The Applicant submitted a description and purpose of the Activity and seabed boring logs from the existing pier on July 3, 2002.
- C-12. The Applicant submitted an application for 401 Certification under letter dated April 3, 2006, which was received by DES on April 5, 2006. The application included the description and purpose of the Activity noted in C-11, above.
- C-13. The Applicant submitted additional information to DES on April 25, 2006, as requested by DES on April 18, 2006. The additional information received on April 25, 2006 and the 401 Certification application received by DES on April 5, 2006 is the basis for this 401 Certification review.
- C-14. The 401 Certification application received by DES on April 5, 2006 included approved DES Wetlands permit number 2002-00746, dated March 20, 2006.

D. FINDINGS

- D-1. The Activity will result in a discharge and may cause the permanent alteration of or temporary impacts to surface waters.
- D-2. Storm water runoff and snowmelt runoff to surface waters from the Activity are discharges under the definitions of Env-Ws 1702.18.
- D-3. The Activity requires water quality certification under Section 401 of the federal Clean Water Act.

- D-4. The 401 Certification decision by DES relies, in part, on an approved permit from the DES Wetlands Bureau for the potential construction-related impacts to jurisdictional wetlands.
- D-5. The Piscataqua River within and adjacent to the Activity are surface waters affected by the Activity. The affected surface waters are Class B waterbodies; Class B New Hampshire surface water quality standards (SWQS) apply to the Activity. Class B waterways are considered suitable for aquatic life, primary and secondary contact recreation, fish consumption, wildlife and, after adequate treatment, as a water supply.
- D-6. The Activity includes the removal of existing timber cribs situated on existing stable platforms on the seabed. The removal process is not expected to cause significant disturbance to or suspension of seabed sediments.
- D-7. The Activity may result in discharges of petroleum-based compounds including but not limited to gasoline, oil, and grease in the Piscataqua River during construction or operation, particularly during vessel refueling. During operation, the Activity serves as a berthing area for vessels owned and operated by the National Oceanic and Atmospheric Administration (NOAA) and the Applicant. The Applicant, in its submittal of additional information, stated that NOAA vessels deploy oil containment booms during their refueling operations. In addition, UNH Marine Program vessels, owned by the Applicant, refuel at the Portsmouth Fisherman's Cooperative on Pierce Island, which is off-site from the Activity.
- D-8. The Applicant, in its submittal of additional information, noted a concrete overlay will be cast-in-place on pre-cast concrete planks on the new pier. Thus, discharge of concrete may occur in the Piscataqua River during construction.
- D-9. The Applicant, in its Section 401 Certification application, stated its maintenance of a high-level of operational control over uses on the pier to ensure high water quality. The Activity includes the operation of an under-pier area to support the Applicant's aquaculture program. The program is critically dependent on the high quality of water in area of the Activity. Routine washing and cleaning is not planned for the pier. Approximately 17 four-inch diameter curb scrubbers are proposed on the south side of the pier to treat runoff. Runoff on the north side of the pier will drain through a 0.5-inch space between the concrete deck and the fender system. The Applicant proposes to install and operate a water quality monitoring station on the new pier following construction.
- D-10. The Applicant has consulted federal and state resources agencies regarding the fisheries habitat and water quality aspects of the Activity. Federal and state resources agencies included the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, NH Fish and Game Department, NH Dredge Management Task Force, and NH DES Wetlands Bureau.

E. WATER QUALITY CERTIFICATION CONDITIONS

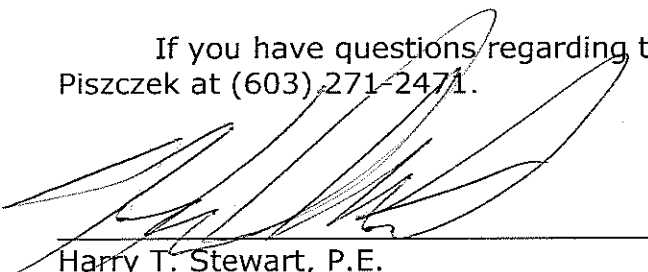
- E-1. Any terms and conditions of this 401 Certification shall be binding for any successor owner of the Activity.

- E-2. The Activity shall not cause or contribute to a violation of surface water quality standards. If DES determines that surface water quality standards are not met in the waterbodies affected by the Activity, DES may modify this Certification to include additional conditions to ensure compliance with surface water quality standards, when authorized by law, and after notice and opportunity for hearing.
- E-3. The Applicant shall allow DES to inspect the Activity at any time to monitor compliance with the conditions of this 401 Certification.
- E-4. The Applicant shall consult with DES regarding any proposed modifications to the Activity, including construction or operation, which may result in a change in discharge to surface water, to determine whether this 401 Certification requires amendment.
- E-5. The conditions included in DES Wetlands Bureau Permit 2002-00746, including any amendments, shall become conditions of this 401 Certification upon its issuance.
- E-6. The Applicant shall incorporate measures to avoid or minimize the discharge of construction related debris into surface waters, including but not limited to concrete, from the new pier deck during construction. The Applicant shall remove and dispose of any significant activity-related concrete deposits from the Piscataqua River prior to final construction demobilization.

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 Michael Sclafani, DES Council Appeals Clerk, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095; telephone 603-271-6072.

If you have questions regarding this 401 Certification, please contact Paul Piszczek at (603) 271-2471.



Harry T. Stewart, P.E.
Director, Water Division

cc: Paul Piszczek, DES Watershed Management Bureau
Frank Richardson, DES Wetlands Bureau
Chris Williams, DES Coastal Consistency Program
Richard Roach, ACOE
Robert Snover, Appledore Marine Engineering, Inc.
New Castle Conservation Commission
New Castle Board of Selectmen